
Saleyards.com.au

Terms and Conditions

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Terms

Introduction

The use of the online auction facility (*'the Facility'*) available on the Saleyards.com.au site (*'the Site'*) operated by Saleyards.com.au Pty Ltd (ACN 133 181 843) (*'Saleyards.com.au'*) is subject to these Terms and Conditions and various policies. Please read these Terms and Conditions carefully before using the Site. If you do not agree to any of the Terms and Conditions, you should not use the Facility. Please note that the Site is also governed by terms of use located at <http://www.saleyards.com.au/esaleyards/terms/WebsiteTermsAndConditions.asp> which govern aspects of the Site other than the Facility.

It is agreed

1. Interpretation

1.1. In these Terms and Conditions, unless otherwise indicated by the context:

- (a) *Advertiser* means a person placing an Classified Advertisement on the Site;
- (b) *Arbitrator* has the meaning given to that term by clause 10;
- (c) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne;
- (d) *Bid* means the making of an online bid on an Item via the Facility or the online bid itself as the context requires;
- (e) *Bidder* means any User which places a Bid on an Item using the Facility;
- (f) *Bidding Screen* in relation to an Item means the online form made available on the Site by Saleyards.com.au which facilitates the making of a Bid on that Item;
- (g) *Buyer* means any entity which places a Successful Bid on an Item using the Facility;
- (h) *Classified Advertisement* means an advertisement for livestock or product to be displayed on the Site which livestock or product is not offered for auction;
- (i) *Complaints Manager* means the person authorised to deal with complaints and disputes by Saleyards.com.au from time to time;

- (j) *Court* means a court of law having jurisdiction to make a determination in relation to matters arising out of these Terms and Conditions, a Sale Contract or any other transaction arising in connection with these Terms and Conditions;
- (k) *Delivery Date* means the date selected by the Seller on which the livestock or product comprising an Item will be delivered to the Delivery Site for collection by the Buyer;
- (l) *Delivery Note* means an email or electronic document provided to the Seller from Saleyards.com.au evidencing that an Item has been paid for and delivery may now be made;
- (m) *Delivery Site* means the site selected by the Seller to which the livestock or product comprising an Item will be delivered for collection by the Buyer;
- (n) *eNVD*[®] means a 'National Vendor Declaration' in the form required by Saleyards.com.au;
- (o) *Expiry Date* has the meaning given to that term by clause 5.4(e);
- (p) *Expiry Time* has the meaning given to that term by clause 5.4(e);
- (q) *Facility* means the online auction facility provided at the Site;
- (r) *Fees* means the fee or fees payable by the Buyer and the Seller to Saleyards.com.au in relation to any settled Sale Contract or Classified Advertisement as set out on the Site from time to time;
- (s) *Insolvency Event* means, in relation to any User, the occurrence of any one of the following events:
 - (i) the User becomes '*insolvent under administration*' as defined in section 9 of the *Corporations Act 2001*;
 - (ii) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding-up or dissolution of the User or for the appointment of an administrator, receiver, receiver and manager, liquidator or provisional liquidator to the User or any of its assets;
 - (iii) the User resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;

- (iv) the User becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
 - (v) proceedings are commenced to make the User bankrupt; or
 - (vi) an event analogous to any of those set out in clauses 1.1(s)(i) to 1.1(s)(v) above occurs.
- (t) *Item* means an offer to sell livestock or a quantity of product made and displayed via the Facility;
- (u) *Item Listing Page* means the sub-page of the Site that publicly displays the details of an Item (as an electronic brochure) and provides a link to the Bidding Screen for that Item;
- (v) *Listing Form* means the online form made available on the Site by Saleyards.com.au which facilitates the listing of an Item;
- (w) *Management Area* in relation to a User means the page made available by Saleyards.com.au on the Site enabling the User to use the various functions including viewing, listing, editing and managing the data of their own account details and Items and setting out that User's current Bids and other activity of the User using the Facility;
- (x) *Payment Receipt* means an email or electronic document acknowledging the payment by the Buyer and entitling the Buyer to collect the livestock or product set out in an Item;
- (y) *Purchase Price* means the price stated in the Successful Bid for an Item;
- (z) *Registration Form* means the online form made available on the Site by Saleyards.com.au which facilitates the registration of a User;
- (aa) *Reserve Price* has the meaning given to that term by clause 5.4(c);
- (bb) *Sale Contract* has the meaning given to that term by clause 7.4;
- (cc) *Site* means Saleyards.com.au including all its related sub-pages but not pages which belong to another domain to which Saleyards.com.au links;
- (dd) *Saleyards.com.au* means Saleyards.com.au Pty Ltd (ACN 133 181 843);

