

AuctionsPlus Pty Ltd

OPERATING  
CONDITIONS

Effective 1 May 2015



**BID the GRID**

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## INTERPRETATION

### 1. Definitions

In these Operating Conditions –

"*access*", in relation to the Bid the Grid System or data, means to read on screen or obtain a printed copy or other record of any data recorded in the Bid the Grid System;

"*assessor*" means in relation to a lot of livestock listed for sale on the Bid the Grid System the person who assesses that lot of livestock on behalf of the vendor;

"*agent*" means an agent for a vendor or for a purchaser who undertakes all functions normally associated with an agent;

"*auction*" means a sale conducted on the Bid the Grid System in accordance with Part D in which each lot is sold to the highest bidder providing the bid equals or exceeds the reserve price;

"*auctioneer*" means the person conducting the physical component of an interface auction;

"*AuctionsPlus*" means AuctionsPlus Pty Ltd ACN 072 403 984 in its capacity as hoster of the Bid the Grid System, and not in its capacity as a market provider or operator;

"*Bid the Grid System*" means the computer based communication facility for the sale of livestock owned by AuctionsPlus but does not include registered users' terminals or any means of communication from a registered user to the internet;

"*AUS-MEAT*" means AUS-MEAT Limited, a company limited by guarantee;

"*AUS-MEAT Language*" means the terminology and criteria for description of livestock and measurement of carcasses prescribed or adopted by AUS-MEAT;

"*catalogue*", in relation to a lot, includes the assessment of the lot;

"*certified*", in relation to weighbridge scales or abattoir scales, means approved or authorised by the competent authority in the State or Territory where the scales are situated;

"*Commercial Arbitration Legislation*" means the Commercial Arbitration Act, 1984, of New South Wales and the corresponding legislation in each other State and Territory;

"*data*" includes assessments, catalogues, bid bases, reserve prices, bids, limit bids, carcass measurements, kill data, assessor performance data and market reports;

"*designated forms and manuals*" means the forms and manuals designated from time to time by AuctionsPlus under these Operating Conditions;

"*enter*", in relation to data, means to record the data in the Bid the Grid System;

"*market operator*" means AuctionsPlus and any other registered user who is authorised to conduct auctions on the Bid the Grid System;

"*mixed truck lot*" means animals from two or more lots transported on the one motor lorry, railway truck or ship;

"**modify**", in relation to data recorded in the Bid the Grid System, means amend or replace the data;

"**person**" includes a body corporate as well as a natural person;

"**pricing grid**" means in relation to a purchaser of livestock comprising a particular stock category the grid setting out the prices paid by the purchaser for meat of a particular grade and weight, a copy of which is provided to the vendor at the end of an auction;

"**purchaser**" includes an agent who is deemed to be purchasing as a principal;

"**registered user**" means a person registered as a user of the Bid the Grid System by AuctionsPlus under these Operating Conditions;

"**sale**" means a sale by auction;

"**sell**" means to sell by auction;

"**selling agent**" means the agent who lists stock in an auction on behalf of the vendor;

"**slaughter stock**" means animals purchased for immediate slaughter by or on behalf of the purchaser;

"**stock category**" means a category or class of livestock fixed by AuctionsPlus from time to time and distinguished by species, sex, dentition and weight;

## **2. Headings and schedules**

2.1 The headings to the clauses are not part of these Operating Conditions and shall not affect their construction.

2.2 The Schedules are part of these Operating Conditions.

## **3. Parts of speech and grammatical forms**

In these Operating Conditions, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **4. Gender and number**

In these Operating Conditions, unless the contrary intention appears:

- (a) words importing one gender include all other genders; and
- (b) words in the singular include the plural, and words in the plural include the singular.

## **5. Notices**

Any notice AuctionsPlus is required or permitted to give in writing to a registered user under these Operating Conditions may be given by electronic mail.

## PART A: GENERAL CONDITIONS

### 1. Operating Conditions bind all users

These Operating Conditions bind all users of the Bid the Grid System, whether or not they are registered users.

