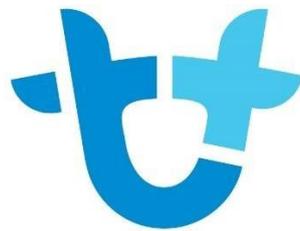


*AuctionsPlus Pty Limited  
User Agreement & Sale Terms  
Effective March 2021*



**AuctionsPlus<sup>®</sup>**

*Australia's Livestock Marketplace*

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## INTERPRETATION

### 1 Definitions

In this document, the following expressions have the following meanings unless the context requires otherwise:

"**Access**" means to enter the AuctionsPlus website and view or download any Data held on the AuctionsPlus System;

"**Assessment**" means a physical appraisal of livestock, conducted by an Accredited Assessor to meet the data requirements set out by AuctionsPlus for the specified auction. An Assessment may be completed on-farm, at a saleyard, or any other livestock holding facility.

"**Assessed Lot**" has the meaning given in clause 4.1 of the Sale Terms;

"**Assessor**" means a person who has been accredited as an assessor by AuctionsPlus for the purposes of the AuctionsPlus System User Agreement terms;

"**Agent**" means an appropriately licensed and AuctionsPlus approved agent for a Vendor or for a Purchaser as appropriate who undertakes all functions normally associated with being an agent in relation to the sale and purchase of Lots;

"**Auction**" means a sale in which each Lot is sold to the highest bidder where the bid equals or exceeds the Vendor's reserve price, in accordance with the Conduct of Auction;

"**Auctioneer**" means the person conducting the physical component of an Auction;

"**AuctionsPlus**" means AuctionsPlus Pty Ltd ACN 072 403 984 and any employee, Agent, consultant, adviser, contractor, sub-contractor or representative;

"**AuctionsPlus System**" means the digital online Auction platform for the sale of Lots made available by AuctionsPlus at [www.auctionsplus.com.au](http://www.auctionsplus.com.au) or at such other domain as AuctionsPlus nominates from time to time but does not include any Users' terminals or any means of communication from a User to the Internet;

"**AUS-MEAT**" means AUS-MEAT Limited ACN 082 528 881, a company limited by guarantee;

"**AUS-MEAT Language**" means the terminology and criteria for description of Livestock and measurement of carcasses prescribed or adopted by AUS-MEAT;

"**Bid and Offer System**" means a sale in which each Lot is sold to the first bidder who makes an offer equal to or above the Vendor's reserve price;

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

"**Catalogue**" means any document or record including any graphics, photographs or other media containing a Listing for a Lot for sale on the AuctionsPlus System;

"**Certified**" in relation to weighbridge scales or abattoir scales, means approved or authorised by the competent authority in the State or Territory where the scales are situated;

"**Commercial Arbitration Legislation**" means the *Commercial Arbitration Act 2010* (New South Wales) and the most similar legislation in each other State and Territory;

**"Conditions of Sale"** means the terms contained in this User Agreement setting out the conditions of sale.

**"Conduct of Auction"** means the terms contained in this User Agreement setting out the conduct of Auctions.

**"Contract of Sale"** means a contract between the Vendor and the Purchaser for the sale of a Lot as set out in this User Agreement and Sale Terms;

**"Data"** includes any material of whatever nature in whatever format on or available through the AuctionsPlus System including, without limitation, Assessments, Listings, Catalogues, bid bases, reserve prices, bids, limit bids, carcass measurements, kill data, Assessor performance data and market reports;

**"Delivery"** means the transfer of Livestock, other applicable commodities or Machinery by the Vendor to the Purchaser and the point of transfer will be at the nominated delivery or collection point as per the Catalogue or as the Vendor and Purchaser may agree otherwise in relation to any sale;

**"Described Lot"** means any Lot that is not required to have an Assessment in accordance with clause 4 of the Sale Terms, inclusive of paddock listings;

**"Delivery Adjustment"** is applied to account for any difference in time off feed when assessing, compared to the anticipated time off feed when the stock are delivered. It is an adjustment made to account for a decrease in weight over time due to loss of gutfill. A delivery adjustment will almost always be a negative, i.e. the weight at delivery is expected to be less than the weight at assessment.