- (ee) *Saleyards.com.au Account* means the account belonging to Saleyards.com.au as notified on the Site from time to time;
- (ff) *Seller* means any entity that achieves the sale of an Item via the Facility;
- (gg) *Successful Bid* has the meaning given to that term by clause 7.2;
- (hh) *User* means any party making use of the Site or the Facility whether as an Advertiser, Bidder, Buyer, Seller or otherwise.

1.2. In these Terms and Conditions, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of these Terms and Conditions;
- (c) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of these Terms and Conditions;
- (d) where any word or phrase is given a definite meaning in these Terms and Conditions, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
- (h) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
- (i) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2. Registration

- 2.1. Users must be registered with Saleyards.com.au as a User and must:
- (a) acknowledge that they have read, agreed, accepted and will adhere to these Terms and Conditions and that registration is conditional upon this;
 - (b) provide all details required by the Registration Form;
 - (c) provide the consents (including a consent to all relevant credit checks in the case of a Buyer) set out in the Registration Form; and
 - (d) if the User is registering as a Seller, provide full bank account details of the account to which the Seller wishes to have the Seller's sale proceeds deposited.
- 2.2. Saleyards.com.au reserves the right to cancel, suspend or withdraw the registration of any User at any time without giving notice or reason. If a User's registration is cancelled, suspended or withdrawn that User will not be able to log onto the Facility, and any existing Bids or Items that the User has placed on the Facility will be cancelled.
- 2.3. A User's registration will immediately be cancelled without the requirement for notice in the event that the User suffers an Insolvency Event.
- 2.4. Upon being granted registration a User will be provided with a unique user name and password. The User is responsible for maintaining the security of its user name and password. The User acknowledges that any Item placed or Bid made by any person logged on to the Facility with the User's user name and password is a valid and binding Item or Bid and the User is responsible for honouring that Item or Bid.

3. User Acknowledgements and Warranties

- 3.1. By using the Facility each User acknowledges and agrees that:
- (a) the User is bound by these Terms and Conditions;
 - (b) these Terms and Conditions may change from time to time; and
 - (c) each time the User uses the Site or the Facility, the User confirms its agreement to these Terms and Conditions and are bound by and acknowledge any changes to the Terms and Conditions.
- 3.2. Each User, by using the Site or the Facility, warrants that:

- (a) it has the legal capacity to accept these Terms and Conditions and full authority to enter into any legal arrangement which the User enters into via the Facility;
- (b) it will not violate any applicable law, statute, ordinance or regulation (including, but not limited to, consumer protection, criminal law, and trade practices/fair trading laws);
- (c) the User will act honestly, fairly and with integrity while on the Site and towards other Users;
- (d) the User will not commit any fraudulent activities relating to transactions or information provided;
- (e) the User will update the User's information as necessary and will not provide or engage in any false, inaccurate, misleading or deceptive conduct; and
- (f) the User will not provide any malicious data, obscene, defamatory or otherwise objectionable content.

4. Placing a Classified Advertisement

- 4.1. The Site is to be used only for the sale and purchase of livestock or the types of property notified by Saleyards.com.au from time to time and no other property may be offered for sale via the Site. Saleyards.com.au reserves the right to refuse or take down any Classified Advertisement which breaches this clause.
- 4.2. Each Classified Advertisement that an Advertiser places using the Facility shall constitute an invitation to treat in relation to the livestock or product described in that Classified Advertisement and, for the avoidance of doubt, does not constitute an offer to sell that livestock or product which is capable of immediate acceptance.
- 4.3. In order to place a valid Classified Advertisement on the Site, the Advertiser must:
 - (a) complete a Classified Advertisement listing including all mandatory fields;
 - (b) set out a precise description of the property the subject of the Classified Advertisement;
 - (c) not include in the Item any links or references to any websites external to the Site; and
 - (d) not include in the Item any information or data in the Item which is:

- (i) illegal;
- (ii) inaccurate;
- (iii) misleading or deceptive;
- (iv) defamatory;
- (v) in contempt of court;
- (vi) in breach of a third party's copyright;
- (vii) in breach of the *Privacy Act 1988 (Cth)*;
- (viii) designed to or likely to offend another person; or
- (ix) sexually explicit or is unsuitable for public access.

4.4. By placing an Classified Advertisement on the Site, the Advertiser warrants that:

- (a) the livestock or product the subject of the Classified Advertisement conforms to the description set out in the Classified Advertisement;
- (b) the Advertiser has good right and title to the livestock or product the subject of the Classified Advertisement, free from any encumbrances; and
- (c) the Advertiser has all necessary authorisations required to complete the sale of the livestock or product described in the Classified Advertisement.

4.5. The Advertiser agrees to pay the Fees relevant to any Classified Advertisement at the time of placing the Classified Advertisement and Saleyards.com.au is authorised to deduct the Fees relating to the Classified Advertisement from the balance of the Advertiser's account with Saleyards.com.au. For the avoidance of doubt, Fees will be payable regardless of whether the livestock or product set out in the Classified Advertisement is sold or otherwise.

4.6. A Classified Advertisement may be edited by an Advertiser however, Classified Advertisements may not be edited to vary (either upwards or downwards) the number of head (or quantity of product) included in the Classified Advertisement.

4.7. A Classified Advertisement may be withdrawn at any time by an Advertiser.

5. Placing an Item for Auction

- 5.1. The Site and the Facility are to be used only for the sale and purchase of livestock or the types of property notified by Saleyards.com.au from time to time and no other property may be offered for sale via the Site or the Facility. Saleyards.com.au reserves the right to refuse or take down any Item which breaches this clause.
- 5.2. Each Item that a Seller places using the Facility shall constitute an agreement to sell the livestock or product described in that Item on the terms of the Sale Contract.
- 5.3. The placing of an Item for sale via the Facility must be done on an exclusive basis, and the Seller, by placing an Item for sale via the Facility, agrees not to make the Item available for sale through any other means whilst the Item is for sale via the Facility.
- 5.4. In order to place a valid Item on the Facility the Seller must:
 - (a) have provided to Saleyards.com.au the correct bank account details for the bank account to which the Seller wishes the Purchase Price (less the Fee) to be deposited;
 - (b) complete a Listing Form including all mandatory fields, in such a fashion so that when read in conjunction with these Terms and Conditions all required terms (other than the Purchase Price) are complete and capable of performance;
 - (c) set out a minimum acceptable price (*Reserve Price*) below which the Seller refuses to sell the Item and matching or above which the Seller agrees it must sell to the highest Bidder;
 - (d) set out a precise description of the property the subject of the Item;
 - (e) set a date (*Expiry Date*) and time (*Expiry Time*) within the parameters set out in the Listing Form and as approved by Saleyards.com.au, at which the auction of that Item will conclude;
 - (f) set out the anticipated Delivery Date;
 - (g) not include in the Item any links or references to any websites external to the Site;
 - (h) not include in the Item the telephone number or other contact details of the Seller or any third party (other than in the fields where such information is specifically requested);
 - (i) not include in the Item any information or data in the Item which is:

- (i) illegal;
 - (ii) inaccurate;
 - (iii) misleading or deceptive;
 - (iv) defamatory;
 - (v) in contempt of court;
 - (vi) in breach of a third party's copyright;
 - (vii) in breach of the *Privacy Act 1988 (Cth)*;
 - (viii) designed to or likely to offend another person; or
 - (ix) sexually explicit or is unsuitable for public access; and
- (j) confirm on the Listing Form that the warranties set out in clause 5.5 are true and accurate at:
- (i) the time of placing the Item;
 - (ii) the Expiry Date;
 - (iii) the Expiry Time; and
 - (iv) the Date for Delivery.