### 2. Variation of Operating Conditions

AuctionsPlus may from time to time, by notice on the Bid the Grid System setting out the variations, vary these Operating Conditions. A variation has effect from the date specified in the notification.

### 3. Use of AUS-MEAT Language

All livestock sold through the Bid the Grid System must be described, and all assessments, carcase measurements and kill data entered in the Bid the Grid System must be based on the AUS-MEAT Language.

### 4. Sale Options

The only sale option available through the Bid the Grid System is **Carcase weight** basis, where the price is in cents per kilogram for the aggregate weight ascertained by certified abattoir scales of the carcasses of all livestock in the lot subject to the adjustments for non-conforming assessments as specified in the applicable purchaser's pricing grid..

### 5. Forms and manuals

AuctionsPlus will make available copies of the designated forms and manuals to registered users for prices fixed by AuctionsPlus, and may from time to time vary the designated forms and manuals.

### 6. Disputes

- 6.1 Subject to the provisions of Part E1 clause 22 and the First Schedule, a dispute about the conduct of an auction, the sale of a lot, the fitness for transport of any animal, the slaughter of a lot or any other matter arising under these Operating Conditions shall first be referred for resolution to the relevant agent.
- 6.2 If the parties are unable to resolve the dispute within fourteen (14) days of delivery of the stock, the dispute shall be referred in writing, no later than the expiration of that period, to the AuctionsPlus ~~General Manager~~ CEO for arbitration.
- 6.3 When a dispute is referred for Arbitration:
- (a) each party shall submit to AuctionsPlus an acceptance for the matter to be taken to arbitration. This is to be on the designated form and is to be accompanied by the payment of the prescribed fee.
  - ~~(b) — the AuctionsPlus General Manager~~ CEO may delegate his or her powers under this clause 6 to any other person chosen by himself or herself, who in the AuctionsPlus ~~General Manager's~~ CEO's opinion has appropriate qualifications and relevant industry experience.
  - (c) the parties shall each outline in writing to the AuctionsPlus ~~General Manager~~CEO (or his or her delegate) the nature of the dispute and all matters relevant to the dispute that in their opinion should be considered in the arbitration and;
  - (d) with their written outline to the AuctionsPlus ~~General Manager~~CEO the purchaser shall pay the amount in dispute to AuctionsPlus and AuctionsPlus shall hold the payment in trust pending the determination of the arbitration, whereupon the amount shall be paid in accordance with the determination.
- 6.4 The arbitrator may determine the rules to apply to the arbitration and the awarding of costs or, if he or she is unwilling or unable to do so, the arbitration shall be conducted under the Commercial Arbitration Legislation in the State or Territory in which the arbitration is held.

## **PART B: CONDITIONS OF REGISTRATION**

### **1. Application for registration**

A person who desires to use the Bid the Grid System shall become a registered user and shall apply to AuctionsPlus to become a registered user by completing and submitting an online application located on the website.

### **2. Registration**

2.1 AuctionsPlus may accept or reject an application as it sees fit, and may accept an application subject to such conditions as it sees fit to impose, and may from time to time revoke, renew or vary the conditions as it sees fit.

2.2 AuctionsPlus may require further particulars (whether or not required on the designated form of application) before determining whether to accept or reject an application, or in relation to the continuing registration of a registered user.

2.3 Where AuctionsPlus rejects an application, it will provide reasons for the rejection.

### **3. Notice of change in particulars**

A registered user shall give notice in writing to AuctionsPlus of any change in the particulars supplied in relation to registration within seven (7) days of the change occurring.

### **4. Conditions for registration of agents and market operators**

A registered user operating as an agent shall -

- (a) comply with all legal requirements in any State or Territory in which the registered user carries on business; and
- (b) comply with any other conditions imposed by AuctionsPlus.

### **5. Conditions for registration of purchasers**

A registered user operating as a purchaser who slaughters livestock sold through the Bid the Grid System, on a Carcase weight basis shall -

- (a) ensure the livestock are slaughtered in accordance with the AUS-MEAT Language by:
  - (i) having the livestock slaughtered at an AUS-MEAT accredited abattoir; or
  - (ii) having the slaughter of the livestock monitored by AUS-MEAT for a fee, payable by the purchaser, determined by AUS-MEAT from time to time;
- (b) permit AuctionsPlus, the vendor or the selling agent to attend and observe the slaughter of the livestock;
- (c) supply a copy of the recognised kill sheet incorporating the carcase measurement and kill data to AuctionsPlus within two (2) working days of slaughter.