**"Disputable Description"** means a failure of a Described Lot to meet the mandatory requirements (if any) specified by AuctionsPlus from time to time on its website at [www.auctionsplus.com.au](http://www.auctionsplus.com.au). For clarity, there may not be any mandatory requirements specified by AuctionsPlus and if you are unsure whether a particular Described Lot is eligible, you should check with AuctionsPlus prior to placing a bid.

**"Enter"** means to upload Data on the AuctionsPlus System;

**"Force Majeure"** means any event or circumstance beyond the reasonable control of the affected party and not attributable to the party's own act, error, omission, fault or negligence, and which prevents the affected party's performance of its obligations in accordance with the User Agreement or Sale Terms as applicable and includes war, strike, act of terrorism, riot, crime or an event commonly accepted as an act of God such as storm, flood or fire, but does not include market supply or price variance to the Vendor's Terms and Conditions at the time of Delivery, adverse seasonal conditions not physically preventing Delivery, mechanical failures, or delayed shipping;

**"Interface Auction"** means an Auction conducted in accordance with this document that also comprises a traditional live auction;

**"Intellectual Property"** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's rights, trade secret, knowhow, right in relation to semiconductors, and circuit layouts, trade or business or company name, indication or source of appellation of origin or other proprietary rights, or right of registration of such rights.

**"Listing Fee"** means the applicable fee for the services provided by AuctionsPlus in connection with the AuctionsPlus System as specified by AuctionsPlus from time to time;

**"Livestock"** means cattle, sheep, pigs or any other animals listed for sale on the AuctionsPlus System;

**"Login Information"** means the information required to log into the AuctionsPlus platform, including, but not limited to username and password;

**"Lot"** or **"Listing"** means any Livestock, other commodity or Machinery listed for sale on the AuctionsPlus System by a Vendor, which includes both Assessed Lots and Described Lots;

**"Loss"** means any loss of whatever nature including, without limitation, loss of contracts, loss of business, loss of revenue, loss of profits, loss of anticipated savings, loss of data, loss of goodwill or reputation, or any other special, indirect or consequential loss or damage whether arising under contract, statute, tort, in equity or at common law;

**"Machinery"** means farm equipment, machinery, trucks, tractors, vehicles, furniture, tools, parts and accessories for any of the foregoing, and any other good categorised as 'Machinery', and listed for sale, on the AuctionsPlus System;

**"Negotiated Sale"** means a sale negotiated between a Vendor and a Purchaser as provided for by the AuctionsPlus System;

**"NLIS"** means the National Livestock Identification Services;

**"Not Station-Mated"** means that to the best of the Vendor and Selling Agents knowledge, the livestock have not knowingly been exposed to a bull or a ram. It does not guarantee that stock are empty.

**"PIC"** means Property Identification Code;

**"Purchaser"** means a purchaser of a Lot on the AuctionsPlus System and includes an Agent as applicable who is deemed to be purchasing as a principal for the purposes of this User Agreement;

**"Privacy Policy"** means AuctionsPlus' privacy policy as amended or substituted from time to time available at [www.auctionsplus.com.au/auctionsplus/privacy-policy](http://www.auctionsplus.com.au/auctionsplus/privacy-policy);

**"Sale Terms"** means the terms and conditions which govern any Contract of Sale entered into by Vendors and Purchasers as set out below;

**"Schedule"** means the price adjustment schedule to this User Agreement.

**"Selling Agent"** means an Agent who lists a Lot in an Auction on behalf of a Vendor;

**"Sequential"** means a type of Auction defined in clause 2.1 of the Conduct of Auction which is conducted in accordance with this document where lots are offered and sold sequentially;

**"Sheep"** means both adult sheep and lambs or hoggets, unless otherwise specified;

**"Simultaneous"** means a type of Auction defined in clause 2.1 of the Conduct of Auction which is conducted in accordance with this document where all Lots are available for sale at the same time;

**"Slaughter Stock"** means animals purchased for immediate slaughter by or on behalf of the Purchaser following Delivery;

**"Standard Bid Basis"** is a bid expressed in dollars per head equivalent exclusive of GST, taxes, duties, levies or any other charges to the Vendor;

**"Station-mated"** means stock have been running with a bull/s or ram/s. There is no guarantee that they will be in calf/lamb.