5.5. By placing an Item on the Facility the Seller warrants that:

- (a) the livestock or product the subject of the Item conforms to the description set out in the Item;
- (b) the Seller has good right and title to the livestock or product the subject of the Item, free from any encumbrances;
- (c) the Seller has all necessary authorisations required to complete the sale of the Item; and
- (d) the livestock or product the subject of the Item:

- (i) has a correctly completed eNVD[®] (where the product consists of livestock);
 - (ii) are accompanied on delivery to the Buyer by all documentation, certificates, or other requirements necessary to give the Buyer good right and title to the livestock or product.
- 5.6. The Seller agrees that Saleyards.com.au will be entitled to deduct the Fees payable by the Seller in relation to any settled Sale Contract from the Purchase Price received from the Buyer. For the avoidance of doubt, Fees will only be payable if the Sale Contract settles and a sale of the Item is completed, and not otherwise.
- 5.7. The placing of an Item may be edited by a Seller via the Seller's Management Area in relation to the Reserve Price or any pictures. Items may not be edited to vary (either upwards or downwards) the number of head (or quantity of product) included in the Item.
- 5.8. Once placed an Item cannot be withdrawn other than with the consent of Saleyards.com.au (which consent may be withheld at the absolute discretion of Saleyards.com.au). An application to withdraw an Item must be made by telephone to Saleyards.com.au, and the Seller must show that exceptional circumstances exist. No Item may be withdrawn within 24 hours prior to the Expiry Time. Saleyards.com.au will charge the Fee in relation to any withdrawn Item as if that Item was sold.

6. Bidding on an Item

- 6.1. A Bidder may Bid on any Item on the Facility by completing the Bidding Screen accessible from Item Listing Page relating to that Item.
- 6.2. Any Bid made on an Item by a Bidder must:
 - (a) set out the price that the Bidder is willing to pay for the Item; and
 - (b) where the Item is capable of being purchased in part, state whether the Bidder wishes to purchase the entire Item and if not, the quantity the Bidder is Bidding for.
- 6.3. By making a Bid the Bidder warrants and agrees that:
 - (a) It will pay the relevant Fee to Saleyards in the event that the Bid becomes the Successful Bid in relation to the Item;
 - (b) it will purchase an Item based on the description of that Item set out in the relevant Item Listing Page;

- (c) confirm that the Bidder accepts all the terms set out in the Saleyards.com.au the Item Listing Page and these Terms and Conditions;
- (d) it has funds or finance available to meet the Purchase Price at the Expiry Time; and
- (e) it will be available to take delivery of the livestock or product the subject of the Item.

6.4. Once a Bid is submitted by the Bidder a Bid Confirmation Notice will become accessible from the Bidder's Management Area.

7. Closing of Bids

- 7.1. Unless cancelled prior, an Item will close at the Expiry Time.
- 7.2. Unless no Bid has matched or exceeded the Seller's Reserve Price, the highest Bid matching or above the Reserve Price will be the winner of the Item (*Successful Bid*).
- 7.3. If no Successful Bid is made, either due to no Bids being made or a failure to achieve the Seller's Reserve Price, then the Item will be cancelled at the Expiry Time and the Seller will be informed via email and the Seller's Management Area.
- 7.4. The Bidder that makes the Successful Bid (*Buyer*) and the Seller agree that at the Expiry Time a binding contract of sale for the Item (*Sale Contract*) is formed with the terms comprised of:
 - (a) these Terms and Conditions;
 - (b) the Successful Bid; and
 - (c) the Item.
- 7.5. To the extent of any inconsistency between the documents referred to in clause 7.4 the documents will be interpreted in the following order of priority:
 - (a) these Terms and Conditions; then
 - (b) the Successful Bid; and then
 - (c) the Item.

- 7.6. The Buyer and the Seller will both be advised via their Management Area and by email that the Successful Bid has been made, the Sale Contract formed and the Fee that is payable by each party on the transaction.
- 7.7. Once the Sale Contract is formed, Saleyards.com.au may make the details of the transaction publicly available in its absolute discretion subject to its Privacy policy.