### **6. User identification numbers**

6.1 AuctionsPlus will give each registered user a user identification code and user-id.

6.2 A registered user shall quote his user identification code and/or user-id in relation to all transactions through the Bid the Grid System and all dealings with AuctionsPlus.

### **7. Connection to Bid the Grid System**

7.1 AuctionsPlus will give each registered user who communicates with the Bid the Grid System by a terminal, a user identification code and user-id, and the facility to establish a confidential password.

7.2 A registered user shall use his user identification code and his password to communicate with the Bid the Grid System and will be unable to gain access to the Bid the Grid System if he fails to do so.

7.3 A registered user shall keep his user identification code and his password confidential and observe any security instructions given by AuctionsPlus and for his own protection should immediately give notice in writing to AuctionsPlus of any improper disclosure or use of his user identification code or his password.

7.4 A registered user is bound by any transaction using their user identification code and his password unless he has previously given AuctionsPlus notice in writing requesting cancellation of his user identification code or his password.

## **8. Fees for use of Bid the Grid System**

8.1 A registered user shall pay to AuctionsPlus fees for use of the Bid the Grid System.

8.2 The scale of fees will be set by AuctionsPlus from time to time.

8.3 All accounts must be paid within fifteen (15) days of receipt of an invoice from AuctionsPlus.

## **9. Interest on overdue fees**

9.1 Where a registered user fails to pay any fees in full on the due date, AuctionsPlus reserves the right to charge interest on the unpaid balance of the fees at the rate set out in the scale of fees.

9.2 Interest will accrue from day to day and shall be paid monthly in arrears. Any unpaid interest will be added to the balance of fees owing and will itself bear interest in accordance with this clause.

## **10. Copyright in Bid the Grid System**

AuctionsPlus is the absolute legal and beneficial owner of the Bid the Grid System and of the copyright and all other rights in the nature of copyright and all other intellectual property rights, in the Bid the Grid System and in the designated forms and manuals.

## **11. Publication and confidentiality of data**

11.1 Each vendor authorises the access by all other registered users of any assessment entered by him or on his behalf.

11.2 Each purchaser authorises the inclusion of summaries of carcase measurement and kill data in market reports compiled by AuctionsPlus and the access by all other registered users of those market reports.

11.3 Each vendor and purchaser authorises the inclusion of summaries of sales in market reports compiled by AuctionsPlus or market operators and the access by all other registered users of those market reports.

## **12. Indemnities by registered users**

Each registered user shall keep AuctionsPlus indemnified against all claims made against AuctionsPlus by any person in respect of any transaction entered into by the registered user, whether as a principal or an agent, through the Bid the Grid System.

## **13. Disclaimer by AuctionsPlus**

13.1 AuctionsPlus is not liable to any market operator, agent or vendor for payment in respect of any lot sold through the Bid the Grid System.

13.2 Each purchaser shall keep AuctionsPlus indemnified against all claims for payment in respect of any lot sold through the Bid the Grid System and each vendor shall release AuctionsPlus from all such claims.



**14. Malfunction of Bid the Grid System**

AuctionsPlus is not liable to any registered user for any malfunction of or break down in the Bid the Grid System or for any non-receipt, non-transmission or loss of data by the Bid the Grid System, whether caused or contributed to by any negligent or other act or omission of AuctionsPlus or its employees, contractors or agents or of any registered user.

**15. Variation of Bid the Grid System**

AuctionsPlus may vary any of the functions of the Bid the Grid System or any hardware or software included in the Bid the Grid System, but will not be liable to any registered user for any change in functionality, performance or specifications by reason of any such variation.

**16. Variation of stock categories and sale options**

AuctionsPlus may vary the stock categories traded through the Bid the Grid System and may vary the sale options for livestock, but will not be liable to any registered user due to such variation.

