

## Common Terms

### 1. Definitions

- 1.1. **Application** means an application to a Water Authority for the assignment of a Water Product as a result of a Transaction.
- 1.2. **Associate** means a Related Body Corporate, director, officer, employee, shareholder, or beneficiary of another person or entity.
- 1.3. **Auction** means a competitive sales process conducted through the Auction Platform in which each Lot is offered for sale to the highest Bidder at the end of the Auction Period.
- 1.4. **Auction Period** means the period of 5 Business Days, as varied at the discretion of Elders (for example, if there is any malfunction or non-availability of the Auction Platform during the Auction Period).
- 1.5. **Auction Platform** means the computer based communication facility through which Registered Users may concurrently participate in an auction sales process by using internet based bidding through a web browser of an appropriate type and configuration, but does not include Registered Users' terminals or any means of communication from a Registered User to the internet.
- 1.6. **Auction Terms** means the terms and conditions that govern the conduct of an Auction on the Auction Platform, as available on the Website.
- 1.7. **Bid Price** means a price offered for the Lot by a Bidder during the course of the Auction.
- 1.8. **Bidder** means a Registered User who bids for the purchase of a Lot during the course of the Auction.
- 1.9. **Business Day** means a day other than a Saturday, Sunday or public holiday in each of the places in which an act needs to occur or, if used in a context where no act needs to occur, in the State of South Australia.
- 1.10. **Buy Now Price** means a price nominated by a Vendor at which a Bidder may elect to purchase a Lot immediately, even if the Auction Period has not expired.
- 1.11. **Buyer** means a person who purchases a Lot through the Auction Platform.
- 1.12. **Commission** means any commission payable by the Vendor to Elders (however described), calculated as a percentage of the GST-exclusive Purchase Price, such percentage being the amount notified on the Website at the time of Listing Lots for sale.
- 1.13. **Contract** means a contract for the sale and purchase of Lots, formed as a result of an Auction, comprised of the documents and commercial terms described in clause 11 (*Formation of Contract*) of the Auction Terms.
- 1.14. **Delivery** means delivery of the Lot to the Buyer in accordance with the Contract.
- 1.15. **Elders** means Elders Rural Services Australia Limited (ACN 004 045 121).
- 1.16. **Encumbrance** means any mortgage, pledge, licence, charge, lien, right of set-off or any security or preferential interest or arrangement of any kind or a security interest under the *Personal Property Securities Act 2009* (Cth), but does not include a retention of title security interest arising in the ordinary course of day to day trading.
- 1.17. **Force Majeure Event** means any rain event, flood, fires, lockouts, labour disputes, quarantine restrictions, epidemic, storm, earthquake, act of God or any act (including laws, regulations, disapprovals or failures to approve) of any government or agency, whether national, municipal or otherwise or any other cause beyond a party's reasonable control.