8. Settlement Procedure

- 8.1. The Buyer must forward payment of the Purchase Price and the Fee to the Saleyards.com.au Account by the close of business on the date 2 Business Days after the Expiry Date.
- 8.2. Upon receiving the Purchase Price and the Fee from the Buyer pursuant to clause 8.1, Saleyards.com.au will issue:
- (a) the Payment Receipt to the Buyer;
 - (b) the Delivery Note to the Seller,
- via the Seller's and the Buyer's respective Management Areas and email addresses.
- 8.3. The Seller must arrange delivery within a reasonable time after receiving the Delivery Note pursuant to clause 8.2(b) and in any event, not later than 3 days after receiving the Delivery Note pursuant to clause 8.2(b) unless otherwise agreed with the Buyer.
- 8.4. On the Delivery Date:
- (a) the Buyer must present a copy of the Payment Receipt to the Seller;
 - (b) the livestock or product comprising the Item will be handed over to the Buyer by the Seller together with a signed copy of the eNVD[®] for the livestock or product (if applicable); and
 - (c) the Buyer must sign the Delivery Note.
- 8.5. Notwithstanding clauses 5.2, 6.3 and 7.4 and subject to clause 8.6, the Buyer shall be entitled to refuse to take delivery of a portion of the livestock or product comprising the Item if at the time of loading the livestock or product for delivery to the Buyer, that portion of the livestock or product differs from the description in the Item in one of the following ways:
- (a) the livestock is lame;
 - (b) the livestock is diseased; or

- (c) the stock is significantly different from the description in a manner verified in accordance with clause 10.4.
- 8.6. Clause 8.5 only applies if prior to loading:
 - (a) any of the circumstances set out in clauses 8.5(a)-8.5(c) had not been disclosed to the Buyer; or
 - (b) the Complaints Manager has been contacted and determined that the Buyer is entitled to refuse delivery in accordance with clause 8.5.
- 8.7. If upon delivery of the livestock or product comprising the Item, there is less of the livestock or product available than there was at the time of loading the livestock or product, the Buyer must accept delivery of the Item and if they wish to further the issue, should refer the issue to the Complaints Manager in accordance with clause 10.
- 8.8. Upon the expiry of 2 Business Days from the Delivery Date and provided that neither the Seller nor the Buyer has notified Saleyards.com.au of any dispute in relation to the transaction which has not been resolved, Saleyards.com.au will release funds as follows (and with the following priority):
 - (a) to retain any Fee payable to Saleyards.com.au; then
 - (b) pay to the Seller the balance of the Purchase Price (after the deduction of the Fee and any price variations that may have been authorised by Saleyards.com.au and any amount payable to Saleyards.com.au pursuant to clauses 10.4, 10.5 or 10.9).

9. Breach of Sale Contract

- 9.1. If the Buyer does not make payment of the Purchase Price by the close of business on the date 2 Business Days after the Expiry Date or fails to take delivery of the livestock or product comprising the relevant Item or otherwise breaches the Sale Contract:
 - (a) the Buyer will be in breach of the Sale Contract;
 - (b) the Seller and Saleyards.com.au must notify each other of any breach that the Seller or Saleyards.com.au become aware of;
 - (c) subject to clause 10, the Seller may take legal action for breach of the Sale Contract;

- (d) Saleyards will hold any Purchase Price paid pending an instruction from the Arbitrator or an order of a Court; and
- (e) Saleyards.com.au will not be responsible in any way for any loss, damage, cost or expense incurred by the Seller or any other party for the breach of the Sale Contract by the Buyer.

9.2. If the Seller does not make delivery of the livestock or product comprising an Item or otherwise breaches the Sale Contract:

- (a) the Seller will be in breach of the Sale Contract;
- (b) the Buyer and Saleyards.com.au must notify each other of any breach that the Buyer or Saleyards become aware of;
- (c) subject to clause 10, the Buyer may take legal action for breach of the Sale Contract;
- (d) Saleyards.com.au will hold any Purchase Price paid pending an instruction from the Arbitrator or an order of a Court; and
- (e) Saleyards.com.au will not be responsible in any way for any loss, damage, cost or expense incurred by the Seller or any other party for the breach of the Sale Contract by the Buyer.

