

Auction Terms

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

1. The Nature of Transactions Through the Auction Platform

- 1.1. The Auction Platform operates as a platform to effect the sale of Lots from the Vendor to the Buyer.
- 1.2. Any Transaction that occurs through the Auction Platform is between the Buyer and the Vendor as principals. Unless Elders is the Vendor, Elders is the disclosed agent of the Vendor and does not accept any liability as a principal.
- 1.3. Elders is not:
 - 1.3.1. a principal Buyer or Vendor in any Transaction (unless the Registered User Listing or Bidding on a Lot is Elders);
 - 1.3.2. an agent for the Buyer;
 - 1.3.3. a del credere agent, and therefore does not indemnify a Vendor against the risk that a Buyer cannot or does not pay for a Lot;
 - 1.3.4. responsible for any misdescription of the Lot by a Vendor (except where Elders is the Vendor); or
 - 1.3.5. responsible for any physical or other defects with the Lot (except where Elders is the Vendor).
- 1.4. Elders will conduct the Auction, manage the Auction Platform and facilitate completion of a Transaction by holding the Purchase Price as stakeholder pending delivery, but unless expressly stated or disclosed in the Lot Description or Bid, Elders is not a party to the sale or purchase of the Lot and does not have any obligations in favour of either party in relation to the sale and purchase of a Lot, including obligations to Deliver Lots or arising out of the description or condition of the Lot. When acting as the agent of the Vendor, Elders disclaims any personal liability to the Buyer for breach of the Contract (except in relation to Elders's obligations to hold the Purchase Price as stakeholder) or misdescription by the Vendor. Any other claims must be addressed directly between the Vendor and the Buyer.
- 1.5. Each Buyer and Vendor must comply with these Auction Terms. Each Vendor will ensure that their Lot Description is accurate and complete. Each Buyer is responsible for conducting such inquiries as it deems appropriate to satisfy themselves that the Lots they bid on are to a suitable standard and that their bids are at an appropriate price.
- 1.6. If a Transaction occurs for the sale of Livestock, the Livestock Terms will form part of the Contract for the sale and purchase of Livestock. If a Transaction occurs for the sale of Genetic Material, the Genetic Material Terms will form part of the contract for the sale and purchase of Genetic Material. If a Transaction occurs for the sale of a General Item, the General Item Terms will form part of the Contract for the sale and purchase of the General Item. If a Transaction occurs for the sale of a Water Product, the Water Product Terms will form part of the contract for the sale and purchase of the Water Product.

2. Conditions for Listing Lots that are Livestock

2.1. A Vendor must only list Livestock for sale on the Auction Platform if:

- 2.1.1. the Vendor is the owner of the animal or is authorised by the owner of the animal to sell it on the owner's behalf;
- 2.1.2. where the animal is owned by the Vendor and others jointly, the Vendor has the express authority from all other owners to sell the animal;
- 2.1.3. where the animal is required to be registered against a PIC number, the animal is physically located on the property associated with the PIC number and that property is located in the State or Territory stated by the Vendor;
- 2.1.4. the PIC or breeder numbers recorded in the Lot Description are correct;
- 2.1.5. where Livestock are subject to any Encumbrance (such as a specific security interest covering the Livestock), the Vendor has the consent of the secured parties to sell the Livestock; and
- 2.1.6. the Vendor is complying with the Registration Terms.

2.2. By virtue of listing Livestock on the Auction Platform, the Vendor warrants to Elders that as at the time of Listing and continuing until the end of the Auction each of the conditions in clause 2.1 is true.

3. Conditions for Listing Lots that are Genetic Material

3.1. A Vendor must only list Genetic Material for sale on the Auction Platform if:

- 3.1.1. the Vendor is the owner of the Genetic Material or is authorised by the owner of the Genetic Material to sell it on the owner's behalf;
- 3.1.2. where the Genetic Material is owned by the Vendor and others jointly, the Vendor has the express authority from all other owners to sell the Genetic Material;
- 3.1.3. where Genetic Material is subject to any Encumbrance (such as a specific security interest covering the Genetic Material), the Vendor has the consent of the secured parties to sell the Genetic Material; and
- 3.1.4. the Vendor is complying with the Registration Terms.

3.2. By virtue of listing Genetic Material on the Auction Platform, the Vendor warrants to Elders that as at the time of Listing and continuing until the end of the Auction each of the conditions in clause 3.1 is true.

4. Conditions for Listing Lots that are General Items

4.1. A Vendor must only list General Items for sale on the Auction Platform if:

- 4.1.1. the Vendor is the owner of the General Item or is authorised by the owner of the General Item to sell it on the owner's behalf;
- 4.1.2. where the General Item is owned by the Vendor and others jointly, the Vendor has the express authority from all other owners to sell the General Item;

- 4.1.3. where General Item is subject to any Encumbrance (such as a specific security interest covering the General Item), the Vendor has the consent of the secured parties to sell the General Item; and
 - 4.1.4. the Vendor is complying with the Registration Terms.
- 4.2. By virtue of listing the General Item on the Auction Platform, the Vendor warrants to Elders that as at the time of Listing and continuing until the end of the Auction each of the conditions in clause 4.1 is true.

