



## GENERAL ITEM TERMS

The Common Terms apply to and are deemed to be incorporated into these General Item Terms.

### 1. Sale and Purchase

- 1.1. Where an Auction results in the sale of a General Item, these General Item Terms form part of the Contract for the sale of the Lot. The Contract for sale of the Lot is described in the Auction Terms. The Vendor's right to terminate the Contract by 5:00pm (Adelaide time) on the day after the day on which the Auction ended in certain circumstances is also described in clause 7 below.
- 1.2. The Vendor agrees to be bound by these General Item Terms by listing a General Item for sale on the Auction Platform.
- 1.3. The Buyer agrees to be bound by these General Item Terms by submitting a Bid to buy a General Item through the Auction Platform.

### 2. Title and Risk

- 2.1. Title to a General Item passes to the Buyer on Delivery in accordance with clause 5.1.
- 2.2. Risk passes to the Buyer on Delivery. However, the Buyer is advised to insure the General Item from the end of the Auction.
- 2.3. The Vendor must (at the Vendor's cost) maintain the Lot in the same condition as represented in the Lot Description until it is Delivered to the Buyer. The Vendor must:
  - 2.3.1. maintain the General Item in good and sound condition consistent with the description in the Lot Description; and
  - 2.3.2. ensure the integrity and security of the General Item until Delivery.

### 3. Description of General Items

- 3.1. The Vendor:
  - 3.1.1. warrants that the Lot Description accurately describes the General Item and the condition of the General Item at the time of Delivery; and
  - 3.1.2. acknowledges and repeats the warranties given by the Vendor in the Auction Terms, and each of these warranties is given in favour of the Buyer and Elders at the end of the Auction and at the time of Delivery of the General Item.
- 3.2. The Vendor warrants in favour of the Buyer that the General Item will be free from any Encumbrances at the time of Delivery.
- 3.3. The Vendor further warrants that the General Item listed for sale is not a Schedule 7 poison, Dangerous Good or other Restricted Item, that requires a licence to buy, sell, store or use.

### 4. Invoicing and Payment into Trust Account

- 4.1. The Invoice Amount is due for payment immediately upon receipt of an invoice by the Buyer.
- 4.2. Elders will issue a tax invoice to the Buyer as agent for the Vendor for the Purchase Price of the General Item. Elders will also invoice the Buyer for the Buyer's Premium, if any.
- 4.3. The Buyer must pay the Invoice Amount to Elders by any of the payment mechanisms that are made available on the Website from time to time.
- 4.4. If the Invoice Amount is not paid within 5 Business Days, then Elders will ask the Vendor to elect in its sole discretion either to:
  - 4.4.1. terminate the Contract immediately; or
  - 4.4.2. permit the Buyer an extension of time not exceeding 15 Business Days within which to pay the Purchase Price, on the basis that if the Purchase Price is not paid by the extended due date then the Contract will terminate immediately on that date.The Vendor must notify Elders of its election and Elders will then communicate that notice to the Buyer, as agent for the Vendor.
- 4.5. If the Purchase Price is not paid in full by the extended due date for payment notified by the Vendor pursuant to clause 4.4.2, the Contract will terminate automatically on that date.
- 4.6. Elders will hold the Invoice Amount in a trust account as stakeholder, pending Delivery of the General Item to the Buyer in satisfactory condition and will apply the Purchase Price as follows:
  - 4.6.1. if the sale and purchase of the General Item completes satisfactorily, Elders will distribute the Purchase Price in accordance with clause 12 (*Payment of Purchase Price to Vendor*) of the Auction Terms; and
  - 4.6.2. if the sale and purchase of the General Item does not complete satisfactorily, Elders will retain the Invoice Amount on trust pending the finalisation of any dispute resolution process. Elders will distribute the Invoice Amount in accordance with a joint direction of the Vendor and Buyer or a Court order, subject to the deduction of Commission, Buyer's Premium and any other fees, charges, levies or taxes in accordance with clause 12 (*Payment of Purchase Price to Vendor*) of the Auction Terms.
- 4.7. Upon receipt of the full Invoice Amount in cleared funds, Elders will:
  - 4.7.1. notify the Vendor that Elders has received the Invoice Amount from the Buyer; and
  - 4.7.2. request that the Vendor and the Buyer effect Delivery of the General Item.
- 4.8. The Vendor acknowledges that Elders is not a del credere agent. The Vendor further acknowledges that if it permits delivery of the General Item to occur before receiving confirmation from Elders that funds have been received by Elders it does so at the Vendor's own risk.
- 4.9. The Buyer is responsible for paying any taxes, charges or levies that are payable by purchasers of a General Item in any relevant State or Territory. The Buyer is also responsible for paying any bank or credit card fees incurred as a result of paying the Invoice Amount to Elders.