10. Dispute Resolution

10.1. Any dispute arising between the Buyer and Seller out of a breach of a Sale Contract shall in the first instance be referred to the Complaints Manager at Saleyards.com.au. If a dispute occurs at delivery the Complaints Manager should be immediately contacted by telephone during normal business hours (which are generally 9am-5pm Monday to Friday excluding Public holidays).

10.2. The parties agree that the Complaints Manager may immediately resolve the dispute and make directions to the Buyer and Seller in relation to:

- (a) the delivery of the Item;
- (b) variations to the price of the Item; or
- (c) rectification of the Item by the Seller.

10.3. The Complaints Manager may make an interim direction pending the proper investigation of the dispute. If further investigation is required, the Complaints Manager may request

that the Buyer and Seller each provide originals of documents (including Delivery Notes and Payment Receipts) and will endeavour to resolve disputes within 5 Business Days of being notified of a dispute. The Complaints Managers decision in relation to a dispute shall be final and binding on the Seller and Buyer.

- 10.4. If the dispute arises from the Buyer refusing to accept delivery pursuant to clause 8.5, then the Complaints Manager may appoint an independent expert (for instance, a veterinarian), at the cost of the Buyer if the claim is not justified but at the cost of the Seller if the claim is justified/upheld, to assess the Buyer's claim and verify whether the livestock or product differs in a significant manner from the description set out in the Item and may rely on that determination in making its decision.
- 10.5. Any dispute arising out of the breach of a Sale Contract which is not capable of resolution by the Complaints Manager or any other dispute that arises between a Seller or Buyer and Saleyards.com.au, shall be referred to third-party arbitration (with all up-front costs being at the cost of the disputing party, subject to any later determination of the Arbitrator) in accordance with the following process:
- (a) A party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute.
 - (b) On receipt of the notice specified in clause 10.5(a), the parties to the dispute must within 5 Business Days of receipt of the notice seek to resolve the dispute.
 - (c) If the dispute is not resolved within 5 Business Days, or within such further period as the parties agree, then the dispute is to be referred to Australian Commercial Disputes Commission (*the Arbitrator*).
 - (d) The arbitration is to be conducted in accordance with Australian Commercial Disputes Commission Arbitration Guidelines which are deemed incorporated.
 - (e) The costs of the arbitration shall be borne by the unsuccessful party (or where no party is entirely unsuccessful, as determined by the Arbitrator).
 - (f) This clause will not merge on completion.
- 10.6. Neither the Buyer nor the Seller, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other or against Saleyards.com.au in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration referred to in this clause 10.
- 10.7. The obtaining of an award from the Arbitrator shall be a condition precedent to the right of either party, or of any person claiming under either of them, to bring an action or other legal proceedings against the other party in respect of any such dispute.

- 10.8. Saleyards.com.au may rely on any award from the Arbitrator in dealing with any funds held by Saleyards.com.au and no liability will be incurred by Saleyards.com.au for any action taken in reliance upon an award from the Arbitrator.
- 10.9. The Buyer and the Seller shall indemnify Saleyards.com.au for any costs or expenses howsoever incurred by Saleyards.com.au relating to the dispute process and Saleyards.com.au shall be authorised to set-off and deduct any such costs from any monies owing by Saleyards.com.au to the Buyer or Seller.

11. Fees and Charges

- 11.1. Saleyards.com.au may change its fee and credit policy and the Fees from time to time. Changes to the above are effective 10 Business Days after we post notice of the changes on the Site.
- 11.2. If Saleyards.com.au introduce a new service, the fees for that service are effective at the launch of that new service.
- 11.3. Unless otherwise stated, all fees are quoted in Australian Dollars. You are responsible for paying all fees associated with using our services and our Site and all applicable taxes

12. GST

- 12.1. Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement excludes GST.
- 12.2. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- 12.3. Each party to a Sale Contract agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.