**"Stock Category"** means a category or class of Livestock fixed by AuctionsPlus from time to time and

distinguished by species, sex and dentition;

"**User**" means anyone who uses the AuctionsPlus System not limited to and including Vendors, Agents, Assessors, bidders and Purchasers. For the avoidance of doubt, a User includes a Vendor who has engaged an Agent to use the AuctionsPlus System on their behalf, even if the Vendor does not itself hold an account on the AuctionsPlus System;

"**User Agreement**" or "**User Agreement and Sale Terms**" means this document, including the Conditions of Sale, Conduct of Auction, Sale Terms and Schedule;

"**Vendor**" means a vendor of a Lot on the AuctionsPlus System and includes a Selling Agent as applicable; and

"**Vendor Terms and Conditions**" means the terms and conditions of a Vendor mandated by a Vendor for the sale of a Lot through the AuctionsPlus System in place of the Sale Terms and includes the Vendor's Agent's selling terms and conditions if those are used.

## **2 User Agreement**

In this User Agreement and Sale Terms:

- (a) headings are for ease of reference only and do not affect the interpretation of the User Agreement or Sale Terms;
- (b) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party for the purposes of this User Agreement and Sale Terms and references to "User Agreement" or "Sale Terms" includes any applicable schedules or annexures;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this User Agreement or Sale Terms) is to that document or agreement including this User Agreement or Sale Terms as amended, supplemented, varied or replaced from time to time;
- (e) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (f) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day, except with regard to misdescription claims which are required to occur within 48 hours of receiving the Lot regardless of the day of the week;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (h) a reference to 'month' means calendar month;
- (i) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (j) a reference to applicable law is to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of

Australia, and also to any relevant judgment, order, policy, guideline, official directive, code of conduct, authorisation or request (even if it does not have the force of law) of any Government agency, competent authority or regulatory body, within or outside Australia;

- (k) a singular word includes the plural and vice versa;
- (l) the masculine includes the feminine and vice versa and also includes the neuter;
- (m) a provision of the User Agreement or Sale Terms is not to be construed against the interests of a party merely because that party proposed the provision or was engaged in drafting it;
- (n) a reference to a “day” is to be interpreted as commencing at midnight and ending 24 hours later; and
- (o) a reference to “\$” or “dollar” is to Australian dollars.

### **3 Operation of User Agreement**

- 3.1 This User Agreement applies to all Users.
- 3.2 By using, or registering for an account on, the AuctionsPlus System, each User agrees to:
  - (a) be bound by the terms of this User Agreement; and
  - (b) comply with all laws and regulations that apply to the use of the AuctionsPlus System.
- 3.3 Except as expressly provided for otherwise in this User Agreement, this User Agreement, including the Sale Terms and Conditions of Sale, govern the sale of every Lot.
- 3.4 The AuctionsPlus System is a digital online platform that allows Users to offer, sell and buy Livestock, other commodities and Machinery in a variety of pricing formats and locations. The Contract of Sale is made directly between the Vendor and Purchaser. AuctionsPlus does not buy, sell, or market any Lot listed for sale and is not party to the sale process of any Lot or any Contract of Sale.
- 3.5 Subject to clause 3.6, and clause 2.3 of the Sale Terms, the Vendor may in its sole discretion mandate the use of its Vendor Terms and Conditions instead of the Sale Terms or specify any special conditions or restrictions to a Listing that are to apply in addition to the Sale Terms. If the Vendor does not provide its own Vendor Terms and Conditions, then the Sale Terms apply to any Contract of Sale.
- 3.6 AuctionsPlus may in its absolute discretion veto the use of any Vendor Terms and Conditions or special conditions or restrictions. If AuctionsPlus vetos the use of Vendor Terms and Conditions or special conditions or restrictions, the Sale Terms apply.
- 3.7 If after using the AuctionsPlus System, a User directly contacts a Vendor and transacts with the Vendor in relation to a Lot without using the AuctionsPlus System, the Vendor and Purchaser do so at their own risk. AuctionsPlus is not liable to the Purchaser or Vendor for any Loss arising in connection with such a transaction and the limitations and exclusions in AuctionsPlus’ favour in the User Agreement and Sale Terms shall apply to its benefit. Without prejudice to the foregoing, the Vendor will still be liable to pay the

Listing Fee to AuctionsPlus in connection with any such transaction as if the transaction had taken place through the AuctionsPlus System. AuctionsPlus may in its discretion decide to suspend or terminate relevant User's or Users' Access.