### 5. Delivery

- 5.1. Delivery will occur when the Buyer or the Buyer's representative (such as a nominated freight carrier) collects the General Item from the Vendor's property, unless otherwise agreed between the Vendor and Buyer.
- 5.2. Elders recommends to Vendors that they not deliver a General Item to Buyers until Elders confirms the receipt of the full Invoice Amount in cleared funds. The Buyer acknowledges that the Vendor will not be required to effect Delivery of the General Item until the Buyer has paid the Invoice Amount to Elders in full.
- 5.3. The Buyer will be responsible for paying for the costs of Delivery, unless otherwise agreed with the Vendor.
- 5.4. The Vendor and the Buyer are responsible for co-ordinating the Delivery of the General Item. Elders will not arrange the Delivery of General Items or provide or procure freight services.
- 5.5. The Vendor and the Buyer must comply with all laws or industry codes relating to the safe handling, loading, securing and transport of the General Item/s.
- 5.6. Subject to clause 5.7, Delivery must occur within 10 Business Days of Elders notifying the Vendor that it has received payment of the Invoice Amount in full and in cleared funds.
- 5.7. If the Buyer is unable to secure trucks or transport within the delivery period described in clause 5.6 or is, due to any other cause beyond the Buyer's reasonable control (including a Force Majeure Event), unable to take delivery within that period, the General Item will be at the Buyer's risk from the end of the Delivery period referred to in clause 5.6, but an extension of time of 15 Business Days shall be given by the Vendor in which to take Delivery. Despite risk in the General Item passing to the Buyer, the Vendor must comply with clause 2.3 (at the Vendor's cost), save that the Vendor is not liable to the Buyer for any damage to the General Item arising from weather events such as rain events, floods and fires.
- 5.8. The Buyer will indemnify the Vendor against any loss or damage suffered by the Vendor in connection with the General Item on and from the end of the period for Delivery set out in clause 5.6 (other than the costs of maintaining the General Item (if any) in accordance with clauses 2.3 and 5.5).



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### 6. Buyer's Right of Rejection

- 6.1. The Buyer may at any time prior to 5:00pm Adelaide time on the day (which, to avoid doubt, need not be a Business Day) following the day on which Delivery occurred, reject a General Item Lot that:
  - 6.1.1. does not conform to the Lot Description;
  - 6.1.2. is damaged or inoperative, unless disclosed in the Lot Description;
  - 6.1.3. has had its value or condition compromised for any reason without prior disclosure to the Buyer; or
- 6.2. If the Buyer rejects a General Item Lot, the Buyer must:
  - 6.2.1. notify the Vendor in writing that the Lot has been rejected and the reasons for their rejection, together with any evidence in support of those reasons;
  - 6.2.2. send a copy of the notice to Elders' administrators;
  - 6.2.3. hold the Lot on the Buyer's property and (at the Buyer's cost) maintain the General Item in at least the same condition it was delivered; and
  - 6.2.4. comply with any reasonable directions from Elders on what to do with the General Item if the Buyer is unable to hold it on the Buyer's property.
- 6.3. If Elders is notified that the General Item Lot has been rejected, Elders will retain the Purchase Price in trust, pending confirmation that the any dispute over the rejection of the Lot has been resolved in accordance with clause 4.6.2.

