



# LIVESTOCK AUCTION TERMS AND CONDITIONS OF SALE

## CHAPTER ONE - PRELIMINARY

- A vendor is bound by these terms and conditions by offering livestock for sale.
  - An agent (which includes an auctioneer) is bound by these terms and conditions by conducting a sale.
  - A buyer is bound by these terms and conditions by bidding at auction.
- In these terms the expression auctioneer, agent, buyer and vendor respectively includes the servants, contractors, agents of them. The auctioneer, agent, buyer and vendor shall be wholly responsible for the acts and omissions of their respective servants, contractors and agents. The term "auctioneer" includes, so far as the Act and context permits, the vendor's stock and station agent.
  - When used in these terms the expressions "companion animals" means all animals originating from a property on a particular day. Where lots are split and sent to multiple establishments, then all of these animals shall be regarded as companions.
- These terms and conditions are subject to legislation or regulation in the State in which the auction is conducted and in the event of any conflict then the legislation or regulation will prevail. The provisions of 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 in which the auction is conducted.

## CHAPTER TWO - STANDARD TERMS OF SALE

- Subject to any reserve price, and to the right, prior to the fall of the hammer, of the vendor to withdraw any lot without declaring the reserve, the highest bidder shall be the buyer.
- The auctioneer has the right to bid on behalf of the vendor provided that right is notified prior to the commencement of the sale and is subject to State law.
- A bid cannot be made or accepted after the fall of the hammer.
- The last price called by the auctioneer at the fall of the hammer shall be the amount at which the lot has been sold.
- In the event of a disputed bid, the auctioneer is the sole arbitrator of the successful bidder or the auctioneer may decide to put the lot up again. The auctioneer's decision is final.
- The auctioneer may refuse to accept any bid which, in the auctioneer's opinion, is not in the best interests of the vendor and need not give reasons for doing so. The minimum bid for liveweight selling is 0.2 of a cent (\$0.002).
- A bidder shall be deemed to be a principal unless, prior to bidding, the bidder has given to the auctioneer a copy of written authority to bid for or on behalf of another person.
- Successful bidders. The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer at the fall of the hammer:
  - The purchaser's name; or
  - The name of the person on whose behalf the successful bid was; and the
  - PIC of destination.
- The auction shall be conducted on the basis that the bid price shall be exclusive of Goods and Services Tax (GST). GST shall be added after the fall of the hammer for those sales subject to GST.
- As soon as practicable after the fall of the hammer, the buyer shall sign the agreement for sale (if any).
- If a buyer does not comply with any of these terms and conditions, which includes the requirements of State law, any stock knocked down to that buyer may be re-sold by public auction or private contract in whatever lots and manner the auctioneer decides. The re-sale may be with or without notice and shall be at the buyer's risk. The buyer is responsible for all loss and expense arising out of a re-sale and is not entitled to any resulting profit.
- The buyer of livestock must pay the agent the full amount of the purchase price on receipt of a tax invoice. Payment is required prior to delivery unless some other time for payment is specified in a written agreement between the buyer and the auctioneer that was made before the fall of the hammer.
- No person may bid unless, prior to the commencement of the sale, that person has made arrangements satisfactory to the auctioneer for payment for stock purchased. If bids in breach of this condition are inadvertently accepted, delivery shall not be given until the purchase money is paid and any law, rule or practice to the contrary is accordingly negated as far as possible.
- Cattle sold on a liveweight basis that are weighed pre-sale are at the risk and expense of the buyer upon the fall of the hammer.
  - Cattle sold on a liveweight basis that are weighed post-sale are at the risk and expense of the buyer immediately after weighing.
  - All stock other than cattle sold on a liveweight basis are at the risk and expense of the buyer upon the fall of the hammer.
- Subject to this clause the sale is complete on the fall of the hammer.
  - The time for rejection is the time commencing at the fall of the hammer and ending at the first of:
    - Delivery is taken by a representative of the buyer;
    - Departure of the animal from the purchaser's delivery pen; or
    - One hour after the last animal is:
      - In the case of pre-sale weighing, sold; or
      - In the case of post-sale weighing, weighed.
  - During the time for rejection the buyer may reject any animal which is lame, blind or diseased where that condition existed prior to the fall of the hammer but could not be reasonably observed when the animal was in the selling pen.
  - If the purchaser rejects an animal during the time for rejection then the sale of that animal is cancelled and the animal is returned to the vendor or sold at such price as the purchaser and the agent may agree.
  - This sub-clause applies to cattle which are sold in Queensland at auction for slaughter. The agent has responsibility for the prevention of loss or escape (but not death, sickness or injury) of those cattle from the time of the fall of the hammer, through delivery to and from the scales, to the buyer's delivery pen and on to the buyer's nominated transport. This responsibility ends at the earlier of those cattle boarding the buyer's nominated transport or sunset on the day after the sale. This sub-clause does not apply if the agent makes an announcement to that effect prior to sale.