5. Conditions for Transactions involving Water Products

- 5.1. Elders may list Water Products for sale on the Auction Platform on behalf of a Vendor when duly authorised by the Vendor. For the avoidance of doubt, Elders is not the Vendor in these circumstances, but the disclosed agent of the Vendor only.
- 5.2. Water Products may only be listed for sale on the Auction Platform if:
- 5.2.1. the Vendor is the owner of the Water Product or is authorised by the owner of the Water Product to sell it on the owner's behalf;
 - 5.2.2. where the Water Product is owned by the Vendor and others jointly, the Vendor has the express authority from all other owners to sell the Water Product;
 - 5.2.3. where the Water Product is subject to any Encumbrance (such as a specific Security Interest covering the Water Product), the Vendor has the consent of the secured parties to sell the Water Product.
- 5.3. By virtue of listing the Water Product on the Auction Platform, the Vendor warrants to Elders that as at the time of Listing and continuing until the end of the Auction each of the conditions in clause 5.1 is true.

6. Lot Descriptions and Listing Fee

- 6.1. The Vendor is responsible for providing Lot Descriptions to accompany a Listing for sale.
- 6.2. Lot Descriptions must be submitted through the Vendor's User Profile.
- 6.3. After receipt of a Lot Description, Elders will issue an invoice to the Vendor for the Listing Fee. The Listing Fee will be the amount notified to the Vendor on the Website at the time of listing the Lot and will include any charges for optional features selected by the Vendor on an opt-in basis when submitting a Listing.
- 6.4. Elders reserves the right not to display a Lot Description on the Auction Platform for any reason at Elders's discretion, including where:
- 6.4.1. the Listing Fee has not been paid;
 - 6.4.2. the information required to be included in a Lot Description has not been supplied by the Vendor;
 - 6.4.3. Elders has cause to suspect that the Lot being sold is not owned by the Registered User or an entity that the Registered User is authorised to represent; or
 - 6.4.4. the Lot Description may affect the integrity, functionality or operation of the Auction Platform.

- 6.5. Elders does not make any of its own independent representations or give any warranty about the Lot. In publishing the Lot Description on the Auction Platform, Elders is merely conveying information that is provided by the Vendor without making any independent inquiry into its truth, accuracy or completeness. All claims for misdescription, misleading or deceptive conduct and other analogous claims must therefore be resolved directly between the Vendor and the Buyer.
- 6.6. The Vendor warrants to Elders and each Bidder that:
 - 6.6.1. the Lot Description is accurate and complete in all material particulars;
 - 6.6.2. no information has been left out of the Lot Description that might affect whether or not a reasonable Bidder may bid on the Lot or the amount that they may bid for the Lot;
 - 6.6.3. any photographs or videos that are included with the Lot Description:
 - (a) depict the Lot actually Listed for sale;
 - (b) are a true representation of the condition of the Lot at the time of Listing; and
 - (c) have either been taken by the Vendor or, if not taken by the Vendor, the Vendor has obtained the express authorisation of any party who holds copyright in the photographs or videos to display the photographs or videos on the Auction Platform as part of the Lot Description;
 - 6.6.4. the Lot is in a condition at the time of Listing that will result in it being delivered to the Buyer at a similar standard to how the Lot is depicted in any photographs or videos (that is, in the case of Livestock, the Lot is in “forward condition” at the time of Listing);
 - 6.6.5. the Vendor will, at its cost, maintain the Lot in an equal or better condition as represented in any photographs or videos until the time of delivery; and
 - 6.6.6. where the Lot is Livestock, the Lot is in suitable condition for transportation.

7. Advertising a Listing and Optional Extras

- 7.1. If the Vendor pays the Listing Fee to Elders in accordance with clause 6.3, Elders will list the Lot Description on the Auction Platform and it will be available to be viewed by Bidders.
- 7.2. When listing the Lot Description, Elders will provide such optional extra services as selected by the Vendor when submitting a Listing.
- 7.3. Elders may suspend (for such time as Elders reasonably deems necessary) a Listing and any associated Auction or may remove the Lot Description from the Auction Platform at any time for any reason, including for non-compliance with the Auction Terms, because the Vendor has suffered an Insolvency Event, or in the circumstances described in clause 6.4.
- 7.4. If Elders suspends a Listing or an Auction, it will notify the Vendor as soon as reasonably practicable and endeavour to resolve the relevant issue. If the issue cannot be resolved to Elders’s satisfaction, Elders may permanently remove the Lot Description from the Auction Platform and terminate any associated Auction.