### 7. Right of Early Termination of Contract

- 7.1. The Vendor may terminate a Contract for the sale of a General Item Lot formed with a Buyer at any time prior to 5:00pm Adelaide time on the day (which, to avoid doubt, does not need to be a Business Day) after the day on which the Auction ended, if prior to the end of the Auction:
  - 7.1.1. the Lot was unexpectedly damaged, became inoperative or was destroyed; or
  - 7.1.2. the Vendor delivered a Withdrawal Form to Elders, and the Lot was not removed prior to the end of the Auction.
- 7.2. Notice of termination under clause 7.1:
  - 7.2.1. may be delivered to Elders by the Vendor within 1 Business Day of the end of the Auction; or
  - 7.2.2. will be deemed to have been served where a Withdrawal Form has already been sent to Elders by the Vendor, and in each case Elders will notify the Buyer that the Contract has been terminated.
- 7.3. The Vendor acknowledges that in issuing a notice of termination under clause 7.1 it is representing in favour of Elders that the Lot is damaged or inoperative. If Elders determines that the Vendor has misrepresented the happening of one of those events, the Vendor will be liable to pay Elders on demand, as a liquidated sum, an amount equal to the Commission that would have been payable by the Vendor to Elders if the sale of the Lot had completed. The Vendor acknowledges that this is a genuine pre-estimate of Elders' loss as a result of the sale of the Lot not completing in accordance with these Terms and Conditions and the Contract.
- 7.4. Where the Contract is terminated under clause 7.1, the Buyer and the Vendor will be released from their obligations to complete the sale and purchase of the Lot and the Contract will terminate with no liability to either party or to Elders.

### 8. Dispute Resolution

- 8.1. If a dispute about a General Item Lot is notified by the Buyer to the Vendor and Elders prior to Elders paying the Purchase Price as authorised under clause 12 (*Payment of Purchase Price to Vendor*) of the Auction Terms, Elders will retain the Purchase Price on trust and deal with the Purchase Price in accordance with clause 4.6.2.
- 8.2. If a dispute about a General Item Lot is notified by the Buyer to the Vendor and to Elders after the Purchase Price has been paid as authorised under clause 12 (*Payment of Purchase Price to Vendor*) of the Auction Terms, then:
  - 8.2.1. the Vendor and the Buyer must resolve the dispute between themselves using whatever lawful means they consider appropriate;
  - 8.2.2. Elders will have no involvement in the resolution of the dispute; and
  - 8.2.3. if the Buyer is in possession of the item, the Buyer must maintain the item in at least the condition in which it was Delivered.

### 9. Liability

- 9.1. Other than as set out in the Contract, all warranties about the General Item (express or implied, including implied by statute) are excluded to the fullest extent permitted by law.
- 9.2. Where such warranties cannot be excluded, modified or limited, the Vendor's liability for any breach is limited at its option to the replacement or re-supply of equivalent the General Item or payment of the cost of the same.
- 9.3. The Vendor and Buyer acknowledge that they are the principal parties to the Contract for the sale of the General Item and that Elders is not liable to either the Buyer or the Vendor and the Buyer and Vendor severally hold Elders harmless against any loss or damage suffered by either of them where such loss or damage is caused by, arises from or is connected with:
  - 9.3.1. a breach by either the Vendor or the Buyer of a Contract for the sale and purchase of the General Item;
  - 9.3.2. the description or misdescription of the General Item in the Lot Description, including as a result of the omission of facts or information;
  - 9.3.3. the General Item not being fit for any particular purpose, whether or not that purpose was disclosed to Elders or to the Vendor;
  - 9.3.4. the Vendor's title to the General Item or the existence of Encumbrances over the General Item;
  - 9.3.5. the condition of the General Item at Delivery.
- 9.4. The Vendor indemnifies Elders against any liabilities, losses, damages, costs or expenses incurred or suffered by Elders and all actions, proceedings, claims or demands made against Elders arising from or connected with:
  - 9.4.1. a breach of the Contract by the Vendor;
  - 9.4.2. a breach of the Auction Terms or the Registration Terms by the Vendor;
  - 9.4.3. any negligent act or omission of the Vendor;
  - 9.4.4. any misleading or deceptive statement or representation about the General Item (including by way of omission of facts or information), including misdescription of the General Item in the Lot Description;
  - 9.4.5. the condition of the General Item Lot at Delivery; and
  - 9.4.6. the Vendor's ownership of and authorisation to sell the General Item Lot free from Encumbrances.
- 9.5. The Buyer indemnifies Elders against any liabilities, losses, damages, costs or expenses incurred or suffered by Elders and all actions, proceedings, claims or demands made against Elders arising from or connected with:
  - 9.5.1. a breach of the Contract by the Buyer;
  - 9.5.2. a breach of the Auction Terms or the Registration Terms by the Buyer;
  - 9.5.3. the failure of the Buyer to take Delivery of the General Item within the time permitted under the Contract; and
  - 9.5.4. any negligent act or omission of the Buyer.