#### **4 Variation**

AuctionsPlus may vary the User Agreement and Sale Terms in its discretion from time to time by notice. A variation has effect from the date specified in the notification.

#### **5 Disputes**

- 5.1 This clause 5 applies to all disputes that arise between parties to a Contract of Sale.
- 5.2 Subject to the Sale Terms, a dispute about the conduct of an Auction, the sale of a Lot, the fitness for transport of any Livestock, the slaughter of any Livestock subject to a Lot or any other matter between parties to a Contract of Sale must be raised in writing with the other party or AuctionsPlus within 48 hours after receiving the Lot via the most reasonable and direct route.
- 5.3 Notwithstanding clause [5.2](#), if there is a dispute that relates to any unborn offspring of purchased Livestock being incorrectly described in the Assessment, the buyer must notify AuctionsPlus and the Selling Agent within a reasonable time frame of the claimed mis-described offspring being born. A tolerance level of 10% will apply and any claimed mis-description of less than 10% of the total offspring of purchased Livestock will not be considered a dispute. A dispute pursuant to this clause [5.2](#) will be referred to arbitration in accordance with clause [5.6 or 5.7](#) as applicable. The Vendor will be liable for any adjustment in sale price as determined by the arbitration panel.
- 5.4 A dispute notice provided pursuant to clause [5.2 and 5.3](#) must contain sufficient details to justify the basis of the dispute.
- 5.5 If the parties are unable to resolve the dispute within fourteen (14) days of it having been raised, the dispute shall be referred in writing to AuctionsPlus for arbitration in accordance with this clause.
- 5.6 When a dispute is referred for arbitration:
  - (a) each party shall submit to AuctionsPlus an acceptance in the form designated by AuctionsPlus setting out the details of the dispute accompanied by the payment of an initial arbitration fee of \$1,000 (exclusive of any applicable GST) to AuctionsPlus and each promising to pay their pro-rated share of all other costs of the arbitration as determined by the arbitration panel which will include an appropriate hourly rate for the time of the arbitrators, their out of pocket expenses, the costs of any necessary professional advice (including reasonable lawyers' fees), the costs of any accommodation for the hearing and the arbitrators, and such other amounts as notified by AuctionsPlus to the parties;
  - (b) the AuctionsPlus CEO will establish a panel of arbitrators comprising the CEO or his/her nominee and two (2) other persons chosen by the CEO or his/her nominee, who, in the opinion of the CEO or his/her nominee, have appropriate qualifications and relevant industry experience;
  - (c) the parties shall each outline in writing to the AuctionsPlus CEO the nature of the dispute and all matters relevant to the dispute that in their opinion should be considered in the arbitration;

- (d) the Purchaser shall pay the full amount in dispute to AuctionsPlus and AuctionsPlus shall hold the payment in trust pending the determination of the arbitration, whereupon the amount shall be paid in accordance with the determination;
  - (e) each party will pay their own costs associated with participating in the arbitration;
  - (f) any determination of the arbitration panel is final and binding on all parties; and
  - (g) the members of the arbitration panel will not be disclosed.
- 5.7 The panel of arbitrators may determine the rules to apply to the arbitration and the awarding of costs in its absolute discretion. If the panel of arbitrators fails to determine any rules, the arbitration shall be conducted in accordance with the Commercial Arbitration Legislation of New South Wales.