- Subject to the right of rejection in Clause 18, all conditions and warranties expressed or implied by law are hereby excluded from the sale to the extent that the law allows. All lots are open for inspection prior to the commencement of the sale and are sold with all faults, if any. No compensation shall be given for any faults, imperfections, errors of description, number in or of any lots sold or otherwise.
  - Any claim or objection arising out of an error or misdescription in the provision of relevant information in terms of legislation or regulation concerning the National Livestock Identification Scheme (NLIS) must be made by 5:00pm on the seventh day after the fall of the hammer. No objection, requisition or claim against the vendor or agent in respect of such error or misdescription can be made after that time.
  - Any statements made by the vendor or the auctioneer whether in writing or orally to the effect that any female has been pregnancy tested or scanned positive shall mean and require only that a certificate in writing shall be supplied to the buyer signed by a qualified veterinary surgeon or certified scanner certifying that the said female has been tested or scanned on the date specified in the certificate and that in the opinion of the surgeon or scanner the female was pregnant on that date.
  - For cattle, the agent undertakes to make every reasonable effort to ensure that any NLIS cattle device number is transferred from the saleyard account to the purchaser's account on the NLIS database no later than midnight on the day of the sale.
  - Where livestock have a food safety or market eligibility status derived from the NVD and/or the NLIS/ERP database, the agent will inform the buyers by presale catalogue in conjunction with vendor branding and/or announce the status prior to the offering of those lots.
- If delivery is made to, or possession obtained by, the buyer or its representative before full payment of the purchase money, then until full payment is received, the buyer:
  - Does not acquire title to the stock;
  - Holds the stock as bailee only for the vendor;
  - Must act in a fiduciary capacity in its relationship with the vendor;
  - Must store the stock separately or so that they are readily distinguishable from other stock owned by the buyer;
  - Is responsible for the safety and well being of the stock;
  - May make a bona fide sale for market value of any or all of the stock. As between the buyer and the subsequent buyer, the sale shall be made by the buyer in its own name and not as agent for the vendor, however as between the vendor and buyer, the sale shall be made as bailee and agent for the vendor; and
  - Must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds, together with the benefits of any rights against subsequent buyers, on trust for the vendor.
- In addition to clause 20, if payment is not made according to clause 15, but delivery has been made to, or possession obtained by, the buyer or its representative:
  - The vendor or its agent may repossess and resell the stock and enter property owned or occupied by the buyer or its representative if necessary to do so; and
  - Interest may be charged at the rate usually charged by the agent for overdue accounts on any amounts which remain owing at any time.
- The buyer may not make any claim against the vendor for actions by the vendor under clauses 20 or 21 and indemnifies the vendor against any loss, damage, costs, expenses, penalties, fines or claims suffered by the vendor or any person or entity arising from the vendor exercising its rights under clauses 20 or 21.
- Wherever the auctioneer pays the vendor before being paid by the buyer, the auctioneer is the del credere agent of the vendor and the parties acknowledge that all rights of the vendor as reserved hereunder are fully subrogated to the auctioneer. Nothing in these terms and conditions shall render the auctioneer in any way whatsoever liable to the buyer as vendor nor entitle the buyer to set off against the auctioneer any right the buyer may have against the vendor or otherwise.
- The auctioneer has been retained by the vendor as auctioneer for the purpose of selling the livestock comprised in the lots. The terms of engagement between the auctioneer and the vendor do not extend to the provision of advice by the auctioneer to the vendor in relation to the safety or otherwise of the sale ring, the saleyards and the surrounding environments.

## CHAPTER THREE - WARRANTY FOR CORRECT PRESENTATION AND DECLARATION

- This chapter applies only in the case of livestock and their companion animals sold at auction for slaughter when the buyer is the slaughterer and the livestock are transported direct from the sale yard to the meatworks at which they are slaughtered. This chapter does not apply if the buyer is a trader who subsequently resells the livestock to a slaughterer. A slaughterer is any person who pays the AMPC Processor levy.
- The warranty of a vendor is that livestock and their companion animals offered for sale at auction:
  - Pass AQIS and other regulatory authority requirements and inspections at the time of slaughter;
  - Are of merchantable quality;
  - Carry an NLIS device in accordance with State law;
  - In the case where a representation has been made in the pre-sale catalogue that the livestock have particular characteristics or are fit for a particular purpose or market, and such representations are based on information in the National Vendor Declaration, the livestock will have those characteristics or will be fit for the particular purpose or market; and
  - All information in any National Vendor Declaration provided by the vendor is true, complete and correct in all material respects.
- In the event of a breach by the vendor of the vendor's warranty and provided such breach is notified by the buyer to the vendor's agent by 5:00pm on the 7th day after the fall of the hammer then the buyer is not liable to pay the purchase price of such of the vendor's livestock to which the breach applies.
- However if the breach by the vendor is such that the livestock are not rejected outright but are instead downgraded then the buyer will pay the value of the livestock at their next highest and best use.
- In the case of a breach by the vendor of the vendor's warranty then the vendor will also be liable to the buyer for any further losses which the buyer might establish but the buyer will take all reasonable steps in co-operation with the agent and vendor to mitigate both the effect of the breach and the amount of any loss.