**17. Termination of registration**

17.1 AuctionsPlus may give notice terminating the registration of any registered user who -

- (a) fails to comply with any provision of these Operating Conditions;
- (b) being a natural person, becomes insolvent or under administration;
- (c) being a natural person, has been convicted of an offence or has an offence proved against him whether for breach of any Act or otherwise; or
- (d) being a corporation, is wound up or has a provisional liquidator appointed or has a receiver or receiver and manager of any of its property appointed or has an official manager appointed.

17.2 The termination will take effect from the date specified.

**18. Consequences of termination**

Upon termination of the registration, all rights of the registered user under these Operating Conditions cease but he or she remains liable for any unpaid fees (whether or not invoiced), for any debt, liability or obligation incurred in relation to any sale, and for any claim arising from failure to comply with these Operating Conditions.

## **PART C 1: ASSESSMENT AND SUBMISSION OF LOTS FOR SALE - CATTLE**

### **1. Composition of lots**

All cattle in a lot consigned by a vendor for auction on the Bid the Grid System shall be within the same stock category but may be within one or more weight divisions or classes and one or more fat divisions in the AUS-MEAT Language.

### **2. Tick areas**

2.1 Where the vendor is aware that the lot comprises cattle from tick areas that have been depastured in clean areas in recent times, the vendor shall include this information in the assessment for inclusion in the catalogue.

2.2 Where the vendor is aware that the lot comprises cattle from clean areas that have been depastured in a tick area in recent times, the vendor shall include this information in the assessment for inclusion in the catalogue.

### **3. Hormonal growth promotants**

The vendor shall include all information relating to the hormonal growth promotant status of the cattle in the lot.

### **4. Assessment of lots**

4.1 Where a lot is submitted for sale by auction, the vendor must provide, not more than five (5) days before the date of the auction, an assessment of the lot that complies with the Bid the Grid System and is made on the designated form.

4.2 An assessment of a lot must be made on a group basis.

4.3 Where an assessed lot comprises cattle from a remote area, the assessment may be entered and the lot offered for sale if AuctionsPlus, in its absolute discretion, receives satisfactory assurances that the assessment in the designated form has been or will be sent.

### **5. Identification of cattle**

All cattle included in a lot assessed on a group basis shall at the time of delivery, be clearly identified by a NLIS approved tag.

### **6. Delivery of lot**

6.1 The vendor must, in each assessment of a lot consigned for auction on the Bid the Grid System, nominate:

- (a) The town within which the vendor is prepared to make delivery; and
- (b) the date(s) on which they intends to deliver.

6.2 The vendor of a lot sold by auction on the Bid the Grid System must arrange appropriate transport of the lot to the designated abattoir. All such transport shall be at the sole cost of the vendor.

### **7. Reserve price**

The reserve price will be set after discussion between the vendor and marketing agent.

### **8. Vendor's restrictions and requirements**

A vendor may not impose any restrictions on the sale of his lot under the Bid the Grid System.

### **9. Submission only by owner**

Only an owner may submit a lot for sale.

## PART D 1: CONDUCT OF AUCTIONS

### 1. **Booking time for auction**

- 1.1 A registered user seeking to sell livestock on the Bid the Grid System shall apply to AuctionsPlus to book the date and time for the conduct of any auction through the Bid the Grid System.

### 2. **Conduct of auction**

AuctionsPlus shall control and be responsible for the conduct of the auction on the Bid the Grid System.

### 3. **Order of sale**

All lots on the Bid the Grid System will be offered for auction simultaneously and for the duration of the auction.

### 4. **Withdrawal of a lot**

- 4.1 A vendor may withdraw a lot from auction at any time before the catalogue for that auction has been finalised, with AuctionsPlus' prior notice and consent.
- 4.2 A vendor may withdraw a lot from auction after the catalogue for that auction has been finalised, provided always that the vendor indemnifies AuctionsPlus and any other registered user of the Bid the Grid System against any loss suffered to the extent that such loss arises out of the withdrawal of the lot from auction.

### 5. **Bidder's bid basis**

A bidder shall, before making a bid at an auction, enter its Pricing Grid onto the Bid the Grid System.