## **6 Users and registration**

- 6.1 A User who wishes to participate on the AuctionsPlus System must register with AuctionsPlus first by submitting such forms and details as AuctionsPlus may designate from time to time and comply with any applicable terms and conditions of use specified by AuctionsPlus from time to time.
- 6.2 AuctionsPlus may accept or reject an application in its absolute discretion or impose such conditions as it sees fit from time to time.
- 6.3 Any registered User will comply with any requirements concerning User names and passwords. AuctionsPlus will give each registered User a User identification code and User ID. A registered User will be able to set a password.
- 6.4 A registered User shall quote his User identification code and/or User ID as required in relation to all transactions through the AuctionsPlus System and all dealings with AuctionsPlus.
- 6.5 A registered User shall keep their Login Information confidential and observe any security instructions given by AuctionsPlus. A registered User will immediately notify AuctionsPlus in writing of any improper disclosure or use of his User identification code or his password.
- 6.6 A registered User is bound by any transaction, including a bid at an Auction or in the Bid and Offer System, using his User identification code and his password.
- 6.7 A registered User can deactivate his User ID or his password by notice to AuctionsPlus.
- 6.8 By accessing and using the AuctionsPlus System, a User agrees that the User will not:
- (a) inappropriately post, upload or interfere with content or items in connection with any Lot;
  - (b) infringe any laws, agreements, third party rights or AuctionsPlus policies;
  - (c) use the AuctionsPlus System if the User is not able to form legally binding contracts, is under the age of 18 (except where there is written consent provided from a parent or guardian), is suspended from using the AuctionsPlus System or has had User rights terminated;
  - (d) fail to pay for any Lot purchased, unless the Purchaser cannot authenticate the

Vendor's identity or the Lot delivered is manifestly different from what was in the Assessment and the dispute was raised pursuant to clause 5.2;

- (e) fail to deliver a Lot, unless the Purchaser fails to meet the Contract of Sale obligations or the Vendor cannot authenticate the Purchaser's identity;
- (f) manipulate or game any auction, sale process or the price of any Lot, or interfere with other Users' Listings or any Data or categories on the AuctionsPlus System;
- (g) post false, inaccurate, misleading, defamatory, libellous, unlawful or offensive content (including personal information);
- (h) distribute or post spam or unsolicited or bulk electronic communications;
- (i) distribute viruses or any other technologies that may harm the AuctionsPlus System or the interests or property of AuctionsPlus Users;
- (j) copy, modify or distribute content from the AuctionsPlus System, or AuctionsPlus' copyrights and trademarks;
- (k) harvest or otherwise collect information about Users, including email addresses, without their consent;
- (l) engage in screen-scraping activities or use any robot or spider or other automated means to access the AuctionsPlus System for any purpose;
- (m) use any Data or material from the AuctionsPlus System whether by way of reverse engineering, decompilation, the creation of derivative works or otherwise without the prior written consent of AuctionsPlus or relevant third party;
- (n) commercialise any aspect of the AuctionsPlus System or harvest any Data or lists of Data, including names, addresses and contact details for any purpose without the relevant Users' prior written consent; or
- (o) hack or do anything to undermine the reputation, integrity, operation or functionality of the AuctionsPlus System, including anything that may undermine any feedback or ratings systems maintained by AuctionsPlus.

## **7 Notice of change in particulars**

A registered User shall give immediate notice in writing to AuctionsPlus of any change in the particulars supplied in relation to registration.

## **8 Assessors**

### **8.1 An Assessor:**

- (a) will attend any training courses mandated and approved by AuctionsPlus;
- (b) will accept ongoing reviews of their accreditation, including public reviews from purchasers;
- (c) will assess only those species of Livestock, and submit Assessments only for those sale options for which the Assessor is accredited or where no accreditation is required;

- (d) will not permit any person to use the Assessor's identification code or User ID including for the purposes of assessing any Livestock;
  - (e) confirms and acknowledges that the Assessor is engaged by and is acting for and on behalf of the Vendor unless the Assessor specifies that he/she acts in a different capacity;
  - (f) will comply with the User Agreement terms, any applicable Sale Terms, all applicable laws and regulations, and any other conditions imposed by AuctionsPlus from time to time;
  - (g) will declare in the Assessment if the Assessor is the owner of or otherwise has a financial interest in any Livestock that he/she is assessing; and
  - (h) will handle areas of complaint and misdescription in a professional manner and advise AuctionsPlus in writing of any customer concerns or complaints.
- 8.2 AuctionsPlus may, in its absolute discretion, attach conditions from time to time to the accreditation of any Assessor.
- 8.3 AuctionsPlus is not liable to any person for any Loss resulting from the acts, errors, omissions, default or negligence of any Assessor.
- 8.4 An Assessor must take out and maintain, in their own right or on behalf of the Assessor, with a reputable insurance company all such insurances as an experienced Livestock assessor in the Assessor's position would maintain including professional indemnity insurance for at least \$5,000,000. An Assessor must maintain all such insurance policies referred to in this clause in a form and for a policy period acceptable to AuctionsPlus and, if required by AuctionsPlus, give AuctionsPlus copies of these insurance policies and evidence of currency of the policies.
- 8.5 Users of the AuctionsPlus System may use the feedback mechanism on the AuctionsPlus System to provide feedback in connection with an Assessor's performance and conduct. Without prejudice to clause [8.3](#), AuctionsPlus is not liable for the content of the feedback provided by Users.