- Where a sentinel animal of a lot tests positive for chemical residue, and provided such test is certified and notified as required by these vendor warranty terms, then:
  - The buyer will be entitled to delay payment for the price of all livestock in that lot; or
  - The vendor has the option, at the vendor's cost, of collecting the companion animals and returning them to the vendor's property; or of having the stock slaughtered in which event the risk of further condemnations will be that of the vendor. Where product integrity is potentially jeopardised, the Processor has the right to refuse slaughter and send the livestock back to the consigning property at the vendor's cost.
- The auctioneer is liable to the buyer in respect of any breach of the vendor's warranty arising out of:
  - Any error, by the auctioneer, of transcription of information from the National Vendor Declaration completed by the vendor to the pre-sale catalogue or the buyers post-sale summary;
  - Any failure by the auctioneer to notify the buyer, prior to bidding, of any breach by the vendor of the warranty of the vendor if the buyer establishes that the agent knew of such breach prior to the sale; and
  - Any failure by the auctioneer to disclose prior to bidding, and in the pre-sale catalogue, that the vendor has failed to provide a National Vendor Declaration that is complete in all material aspects.

## CHAPTER FOUR - OWNERS RISK FOR CONDITION OF CATTLE

- This chapter applies only in the case of cattle and their companion animals sold at auction for slaughter when the buyer is the slaughterer and the cattle are transported direct from the sale yard to the meatworks at which they are slaughtered. This chapter does not apply if the buyer is a trader who subsequently resells cattle to a slaughterer. A slaughterer is any person who pays the AMPC Processor levy.
- Owners risk reflects the producer's responsibility to provide slaughter cattle for sale that are fit for human consumption. Cattle are fit for human consumption if they are not condemned as unfit by AQIS. Owners risk applies if the condemnation is due to a condition in the animal which the buyer establishes, by the AQIS certificate, existed prior to the fall of the hammer.
- A buyer with the benefit of owners risk protection is not liable to pay the purchase price of that animal to the vendor. The buyer remains nevertheless liable for all costs incurred after the fall of the hammer in transport, slaughter, testing and disposal of the animal.
- Owners risk protection is available to the buyer of cattle to which this chapter applies if all of the following are satisfied:
  - A certificate is issued by AQIS which states the relevant NLIS RFID tag number and PIC, the date of the certificate, the reason for condemnation and that the reason for condemnation existed prior to the fall of the hammer;
  - The certificate is received by the selling agent either in its original form or by fax by 5:00pm on the 7th day after the fall of the hammer; and
  - If the condemnation is due to chemical residue the certificate follows testing in an AQIS approved laboratory which establishes maximum residue limits in excess of the Australian limit.
- Owners risk does not apply, and the buyer must pay for the cattle, if the reason for condemnation is any of the following:
  - Bruising,
  - Fever,
  - Partial Condemnation, or
  - Emaciation.

## CHAPTER FIVE - NOTICES REQUIRED BY STATE LEGISLATION

### NSW Legislation

Property, Stock and Business Agents Act 2002 Warnings

Penalties for 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:

- To abstain from bidding; or
- To bid to a limited extent only; or
- To do any other act that might prevent free and open competition.

Severe penalties may be imposed on persons convicted of collusive practices.

The auctioneer has the right to make one bid on behalf of the vendor if the auctioneer clearly and precisely announces that fact prior to the sale.

### Tasmanian Legislation

The auctioneer must not appear to acknowledge a dummy bid. A buyer must not give, agree to give or offer a gift or other consideration to a person for abstaining from bidding and a person must not accept any gift or consideration for abstaining from bidding.

A person must not participate in collusive practices by way of making or receiving an unlawful promise to abstain from bidding, not to bid except to a limited extent or do any other thing which may prevent free and open competition.

### Western Australian Legislation

Auction Sales Act 1973 s31 NOTICE

It is an offence to:

- 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;
- Abstain or agree to abstain from bidding as a result of such a promise;
- Knowingly enter or permit or cause to be entered in the auctioneer's record any name other than that of the actual successful bidder;
- Enter in the auctioneer's record the name of the buyer other than that of the actual successful bidder; or
- In the case of successful bidder supply wrong information as to the name of the buyer to the auctioneer or to any person, firm or corporation on whose behalf the sale is conducted.

The vendor, or any person on behalf of the vendor, or the auctioneer have the right to make no more than three bids.

