



GENETIC MATERIAL TERMS

The Common Terms apply to and are deemed to be incorporated into these Genetic Material Terms.

1. Sale and Purchase

- 1.1. Where an Auction results in the sale of Genetic Material, these Genetic Material 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 6.
- 1.2. The Vendor agrees to be bound by these Genetic Material Terms by listing Genetic Material for sale on the Auction Platform.
- 1.3. The Buyer agrees to be bound by these Genetic Material Terms by submitting a Bid to buy Genetic Material through the Auction Platform.

2. Title and Risk

- 2.1. Title to Genetic Material passes to the Buyer on Delivery in accordance with clause 5.
- 2.2. Risk in Genetic Material passes to the Buyer on Delivery. However, the Buyer is advised to insure the Genetic Material from the end of the Auction.
- 2.3. The Vendor must (at the Vendor's cost) cause the Lot to be maintained in the same condition as represented in the Lot Description until it is Delivered to the Buyer.

3. Description of Genetic Material

- 3.1. The Vendor must, in the Lot Description, specify the Storage Centre at which the Genetic Material is located, and the address of that Storage Centre.
- 3.2. The Vendor:
 - 3.2.1. warrants that the Lot Description accurately describes the Genetic Material and the condition the Genetic Material will be in at the time of Delivery; and
 - 3.2.2. acknowledges and repeats the warranties given by the Vendor in the Auction Terms save that it:
 - (a) does not guarantee the viability of the Genetic Material or the conception rates that may be achieved through the use of the Genetic Material; and
 - (b) disclaims all warranties of merchantability and fitness for a particular purposeand 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 Genetic Material.
- 3.3. The Vendor warrants in favour of the Buyer that the Genetic Material will be free from any Encumbrances at the time of Delivery.

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 Genetic Material. 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 Genetic Material to the Buyer in satisfactory condition and will apply the Purchase Price as follows:
 - 4.6.1. if the sale and purchase of the Genetic Material completes satisfactorily, Elders will distribute the Purchase Price in accordance with clause 13 (*Payment of Purchase Price to Vendor*) of the Auction Terms; and
 - 4.6.2. if the sale and purchase of the Genetic Material 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 13 (*Payment of Purchase Price to Vendor*) of the Auction Terms.
- 4.7. Upon receipt of the full Invoice Amount in cleared funds, Elders will notify the Vendor that Elders has received the Invoice Amount from the Buyer.
- 4.8. The Vendor acknowledges that Elders is not a del credere agent. The Vendor further acknowledges that if it permits delivery of the Genetic Material 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 Genetic Material 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. Upon receipt of the notification from Elders referred to in clause 4.7, the Vendor must (unless otherwise agreed between the Vendor and the Buyer):
 - 5.1.1. direct the Storage Centre, in writing, to release the relevant Genetic Material to the Buyer;
 - 5.1.2. obtain written confirmation from the Storage Centre that the relevant Genetic Material has been released to the Buyer; and
 - 5.1.3. provide Elders with copies of the written direction and written confirmation referred to in clause 5.1.1 and 5.1.2.
- 5.2. Delivery will occur when Elders receives copies of the written direction and written confirmation in accordance with clause 5.1.3.
- 5.3. The Buyer acknowledges that the Vendor will not be required to effect Delivery of the Genetic Material until the Buyer has paid the Invoice Amount to Elders in full.
- 5.4. Unless otherwise agreed with the Vendor, the Buyer is responsible for:
 - 5.4.1. paying any costs of Delivery; and
 - 5.4.2. paying any storage costs that the Storage Centre may charge in relation to the Genetic Material after Delivery has been effected and the Buyer releases and indemnifies the Vendor and Elders from all claims relating to such costs.
- 5.5. The Vendor and the Buyer must comply with all laws or industry codes relating to the safe handling of Genetic Material during loading and transport (if applicable) and any applicable laws that regulate the safe transportation of road freight.
- 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 Delivery cannot occur within the delivery period described in clause 5.6 due to any cause beyond the parties' reasonable control (including a Force Majeure Event), the Genetic Material 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 Genetic Material passing to the Buyer, the Vendor must comply with clause 2.3 (at the Vendor's cost).
- 5.8. The Buyer will indemnify the Vendor against any loss or damage suffered by the Vendor in connection with the Genetic Material on and from the end of the period for Delivery set out in clause 5.6 (other than the costs of maintaining the Genetic Material in accordance with clauses 2.3 and 5.5).



GENETIC MATERIAL TERMS

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 Genetic Material Lot that does not conform to the Lot Description.
- 6.2. If the Buyer rejects a Genetic Material Lot, the Buyer must:
 - 6.2.1. notify the Vendor in writing that the Lot has been rejected and the reasons for its rejection, together with any evidence in support of those reasons;
 - 6.2.2. send a copy of the notice to Elders' administrators; and
 - 6.2.3. hold and maintain the Lot at the Buyer's cost in at least the same condition it was delivered.
- 6.3. If Elders is notified that the Genetic Material Lot has been rejected, Elders will retain the Purchase Price in trust, pending confirmation that any dispute over the rejection of the Lot has been resolved in accordance with clause 4.6.2.