- 1.18. **General Item** means any item that is not Livestock or Genetic Material but does not include Schedule 7 poisons or Dangerous Goods.
- 1.19. **General Item Terms** means the terms and conditions that apply to the sale and purchase of General Items as a result of a successful Auction through the Auction Platform.
- 1.20. **Genetic Material** means material that has been artificially isolated from a non-human organism and that can be used to reproduce that organism, and includes semen, ova and embryos.
- 1.21. **Genetic Material Terms** means the terms and conditions that apply to the sale and purchase of Genetic Material as a result of a successful Auction through the Auction Platform.
- 1.22. **GST** means the same as in the GST Law.
- 1.23. **GST Law** means the same as "GST law" means in the A New Tax System (Goods & Services Tax) Act 1999.
- 1.24. **Insolvency Event** means:
- 1.24.1. where the party is a partnership, the partnership is dissolved;
  - 1.24.2. where the party is an individual, the individual becomes bankrupt or makes a composition or arrangement with creditors generally or takes advantage of any statute for the relief of insolvent debtors;
  - 1.24.3. where a party is a corporation:
    - (a) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed to any of the party's property or any steps are taken for the appointment of such a person;
    - (b) steps are taken by any person towards making the party an externally administered body corporate; or
    - (c) the party becomes an externally administered body corporate under the *Corporations Act 2001* (Cth); and
  - 1.24.4. in addition to the foregoing, where the party enters into this agreement in its capacity as trustee of a trust, the trust is dissolved or the assets of the trust are insufficient to meet an actual or contingent claim for indemnification by the trust.
- 1.25. **Invoice Amount** means the amount invoiced to a Buyer for the Lot, being the Purchase Price plus any Buyer's Premium payable by the Buyer.
- 1.26. **Listing** means an advertisement offering to sell a Lot through the Auction Platform.
- 1.27. **Listing Fee** means the fee payable by Vendors of Lots in an amount from time to time as will be notified to Vendors on the Website prior to uploading Listings.
- 1.28. **Livestock** means any animals that Elders permits to be sold on the Auction Platform from time to time, provided such animals are not restricted for sale or purchase by law or, where they are restricted, any necessary government permits are made available to and verified by Elders prior to listing or Bidding.
- 1.29. **Elders** means Elders Rural Services Australia Limited ACN 004 045 121 trading as Elders.
- 1.30. **Livestock Terms** means the terms and conditions that apply to the sale and purchase of Livestock as a result of a successful Auction through the Auction Platform.
- 1.31. **Lot** means:

- 1.31.1. in relation to Livestock, a single unit of a good that is offered for sale through the Auction Platform, (for example, one head of Livestock or a cow and calf offered for sale as a single unit);
  - 1.31.2. in relation to Genetic Material, any combination of goods offered for a single purchase price to a single Buyer;
  - 1.31.3. in relation to General Items, any combination of goods offered for a single purchase price to a single buyer; or
  - 1.31.4. Water Products offered for a single purchase price to a single Buyer.
- 1.32. **Lot Description** means the description of the Lot provided by the Vendor and displayed on the Auction Platform for Bidders to review prior to placing Bids.
- 1.33. **NLIS** means the National Livestock Identification System.
- 1.34. **Permanent Entitlement** means a water entitlement or right issued in perpetuity by a Water Authority.
- 1.35. **PIC** means "Property Identification Code" as applied for the purposes of NLIS.
- 1.36. **Proxy Bid** means the automatic bidding facility on the Auction Platform, which will automatically place Bids for a Bidder at the next available minimum Bid Price up to the maximum proxy Bid Price nominated by the Bidder.
- 1.37. **Purchase Price** means the price for which Lots are sold by Auction and where applicable, includes GST.
- 1.38. **Registered User** means a person, company or other entity that has registered as a Registered User of the Website.
- 1.39. **Registration Terms** means the terms and conditions of registering as a Registered User of the Auction Platform, as in force from time to time.
- 1.40. **Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth).
- 1.41. **Restricted Items** means items that are classified as Schedule 7 poisons, Dangerous Goods or such other items as Elders declares to be a Restricted Item, from time to time.
- 1.42. **Storage Centre** means a place at which Genetic Material is stored.
- 1.43. **Temporary Allocation** means a water allocation issued by a Water Authority to a Permanent Entitlement and available for trade by way of assignment in the current Water Year.
- 1.44. **Terms and Conditions** means each of the Registration Terms, Auction Terms and any terms and conditions relating to specific goods or types of goods that may be sold through the Auction Platform, in the case of Livestock being the Livestock Terms.
- 1.45. **Transaction** means the sale and purchase of a Lot through the Auction Platform.
- 1.46. **User Profile** means the registration of a profile on the Website for the Registered User through to offer for sale or to offer to purchase Lots, but to avoid doubt does not include any other trading account offered by Elders.
- 1.47. **Vendor** means a person who offers a Lot for sale through the Auction Platform.
- 1.48. **Water Authority** means any entity that is, from time to time, authorised by law to receive, process and approve Applications, including:
- 1.48.1. the South Australian Department of Environment, Water and Natural Resources;
  - 1.48.2. the Victorian Department of Environment, Land, Water and Planning;