### 6. **Bidder as a principal**

A bidder is deemed to be bidding as a principal.

### 7. **Standard bid basis**

Each bid will be converted by the Bid the Grid System into a bid on the standard bid basis.

### 8. **Making a bid**

A bid is made only when it is recorded in the Bid the Grid System bidding log.

### 9. **Withdrawal of bids**

A bid may not be withdrawn.

### 10. **Vendor's bids**

The vendor may not bid for his own lot, either by himself or through an agent.

### 11. **Disputes about bidding**

If there is any dispute about the bidding, AuctionsPlus, as the market operator is the sole arbitrator and its decision is final.

### 12. **Purchaser**

The person who makes the highest bid on the standard bid basis that is equal to or above to the reserve price (if any) on the standard bid basis, and that is accepted by AuctionsPlus as the market operator, will be the purchaser.

**13. Passed in lots**

- 13.1 A lot will be passed in when, at the completion of the auction for that lot, the highest bid on the standard bid basis that is accepted by AuctionsPlus as the market operator is less than the reserve (if any) on the standard bid basis.
- 13.2 Where a lot is passed in, the person who makes the highest bid may, within thirty minutes (30) increase his bid to a price equal to the reserve price in which case the lot will be deemed sold.
- 13.3 After the thirty minute time period has elapsed the livestock will be open to bids from participating processors on the day.

**14. Goods and Services Tax**

All auctions shall be conducted on the basis that the bid price shall be exclusive of Goods and Services Tax (GST). Where applicable, GST is to be added after the conclusion of the auction to those lots sold, under this Part D.

## PART E 1: CONDITIONS OF SALE

### 1. Conditions of Sale apply to all sales

All sales of cattle made through the Bid the Grid System shall be subject to these Conditions of Sale and to any additional conditions of sale agreed to by the vendor and purchaser, provided the additional conditions of sale are not inconsistent with these Operating Conditions, or with the prevailing law.

### 2. Warranty of assessment and other information

2.1 The vendor warrants that any information included in the assessment and any information he provides which is included in the catalogue is true and that all material information required by the designated form of assessment or by these Operating Conditions has been included in the assessment or the catalogue.

2.2 The vendor and purchaser of a lot are ~~each liable~~ **each liable** to the other for adjustments in price due to any misdescriptions or discrepancies in the assessment of the lot, in accordance with the purchaser's Price Grid.

### 3. Maintenance of lot

The vendor shall at his own cost maintain the lot from the time of assessment until the time of delivery and warrants that at the estimated delivery date, the cattle will be delivered in the condition described in the catalogue.

### 4. Variation of composition of lot

4.1 A vendor of a lot of livestock must deliver between 95% and 105% of the number of head listed for sale in the catalogue as that lot.

4.2 Subject to sub-clause 4.1, the composition of a lot may not be changed from that nominated in the catalogue.

### 5. Delivery of lot

5.1 If the vendor has nominated more than one place of delivery or more than one date of delivery the vendor and purchaser may mutually agree on a place and date for delivery.

5.2 At the designated place of delivery and on the date of delivery the vendor shall deliver and the purchaser shall take delivery of the lot.

5.3 The vendor and the purchaser shall sign a sale agreement in the designated form as evidence of delivery by the vendor and receipt by the purchaser and disclosing any discrepancy in the number of cattle and any other matter that might reasonably be expected to result in a claim.

5.4 Unless the vendor can prove that for reasons beyond his control and that after taking all reasonable steps to deliver the lot by other available means he is unable to deliver the lot on the date of delivery or any later date that the purchaser is prepared to agree to, the purchaser may rescind the contract if the vendor fails to deliver the lot.

5.5 Unless the purchaser can prove that for reasons beyond his control and that after taking all reasonable steps to take delivery of the lot by other available means he is unable to take delivery of the lot on the date of delivery or any later date that the vendor is prepared to agree to, the vendor may rescind the contract if the purchaser fails to take delivery of the lot.

5.6 Where the contract is rescinded under sub-clause 5.4 or 5.5, neither the vendor nor the purchaser will have any claim against the other in respect of the rescission.