7. Dispute Resolution

- 7.1. If a dispute about a Genetic Material Lot is notified by the Buyer to the Vendor and Elders prior to Elders paying the Purchase Price as authorised under clause 13 (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.
- 7.2. If a dispute about a Genetic Material Lot is notified by the Buyer to the Vendor and to Elders after the Purchase Price has been paid as authorised under clause 13 (Payment of Purchase Price to Vendor) of the Auction Terms, then:
 - 7.2.1. the Vendor and the Buyer must resolve the dispute between themselves using whatever lawful means they consider appropriate;
 - 7.2.2. Elders will have no involvement in the resolution of the dispute; and
 - 7.2.3. if the Buyer is in possession of the Genetic Material, the Buyer must maintain the Genetic Material to the same standard in which it was Delivered.

8. Liability

- 8.1. Other than as set out in the Contract, all warranties about Genetic Material (express or implied, including implied by statute) are excluded to the fullest extent permitted by law.
- 8.2. 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 Genetic Material or payment of the cost of the same.
- 8.3. The Vendor and Buyer acknowledge that they are the principal parties to the Contract for the sale of the Genetic Material 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:
 - 8.3.1. a breach by either the Vendor or the Buyer of a Contract for the sale and purchase of Genetic Material;
 - 8.3.2. the description or misdescription of the Genetic Material in the Lot Description, including as a result of the omission of facts or information;
 - 8.3.3. the Genetic Material not being fit for any particular purpose, whether or not that purpose was disclosed to Elders or to the Vendor;
 - 8.3.4. the Vendor's title to the Genetic Material or the existence of Encumbrances over the Genetic Material;
 - 8.3.5. the pedigree status of the Genetic Material;
 - 8.3.6. the performance attributes of the Genetic Material or any failure of the Genetic Material to achieve any production or performance attributes, standards, benchmarks or targets, whether or not disclosed by the Vendor and whether or not represented in the Lot Description or arising from industry norms or expectations; or
 - 8.3.7. the condition of the Genetic Material at Delivery.
- 8.4. 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:
 - 8.4.1. a breach of the Contract by the Vendor;
 - 8.4.2. a breach of the Auction Terms or the Registration Terms by the Vendor;
 - 8.4.3. any negligent act or omission of the Vendor;
 - 8.4.4. any misleading or deceptive statement or representation about the Genetic Material (including by way of omission of facts or information), including misdescription of the Genetic Material in the Lot Description;
 - 8.4.5. the condition of the Genetic Material Lot at Delivery; and
 - 8.4.6. the Vendor's ownership of and authorisation to sell the Genetic Material Lot free from Encumbrances.
- 8.5. 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:
 - 8.5.1. a breach of the Contract by the Buyer;
 - 8.5.2. a breach of the Auction Terms or the Registration Terms by the Buyer;
 - 8.5.3. the failure of the Buyer to take Delivery of the Genetic Material within the time permitted under the Contract; and
 - 8.5.4. any negligent act or omission of the Buyer.
- 8.6. If, notwithstanding the terms of the Contract, Elders is liable to the Vendor or the Buyer for any reason, then subject to clause 8.8 and to the extent permitted by Law, the liability of Elders is limited to:
 - 8.6.1. 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
 - 8.6.2. in the case of liability to the Buyer, the lesser of the Buyer's direct losses and the Invoice Amount.
- 8.7. Clauses 8.3 to 8.6 do not apply where a Related Body Corporate of Elders is a Vendor or Buyer of Genetic Material in its own right.
- 8.8. 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:
 - 8.8.1. reduced or limited to the extent (if any) that the party causes or contributes to the loss or damage; and
 - 8.8.2. except in the case of fraud by Elders, will be limited to the Purchase Price for the Genetic Material to which the claim for loss or damage relates.
- 8.9. 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 progeny of the Genetic Material, 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.



GENETIC MATERIAL TERMS

9. Force Majeure

- 9.1. The Vendor is not responsible for any loss of Genetic Material 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 Genetic Material and deliver the Genetic Material 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 Genetic Material for Delivery.
- 9.2. 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.

10. Termination

- 10.1. 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:
 - 10.1.1. if the other party breaches a fundamental term of the Contract;
 - 10.1.2. the Buyer fails to pay for the Genetic Material by the time allowed under the Contract;
 - 10.1.3. the Buyer fails to take Delivery of the Genetic Material within the time period allowed under clauses 5.6 or 5.7;
 - 10.1.4. if the other party suffers an Insolvency Event; or
 - 10.1.5. in accordance with another provision of the Contract that permits the termination of the Contract.
- 10.2. Clause 8.8 of the Auction Terms (which describes prohibited conduct by Registered Users during an Auction) is a fundamental term of the Contract.
- 10.3. If the Buyer has taken possession of Genetic Material without paying for them prior to termination of the Contract, the Vendor may retake possession of the Genetic Material from the Buyer. The Buyer irrevocably authorises the Vendor to enter upon any premises where the Genetic Material is located, or to direct a Storage Centre on behalf of the Buyer to do any necessary act, for the purposes of retaking possession.
- 10.4. If Genetic Material has been paid for but not delivered prior to termination of the Contract:
 - 10.4.1. Elders will return the Purchase Price to the Buyer; or
 - 10.4.2. 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.
- 10.5. Termination of the Contract does not affect any rights that a party has that accrued prior to termination.