## **9 Agent Conduct**

- 9.1 An Agent:
- (a) will comply with any legislative or regulatory registration requirements applicable to an Agent in all States and Territories in which they operate;
  - (b) accepts that AuctionsPlus may accept or reject an agency application in its absolute discretion or impose such conditions as it sees fit from time to time;
  - (c) will attend any training courses mandated and approved by AuctionsPlus;
  - (d) will accept ongoing reviews of their accreditation as an agent by AuctionsPlus;
  - (e) will comply with any legislative or regulatory registration requirements applicable to an Agent in all States and Territories in which they operate;
  - (f) will ensure that any Assessor the Agent engages has the necessary contract in place and complies with the applicable terms of the User Agreement and Sale Terms and with all applicable laws and requirements of AuctionsPlus;

- (g) may not 'take principal risk' or own the stock they are selling unless agreed to in writing by AuctionsPlus;
  - (h) will declare in the Assessment if the Agent is the owner of or otherwise has a financial interest in any relevant Lot and that the Agent has the necessary contract in place between the assessor and the agency if using a third party assessor;
  - (i) confirms and acknowledges that the Assessor is engaged by and is acting for and on behalf of the Agent;
  - (j) will comply with the User Agreement terms, any applicable Sale Terms, all applicable laws and any other requirements imposed by AuctionsPlus; and
  - (k) will indemnify AuctionsPlus on demand for any Loss incurred arising out of the act, error, omission, default or negligence of the Agent or any Assessor engaged by the Agent.
- 9.2 AuctionsPlus is not liable for any Loss resulting from the acts, errors, omissions, default or negligence of any Agent or any Assessor engaged by the Agent.
- 9.3 An Agent must take out and maintain, in their own right or on behalf of the Agent, with a reputable insurance company all such insurances as an experienced professional agent would maintain including professional indemnity insurance for at least \$5,000,000. An Agent must maintain all such insurance policies referred to in this clause in a form and for a policy period acceptable to AuctionsPlus and, if required by AuctionsPlus, give AuctionsPlus copies of these insurance policies and evidence of currency of the policies.
- 9.4 Each Agent warrants that:
- (a) before listing a Lot on the AuctionsPlus System on behalf of a Vendor, it has provided the relevant Vendor with a copy of this User Agreement; and
  - (b) all actions taken by the Agent on a Vendor's behalf in connection with the AuctionsPlus System will be performed with the authority of the relevant Vendor and the Agent will not act beyond the scope of that authority.
- 9.5 Each Agent must ensure that the Vendors it represents on the AuctionsPlus System comply with the terms of this User Agreement.
- 9.6 The Agent shall indemnify AuctionsPlus on demand against all Loss, and any other claims, costs and expenses incurred or made against AuctionsPlus by any person in connection with the Agent's breach of the warranties and obligations set out in clause 9.4 and 9.5.

## **10 Fees for use of AuctionsPlus System**

- 10.1 AuctionsPlus shall specify on the AuctionsPlus website the Listing Fee applicable to the services provided in connection with the AuctionsPlus System. AuctionsPlus can change the Listing Fees at any time by publication on the AuctionsPlus website.
- 10.2 A registered User shall pay to AuctionsPlus the relevant Listing Fee specified by AuctionsPlus for the services provided within seven (7) days of receipt of an invoice from AuctionsPlus.
- 10.3 Where a registered User fails to pay the Listing Fees in full by the due date, AuctionsPlus

is entitled to charge interest on the unpaid balance of the fees at the rate determined for the purposes of section 100 of the *Civil Procedure Act 2005* (NSW) and as set out in any applicable Practice Note from the Supreme Court of New South Wales. Interest will accrue daily from the date of invoice until the date of actual payment and both before and after any judgment and shall be paid monthly in arrears. Any unpaid interest will be added to the balance owing and will itself bear interest in accordance with this clause.