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- 9.6. If, notwithstanding the terms of the Contract, Elders is liable to the Vendor or the Buyer for any reason, then subject to clause 9.8 and to the extent permitted by Law, the liability of Elders is limited to:
    - 9.6.1. in the case of liability to the Vendor, the lesser of the Vendor's direct losses and the Purchase Price (less any Commission and exclusive of any Buyer's Premium); and
    - 9.6.2. in the case of liability to the Buyer, the lesser of the Buyer's direct losses and the Invoice Amount.
  - 9.7. Clauses 9.3 to 9.6 do not apply where a Related Body Corporate of Elders is a Vendor or Buyer of the General Item in its own right.
  - 9.8. Any liability which Elders has to a party (including, without limitation, for negligence or breach of any statutory duty) relating to any loss or damage suffered by that party, to the extent permitted by law, will be:
    - 9.8.1. reduced or limited to the extent (if any) that the party causes or contributes to the loss or damage; and
    - 9.8.2. except in the case of fraud by Elders, will be limited to the Purchase Price for the General Item to which the claim for loss or damage relates.
  - 9.9. Notwithstanding any other provision of the Contract and to the extent permitted by law, neither Elders, the Vendor nor the Buyer will be liable to any of the other parties and each party releases the other parties from all liability for any indirect or consequential loss or damage, including loss of profits, loss of production, loss of opportunity and loss of reputation, irrespective of how that loss or damage was caused (including as a result of a party's negligence), even if such loss or damage was reasonably foreseeable.
- 10. Force Majeure**
- 10.1. The Vendor is not responsible for the loss of the General Item between the end of the Auction and Delivery caused by any Force Majeure Event, provided that the Vendor makes every reasonable effort in the circumstances to recover the General Item and deliver the General Item to the Buyer. In such circumstances, the Buyer is not entitled to take any action for non-performance under the Contract, but is entitled to elect whether or not to accept the General Item for Delivery.
  - 10.2. If either the Buyer or Vendor is interrupted in, or prevented from, the performance of its obligations under the Contract by reason of any Force Majeure Event, such party will not be in breach of the Contract and the time for performance of its obligations under the Contract will be extended for a period equal to the duration of the Force Majeure Event that caused the delay, interruption or prevention, provided that if any such period exceeds 20 Business Days, either party may immediately terminate this agreement without liability, by notice in writing to the other and to Elders.
- 11. Termination**
- 11.1. Without limiting their rights to terminate the Contract at law or under another provision of the Contract, either the Buyer or the Vendor may terminate the Contract by notice in writing to the other party and to Elders:
    - 11.1.1. if the other party breaches a fundamental term of the Contract;
    - 11.1.2. the Buyer fails to pay for the General Item by the time allowed under the Contract;
    - 11.1.3. the Buyer fails to take Delivery of the General Item within the time period allowed under clauses 5.6 or 5.7;
    - 11.1.4. if the other party suffers an Insolvency Event; or
    - 11.1.5. in accordance with another provision of the Contract that permits the termination of the Contract.
  - 11.2. Clause 9.8 of the Auction Terms (which describes prohibited conduct by Registered Users during an Auction) is a fundamental term of the Contract.
  - 11.3. If the Buyer has taken possession of the General Item without paying for it prior to termination of the Contract, the Vendor may retake possession of the General Item from the Buyer. The Buyer irrevocably authorises the Vendor to enter upon any premises where the General Item is located for the purposes of retaking possession.
  - 11.4. If a General Item has been paid for but not delivered prior to termination of the Contract, Elders will return the Purchase Price to the Buyer. If the Purchase Price was paid by Elders to the Vendor, Elders will repay the Purchase Price to the Buyer, and the Vendor must repay the Purchase Price as a debt due to Elders upon demand.
  - 11.5. Termination of the Contract does not affect any rights that a party has that accrued prior to termination.