- 7.5. If Elders removes a Lot Description from the Auction Platform, it will refund the Listing Fee to the Vendor. Any fee incurred by Elders in refunding the Listing Fee will be borne by the Vendor and deducted from the amount refunded.

8. Withdrawing a Lot

- 8.1. A Vendor may withdraw a Lot at any time prior to the conclusion of the Auction. To withdraw a Lot from sale, the Vendor must submit a Withdrawal Form to Elders.
- 8.2. A Lot is not withdrawn from sale until Elders has removed the Listing from the Auction Platform and notified the Vendor that the Lot has been withdrawn. Elders may suspend an Auction while it processes a Withdrawal Form.

9. Buy Now Price and No Reserve Price

- 9.1. When submitting a Lot Description, Vendors will be asked to nominate:
- 9.1.1. a starting price for the Auction; and
 - 9.1.2. at the Vendor's option, a Buy Now Price.
- 9.2. Vendors must take care when nominating these prices as:
- 9.2.1. there is no reserve price for Auctions;
 - 9.2.2. Lots are available for sale from the commencement of the Auction at the starting price;
 - 9.2.3. the Buy Now Price may be accepted by a Bidder at any time from the commencement of the Auction, at which time the Auction ends; and
 - 9.2.4. Elders does not accept any responsibility or liability for errors in nominating, or lapses of judgement in assessing, the starting prices and Buy Now Prices.

10. Bidding

- 10.1. Only Registered Users may Bid on Lots. Bids may only be placed through the Auction Platform.
- 10.2. Each Bidder will be deemed to be a principal Bidding on Lots in their own right.
- 10.3. Each Bid is an irrevocable offer to purchase the Lots to which the Bid relates at the Bid Price and in accordance with the Contract (inclusive of any terms and conditions relevant to the Lot being sold, as made available on the Website from time to time, which in the case of Livestock are the Livestock Terms, in the case of Genetic Material are the Genetic Material Terms, and in the case of General Items are the General Item Terms).
- 10.4. A Bid is deemed to have been made when it is received in the Auction Platform's bidding log.
- 10.5. Once made, a Bid cannot be retracted. If the Bidder's Bid is successful, the Bidder will be obligated to buy the Lot in accordance with the terms of their Bid.

10.6. The Bid Price:

- 10.6.1. is the amount that the Bidder is willing to pay for the Lot offered for sale;
- 10.6.2. must be the next minimum Bid Price displayed on the Auction Platform at the time of the Bid; and
- 10.6.3. is exclusive of GST. If the Bidder's Bid is successful, GST will be added to the Purchase Price if it is applicable.

10.7. Bidders may elect to use Proxy Bid. Proxy Bid will automatically place Bids on behalf of a Bidder at the next minimum Bid Price up to the maximum Bid Price nominated by the Bidder. Bidders electing to use Proxy Bid must be prepared to pay the maximum Bid Price nominated by them when establishing their Proxy Bid. Bids placed by Proxy Bid are binding on the Bidder and cannot be revoked once made.

10.8. Registered Users must not:

- 10.8.1. collude with each other on Bidding, including whether or not a Registered User will Bid or the Bid Price to which they will Bid;
- 10.8.2. induce or attempt to induce another person to abstain from Bidding or to Bid only to a limited extent;
- 10.8.3. agree that another person will be able to take over as the Buyer if the Registered User is the successful Bidder for the Lot;
- 10.8.4. Bid on their own Lot or Bid on Lots on behalf of the Vendor; or
- 10.8.5. do any other act or thing that might prevent free and open competition in the Auction.

Registered Users are warned that some collusion between competitors may be unlawful and specifically, collusion between Bidders in the context of an auction may be unlawful. Statements under Western Australian and New South Wales legislation are set out in clause 17.

10.9. Elders reserves the right, at its discretion, to extend the Auction Period for any Auctions adversely affected by an interruption in the availability or the functionality of the Auction Platform.

11. Buyer's Premium

- 11.1. Except where prohibited by law, Elders will charge a Buyer's Premium to the Buyer of Lots at a rate notified to Buyers through the Website prior to them Bidding.
- 11.2. Elders will add the Buyer's Premium to the Purchase Price at the end of the Auction to determine the Invoice Amount.
- 11.3. The Vendor agrees that if the Buyer part-pays an invoice, the Buyer's Premium will be deemed to have been paid first in time and, once paid in full, any balance paid will be applied towards the Purchase Price.