- 5.7. Reasons beyond the control of the vendor or the purchaser include act of God, strikes or other industrial disputes, flood, fire, failure of any third party to perform obligations under a contract and intervention by a government authority.
- 5.8 Rescission of the contract under sub-clause 5.4 or 5.5 will not prejudice any claim AuctionsPlus in its capacities of the market operator or provider of the Bid the Grid System may have for fees in respect of the sale.
- 5.9 Stock that are lame, blind or diseased shall not be delivered.
- 6. Costs of transport**
- 6.1 The vendor shall bear all costs (if any) of transporting the lot to the purchaser's designated abattoir and shall ensure that the lot is transported to the abattoir by the most direct route and without unreasonable delay.
- 7. Quarantine and movement restrictions**
- 7.1 The vendor shall indemnify the purchaser against loss resulting from infringement by the purchaser of quarantine restrictions or movement restrictions unless the restrictions are disclosed in the assessment.
- 7.2 The purchaser shall bear all such loss resulting from infringement of restrictions disclosed in the assessment.
- 8. Tick areas**
- 8.1 Where the vendor has the lot in a tick area and has not restricted bids from persons in tick free areas, the vendor warrants that the lot will be free of ticks at the designated place of delivery.
- 8.2 The vendor shall bear any clearing dip fees
- 9. Title and risk**
- Risk in, and title to and property in a lot sold under the Bid the Grid System passes to the purchaser at the place and time when the carcass is weighed over the abattoir scales.
- 10. Warranty of title**
- 10.1 The vendor warrants that he is the beneficial owner of the lot free of all mortgages, charges and encumbrances and adverse interests and that he is entitled and competent to sell and deliver the lot in accordance with these Conditions of Sale.
- 10.2 AuctionsPlus shall not be liable to any person for any claim resulting from a breach of sub-clause 10.1
- 11. Statutory Charges**
- The purchaser is responsible for the collection and payment of the Cattle Transaction Levy which will be deducted from the vendors proceeds.
- 12. Costs of failing to pass ante mortem inspection**
- Where any cattle in lot sold at auction and delivered to the buyers designated abattoir fail to pass ante mortem inspection by reason of disease, illness, dirt, wetness or fly strike, the vendor shall indemnify the purchaser against reasonable costs incurred in preparing the cattle for subsequent ante mortem inspection unless the reasons are disclosed in the assessment or the vendor proves the reasons were sustained after the time of delivery.
- 13. Slaughter of lot**
- The purchaser of a lot sold under the Bid the Grid System shall notify the vendor of the place and date of slaughter within 24 hours of the sale.

**14. Time for slaughter**

- 14.1 The purchaser of a lot sold under the Bid the Grid System shall take all reasonable steps to ensure that the lot is slaughtered within 48 hours after delivery of the lot to the purchaser's designated abattoir, with allowances for weekends and public holidays.
- 14.2 Where the purchaser is unable to get the results of residue tests back in time to meet the requirements of sub-clause 14.1, the time for slaughter may be extended by an additional 24 hours, subject to the purchaser notifying the vendors agent via written communication immediately after it becomes necessary to extend the time for slaughter.

**15. Delay in slaughter beyond purchaser's control**

- 15.1 If for reasons that the purchaser proves were or are beyond his control, the lot is not slaughtered or will not be slaughtered within the period required under clause 17, the purchaser shall immediately notify the vendor and the vendor and the purchaser may agree on one of the following courses of action -
- (a) complete slaughter of the lot within 24 hours of the end of the period required under clause 14; or
  - (b) the price will be paid in accordance with the assessment or the actual results of slaughter (without any price adjustment according to the purchaser's Pricing Grid), whichever is the more favourable to the vendor; or
  - (c) unless quarantine restrictions or movement restrictions apply, the contract of sale will be rescinded and the lot will be returned to the vendor at the purchaser's cost; or
  - (d) the lot will be kept at the abattoir and maintained until slaughter and the costs of maintaining the lot will be borne equally by the vendor and the purchaser; or
  - (e) any other course of action agreed to by the vendor and the purchaser.
- 15.2 If the vendor and the purchaser fail to agree on a course of action, either one of them may require that the lot be kept at the abattoir and maintained until slaughter at his expense, or the matter shall be submitted to arbitration under these Operating Conditions.