13. Disclaimer and Limitation of Liability

- 13.1. Saleyards.com.au does not endorse, represent or guarantee information provided on this site. Saleyards.com.au is unable to verify or authenticate this information provided by parties other than itself.
- 13.2. Saleyards.com.au accepts no responsibility for and will not be held liable for any direct or indirect loss or damage which may be suffered or which may arise in reliance on the information obtained from the Site.
- 13.3. Certain hyperlinks on the Site lead to third party websites over which Saleyards.com.au has no control. Saleyards.com.au does not accept responsibility for any use of or information obtained from third party sites which are accessed from hyperlinks contained within the Site.
- 13.4. Saleyards.com.au and its officers do not endorse or recommend the products or services contained in any Item or advertisement on the Site or contained in any website accessed from hyperlinks contained within the Site.
- 13.5. All Items are public in nature unless otherwise stated. All Bids are open and displayed for public viewing.
- 13.6. Saleyards.com.au is not involved with or a party to any transactions that take place between members. Saleyards.com.au does not accept any liability in respect of your transaction or any involvement in any mediation, arbitration, tribunal hearing, court proceeding or other proceedings in any way arising out of or in connection with any User's transaction.
- 13.7. Neither Saleyards.com.au is liable to a User or to any other person for:
 - (a) any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of the Site or Facility for any period of time;
 - (b) any loss or damage of any kind that is directly or indirectly caused by or results from:
 - (i) any wrongful, wilful or negligent act or omission of Saleyards.com.au or any of its officers, employees, agents or contractors;
 - (ii) any error or inaccuracy in the information on the Site or in the Facility or any interruption to the Site or Facility;

- (iii) any unauthorised access to or use of the Site or the Facility; or
 - (iv) the cancellation of a User's registration.
- (c) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
- (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) Saleyards.com.au or any other person was previously notified of the possibility of such loss or damage,
- whether such a claim arises in contract, tort, negligence, strict liability, contribution or under statute or otherwise and whether the claim is brought directly or as a third party claim.

14. Indemnity

Each User indemnifies and must keep indemnified Saleyards.com.au against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Saleyards.com.au as a direct or indirect consequence of any one or more of the following:

- (a) any breach or non-performance of:
 - (i) these Terms and Conditions;
 - (ii) any Sale Contract by the User; or
 - (iii) any other contract or agreement contemplated by these Terms and Conditions;
- (b) any wrongful, wilful or negligent act or omission of the User or any of its officers, employees, agents or contractors; and
- (c) any one or more of the warranties or representations made or repeated by a User being untrue or misleading in any material respect (including by omission) when made or repeated.

15. Notices

15.1. Unless specifically provided for otherwise in these Terms and Conditions, a notice or other communication required or permitted to be given to another person pursuant to these Terms and Conditions to another must be in writing and:

- (a) delivered personally; or
- (b) sent by pre-paid mail to the address of the addressee; or
- (c) sent by email to the email address of the addressee; or
- (d) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

15.2. A notice or other communication is taken to have been given (unless otherwise proved):

- (a) if mailed, on the second Business Day after posting; or
- (b) if sent by email or facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

16. Waiver or variation

16.1. Saleyards.com.au's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.2. The exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

16.3. The variation or waiver of a provision of these Terms and Conditions or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

17. Governing law and jurisdiction

17.1. These Terms and Conditions are governed by the laws of Victoria.

17.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

18. Further assurance

Each party will from time to time do all things (including executing all documents and obtaining all consents) necessary or desirable to give full effect to these Terms and Conditions.

19. Whole agreement

In relation to the subject matter of these Terms and Conditions:

- (a) subject to clause 7.5, these Terms and Conditions are the whole agreement between the parties; and
- (b) these Terms and Conditions supersede all oral and written communications by or on behalf of any of the parties.

20. No reliance on warranties and representations

In accepting these Terms and Conditions, the User:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of these Terms and Conditions made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of these Terms and Conditions.

This clause does not apply to warranties and representations that these Terms and Conditions expressly sets out.

21. Severance

If any part of these Terms and Conditions are invalid or unenforceable, these Terms and Conditions do not include it. The remainder of these Terms and Conditions continue in full force.

22. No merger

Nothing in these Terms and Conditions merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

23. Consents and approvals

Where these Terms and Conditions gives any party a right or power to consent or approve in relation to a matter under these Terms and Conditions, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.