12. Formation of Contract

- 12.1. Subject to clause 12.2 , a Bidder will become the Buyer of a Lot by:
 - 12.1.1. accepting the Buy Now Price at any time during the Auction Period, at which time the Auction will end even if the Auction Period has not expired; or
 - 12.1.2. by being the highest Bidder at the end of the Auction Period.
- 12.2. The Contract for the sale of a Lot will comprise:
 - 12.2.1. the Common Terms;
 - 12.2.2. these Auction Terms;
 - 12.2.3. in the case of Lots that are Livestock, the Livestock Terms; in the case of Lots that are Genetic Material, the Genetic Material Terms; in the case of Lots that are General Items, the General Item Terms; and in the case of Lots that are Water Product, the Water Product Terms; and
 - 12.2.4. the Purchase Price.
- 12.3. Subject to terms of the Contract for the sale of Lots, the Vendor will be obligated to sell the Lot to the Buyer determined pursuant to clause 12.1 regardless of the identity of the Buyer.

13. Payment of Purchase Price to Vendor

- 13.1. Elders is entitled to deduct:
 - 13.1.1. its Commission;
 - 13.1.2. any Buyer's Premium; and
 - 13.1.3. any other fees, charges, levies or taxes that are required to be paid,from the Invoice Amount and pay the balance to the Vendor. The Vendor hereby authorises and directs Elders to deduct the above amounts and pay the Commission and Buyer's Premium to itself and the fees, charges, levies or taxes to the appropriate agencies or bodies, prior to distributing the balance of the Purchase Price held in Elders' trust account to the Vendor. The Vendor acknowledges that the Buyer's Premium is a charge levied by Elders on the Buyer and is not part of the Purchase Price to be distributed to the Vendor on any account.
- 13.2. Elders' Commission will be based on the commission rate notified to the Vendor at the time of uploading a Listing and will be calculated based on the GST-exclusive Purchase Price (and to avoid doubt, will not be calculated on the Buyer's Premium). Where applicable, GST will be added to Elders' Commission in accordance with clause 4 of the Common Terms.
- 13.3. Elders may set-off any monies owing to Elders Limited (ACN 004 336 636) or any of its Related Bodies Corporate by the Vendor on any account against any monies to be paid by Elders to the Vendor.

14. Sales following the Auction

If a Lot is not sold during the Auction Period, but is sold within seven days following the end of the Auction Period, the Vendor must pay to Elders an amount equal to the Commission that would have been payable had the Lot sold during the Auction Period.

15. Exclusion of Liability

15.1. To the extent permitted by law, Elders is not liable to any Bidder, the Buyer or the Vendor, and each Bidder, the Buyer and the Vendor severally agree to release and hold harmless Elders from and against all claims for loss or damage arising (directly or indirectly) out of, or in connection with:

15.1.1. the conduct of the Auction;

15.1.2. any malfunction or non-availability of the Auction Platform or the Website, even if it affects the conduct of the Auction; and

15.1.3. the content of a Lot Description.

15.2. The indemnities, limitations and exclusions of liability in any other terms and conditions (including, for Lots that are Livestock, the Livestock Terms) also form part of the Contract for the sale of the Lot.

16. Conflicts of Interest

16.1. Consent is given to any conflict of interest or duty that may arise as a result of Elders auctioning a Lot as agent for the Vendor and charging a Buyer's Premium to the Buyer, by:

16.1.1. each Bidder, who consent by Bidding on the Lots; and

16.1.2. each Vendor, who consent by listing Lots for sale on the Auction Platform.

Each Vendor and Bidder acknowledges that the Auction is a public and competitive process.

16.2. Related Bodies Corporate of Elders may purchase Lots through the Auction Platform. When Bidding:

16.2.1. those entities will be identified with "Elders" in their Registered User name; and

16.2.2. the persons Bidding on behalf of Elders' Related Bodies Corporate will not be engaged in any way in connection with the administration of the Auction Platform.

Subject to Elders and its Related Bodies Corporate complying with these requirements, the Vendor consents to any conflict of interest or duty arising as a result of the Related Bodies Corporate purchasing Lots through the Auction Platform.

17. State Specific Legislation

17.1. This clause operates where the *Auction Sales Act 1973* (WA) applies.

17.1.1. No Vendor Bids are permitted on the Auction Platform.

17.1.2. It is an offence to:

- (a) 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;

- (b) abstain or agree to abstain from bidding as a result of such a promise;
- (c) knowingly enter or permit or cause to be entered in the auctioneer's record any name other than that of the actual successful Bidder;
- (d) for the successful Bidder to 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.

17.2. This clause operates where the *Property, Stock and Business Agents Act 2002* (NSW) (the **NSW Act**) applies.

17.2.1. Penalty for collusive practices: it is an offence against the NSW Act 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:

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

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

17.2.2. Successful Bidders: the actual successful Bidder at an Auction sale must give to the auctioneer or an employee of the auctioneer the Bidder's name or the name of the person on whose behalf the successful Bid was made.

17.3. For the purposes of clause 17.2.2, the information will be deemed to have been given through the registration process.