**16. Delay in slaughter within purchaser's control**

If for reasons within the control of the purchaser or otherwise through the fault of the purchaser the lot is not slaughtered or will not be slaughtered within the period required under clause 14, the vendor may require that the price be determined in accordance with the assessment or the actual results of slaughter (without any price adjustment according to the purchaser's Pricing Grid), whichever is the more favourable to the vendor.

**17. Condemnation**

- 17.1 Where a carcase of a lot sold under the Bid the Grid System is partially condemned -
- (a) the vendor will receive no return for the condemned part except as provided for in paragraph (c) of this sub-clause; and
  - (b) the part not condemned will be priced -
    - (i) at the average of the remainder of the lot; and
    - (ii) for the purpose of price adjustment for misdescription, where the fat measurement site is condemned, the fat measurement of the carcase will be the average of the remainder of the lot.
  - (c) where the carcase is partially condemned as a result of any act or omission occurring in or in connection with the slaughter process, the purchaser shall pay for that part of the carcase partially condemned at the price paid for the remainder of that carcase.
- 17.2 Where a carcase of a lot sold under the Bid the Grid System is totally condemned -
- (a) the purchaser shall pay and bear the costs of slaughter and shall provide the vendor with a copy of the condemnation note; and

- (b) except as provided for in paragraph (c) of this sub-clause, the vendor will receive no return from the purchaser for hides and offal but may apply for compensation from the appropriate authorities in the case of a notifiable disease.
- (c) where the carcass is totally condemned as a result of any act or omission occurring in or in connection with the slaughter process, the purchaser shall pay for the condemned carcass at the average of the remainder of the lot.

17.3 Where the carcass of a lot sold under the Bid the Grid System is retained for further reinspection by inspection authorities and subsequently condemned after the carcass is weighed over the abattoir scales, the liability for losses will remain with the vendor and the procedures outlined in sub-clauses 17.1 and 17.2 will apply.

## **18. Slaughter details for price calculation**

The price of a lot sold under the Bid the Grid System will be calculated on the basis of the carcass measurement and kill data supplied in accordance with clause 5 of Part B of these Operating Conditions.

## **19. Price adjustment for misdescription**

19.1 Where at the time of delivery the cattle in the lot are not in the condition described in the assessment, the vendor is liable for adjustments in price according to the purchaser's relevant Pricing Grid in the manner set out in the First Schedule.

19.2 Subject to sub-clause 19.1, where at the time of delivery the cattle in the lot are not in the condition described in the assessment, the vendor's liability is limited to the obligations imposed by statute and all other liability is excluded.

## **20. Purchaser liability**

The purchaser of a lot, as designated in the sale confirmation notice, is liable for payment to the vendor for the value of cattle purchased.

## **21. Purchaser default**

Unless otherwise provided in these Conditions of Sale, if the purchaser fails to comply with these Conditions of Sale:

- (a) where the purchaser takes possession of the lot prior to payment of the full purchase price, the purchaser authorises the vendor to enter on its premises and any premises occupied by it at any time and without notice and take possession of the lot; and
- (b) any lot sold to the purchaser may be re-sold by public auction or private contract in such lots and upon such conditions as the vendor decides and without notice to the purchaser, and the purchaser shall indemnify the vendor against all loss and expense suffered or incurred in connection with reclaiming the lot and re-sale (including loss and expense in respect of any actions, claims, proceedings and demands brought against the vendor by any third party) but may not participate in any profit that results.

## **22. Vendor default**

22.1 Where a vendor fails to comply with these Conditions of Sale and the vendor and the purchaser are unable to negotiate a settlement, the matter is to be submitted to arbitration under these Operating Conditions, and

- (a) the purchaser must notify AuctionsPlus in writing of the vendor's default within two (2) working days of the latest delivery date specified in the catalogue or that delivery day agreed between the agent and the purchaser, whichever is the later; and
- (b) the purchaser must provide AuctionsPlus with full particulars of all loss or expense claimed pursuant to sub-clause 22.2 within 7 working days of the latest delivery date



specified in the catalogue or that delivery date agreed between the agent and the purchaser, whichever is the later.