- 1.48.3. the New South Wales Department of Primary Industries;
- 1.48.4. the Murray Darling Basin Authority; and
- 1.48.5. irrigation infrastructure operators.
- 1.49. **Water Product** means a Temporary Allocation.
- 1.50. **Water Product Terms** means the terms and conditions that apply to the sale and purchase of Water Products as a result of a successful Auction through the Auction Platform.
- 1.51. **Water Year** means the period from 1 July to 30 June.
- 1.52. **Website** means [www.eldersliveauctions.com.au](http://www.eldersliveauctions.com.au), being the web domain on which the Auction Platform is accessed.
- 1.53. **Withdrawal Form** means a form that a Vendor may submit to Elders to remove a Listing from the Auction Platform, which is available on the Website.

## 2. Interpretation

In each of the Terms and Conditions, unless the context otherwise requires:

- 2.1. Words defined in the GST Law have the same meaning in clauses concerning GST.
- 2.2. If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 2.3. References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- 2.4. Words in the singular include the plural and vice versa.
- 2.5. If a word or phrase is defined its other grammatical forms have the corresponding meanings.
- 2.6. "Includes" means includes without limitation.
- 2.7. If the date on or by which an act must be done under this agreement is not a Business Day, that act must be done on or by the next Business Day.
- 2.8. Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## 3. Miscellaneous

- 3.1. A reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time.
- 3.2. Elders waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it was given.

- 3.3. If any part of the Terms and Conditions or any part of the Contract is void, illegal or unenforceable, it is to be severed from the Contract to the extent to which such severance can occur without affecting the remaining provisions.
- 3.4. No rule of construction applies to the disadvantage of Elders only because Elders put forward the Terms and Conditions or any portion of them.
- 3.5. The Buyer or Vendor may assign their benefits or novate their benefits and obligations under a Contract to a third party only with the prior written consent of Elders.
- 3.6. The Registration Terms are governed by the laws in force in the State of South Australia.
- 3.7. The Auction Terms, the Livestock Terms, any other terms and conditions that apply to the sale of a type of goods, and any Contract comprising the foregoing, are each governed by the laws in force in the State or Territory in which the Lot is located, and in the case of Livestock is the State or Territory in which the property associated with the PIC number against which the animal being offered for sale is registered is located or, if no PIC number is required, the State or Territory in which the animal being offered for sale is physically located at the time of Listing.
- 3.8. The Contract for the sale and purchase of Lots is the entire agreement between the parties in relation to its subject matter.
- 3.9. All references to dollar amounts on and in connection with the Website are to Australian dollars and all amounts required to be paid are to be paid in Australian dollars unless otherwise agreed by Elders.
- 3.10. All complaints are to be made in writing via the Contact Us page on the Website.

#### **4. Goods and Services Tax**

- 4.1. If GST is payable on a supply of goods or services by a party (**Supplier**) then, to the extent that:
  - 4.1.1. the consideration is expressed as an amount of money (**the monetary consideration**) for that supply and is not stated to include an amount in respect of GST; or
  - 4.1.2. the amount of GST stated to be included in the monetary consideration is less than the amount of the GST liability actually incurred by the Vendor in respect of that supply,the Supplier will increase the monetary consideration by the applicable amount of GST and the party liable to pay the monetary consideration must pay that increased amount at the same time and to the same extent as any part of the monetary consideration.
- 4.2. If the GST payable by a Supplier on a taxable supply is varied pursuant to any change in legislation, the monetary consideration will be increased or decreased to reflect that variation of the GST.

#### **5. Restricted Items**

- 5.1. Elders may class certain items as Restricted Items and not allow them for sale on the Auction Platform.

- 5.2. Schedule 7 poisons, as defined under the various State and Territory legislation are classed as Restricted Items and cannot be sold via the Auction Platform.
- 5.3. Dangerous Goods and Hazardous Substances, as defined under the various State and Territory legislation are classed as Restricted Items and cannot be sold via the Auction Platform.
- 5.4. Firearms and ammunition are also classed as Restricted Items and cannot be sold via the Auction Platform.