22.2 The vendor shall indemnify the purchaser against all loss or expense suffered or incurred by the purchaser as a result of the vendor failing to comply with these Conditions of Sale.

### **23. Contract of sale**

23.1 The contract of sale that results from acceptance of a bid under the Bid the Grid System is a contract made in the State or Territory from which the cattle are offered for sale and the proper law of the contract of sale is the law of or applicable in that State or Territory.

23.2 The terms of the sale and the parties to the sale, shall be documented in the sale Price Schedule generated from the Bid the Grid System at the time of contracting the sale and following acceptance of the bid.

### **24. Chemical residues**

24.1 All cattle are sold on the condition that the vendor is liable for payment of any industry agreed voluntary levy to fund the cost of residue testing.

24.2 The vendor shall guarantee the residue status of his livestock subject to -

- (a) a carcass sample being taken within seven (7) days of delivery.
- (b) where a violation is found in a sample carcass prior to the remainder of the vendor's lot being processed, the other animals or carcasses from that lot shall be held in live or carcass form where commercially practicable.
- (c) the vendor may request further testing of those animals or carcasses at his expense or negotiate alternative arrangements, and the purchaser shall assist the vendor to maximise returns on those animals or carcasses.
- (d) where a violation is found in a sample carcass after the remainder of the vendor's lot has been processed, the vendor's loss will be the lesser of the loss incurred by the purchaser on the affected production or the value of his animals.
- (e) a vendor's lot will be regarded as animals from the same property and/or with the same tail tag number despatched in one consignment.
- (f) the value of hides and offal will be taken to reimburse the purchaser for his costs of slaughter and handling the vendor's lot to the chillers.
- (g) the purchaser shall take all reasonable care to prevent residue contamination after sale.
- (h) where the purchaser is proved by the relevant state authority to be responsible for a contamination, the purchaser shall be liable.

### **25. Hormonal growth promotants**

The vendor shall comply with any identification and declaration requirements that apply in the State or Territory from which the cattle are sold.

## SCHEDULE

### **(Part E1, Clause 19)**

#### **Basis of Price Adjustments, including for Misdescription of Cattle**

The price of livestock sold and delivered pursuant to the Bid the Grid System shall be adjusted in accordance with the purchaser's Pricing Grid as set out below.

The purchaser shall enter or cause to be entered onto the Bid the Grid System no later than the close of the working day immediately following the day upon which the lot is slaughtered;

the relevant carcase measurement and kill data; and  
the resulting adjustment(s) (if any) to the price of that lot calculated in accordance with the purchaser's Pricing Grid.

Claims for misdescription and resulting price adjustment (other than adjustments calculated in accordance with the Pricing Grid) may not be made pursuant to this Schedule when the date of delivery of the cattle is later than the maximum period allowed under these Operating Conditions.

#### **MISDESCRIPTION**

Claims for misdescription may only be sought by the purchaser if the vendor's assessment of a lot sold at a Bid the Grid System auction grossly misdescribes the lot and in accordance with the following process.

1. A purchaser may only claim gross misdescription:
  - (a) where:
    - (i) the age, sex or breed of the cattle delivered were obviously and substantially different to the specification included in the catalogue; or
    - (ii) dentition is incorrectly assessed in at least 10% of the cattle in the lot; and
  - (b) The adjustments to the price of the lot calculated in accordance with the purchaser's Pricing Grid do not cover the additional costs incurred by the purchaser relating to the slaughter of that lot.
2. The claim must be made by notifying the vendor in writing, outlining the reasons for making the claim, by the end of the next working day after the lot is slaughtered, subject to the lot being slaughtered in accordance with the time period required under the clause 14 of Part E1.
3. Claims for misdescription are to be determined by negotiation between the vendor and the purchaser, and if settlement cannot be negotiated, the matter is to be submitted to arbitration under these Operating Conditions.