- 10.4 In addition to any other rights AuctionsPlus may have under this User Agreement, where a User fails to pay the Listing Fees or any other fees payable under this User Agreement in full by the due date:
- (a) AuctionsPlus may suspend that User's access to the AuctionsPlus System until payment of the outstanding amount (including any accrued interest) is received in full);
  - (b) AuctionsPlus may charge the User reasonable administrative fees associated with collecting the outstanding amount; and
  - (c) the User must pay AuctionsPlus' reasonable costs of debt collection and enforcement, including all associated legal fees.

## **11 Intellectual property rights**

- 11.1 Each User acknowledges:
- (a) that the Intellectual Property in the AuctionsPlus System vests in AuctionsPlus;
  - (b) that the Intellectual Property in any material uploaded onto the AuctionsPlus System becomes the property of AuctionsPlus; and
  - (c) the results of the sale of any Lot may be provided to third parties and may subsequently be published.
- 11.2 Without prejudice to any other provision of the User Agreement or applicable Sale Terms, no User may in any form or by any means copy, adapt, reproduce (other than for the purpose of accessing and using the AuctionsPlus System), store, modify, reverse engineer, distribute, print, upload, display, perform, remove any credits, publish post frame within another website or create derivative works from any part of the AuctionsPlus System or commercialise any information or content obtained from any part of the AuctionsPlus System without AuctionsPlus' prior written consent or, in the case of third party material, from the owner of the relevant Intellectual Property in that material.
- 11.3 Each User warrants that any material, including that contained in the Catalogue, will not infringe any third party Intellectual Property and that it has the necessary rights to grant the rights to AuctionsPlus as set out in clause [11.1\(b\)](#)
- 11.4 Each User agrees to the terms of the Privacy Policy and acknowledges that AuctionsPlus will handle personal information in accordance with the Privacy Policy.

## **12 Publication and confidentiality of Data**

- 12.1 The Vendor authorises the Access by all other Users of all Data in relation to the Vendor and any of its Lots.

- 12.2 Each Purchaser authorises the inclusion of summaries of carcase measurement and kill data in market reports compiled by AuctionsPlus and the Access by all Users of market reports.
- 12.3 The Vendor, Purchaser, Assessor, Agent, and every User authorise:
- (a) the inclusion of summaries of sales in market reports compiled by AuctionsPlus or any other person on instruction from AuctionsPlus, or in any derivative works by any other person, and the access by all other Users of those market reports; and
  - (b) the commercialisation by AuctionsPlus in any way of any information, content or Data supplied by or derived from any User or compiled by AuctionsPlus or any other person on instruction from AuctionsPlus in connection with the operation of the AuctionsPlus System and business.

### **13 Disclaimer**

- 13.1 AuctionsPlus has no control over and does not make any representation in relation to, nor guarantee nor accept any liability for:
- (a) the existence, quality, condition, safety or legality of any Lot advertised;
  - (b) the truth, completeness, or accuracy of any content, Data, specifications or Listing, or the content referable to any Vendor, Purchaser, Assessor, Agent, or any other person;
  - (c) the capacity of a Vendor to sell any Lot;
  - (d) the capacity of a Purchaser to pay for any Lot;
  - (e) that a Vendor or Purchaser will complete a transaction of whatever nature;
  - (f) the completeness, truth or accuracy of any content or information on the AuctionsPlus website or any derivative work whether provided by AuctionsPlus, any Vendor, Assessor, Purchaser or any other person.
- 13.2 Users of the AuctionsPlus System may use the feedback mechanism on the AuctionsPlus System to provide feedback in connection with another User. AuctionsPlus is not liable for the content of the feedback provided by Users.
- 13.3 When providing feedback on the AuctionsPlus System, each User agrees not to:
- (a) submit material that is copyrighted, confidential or otherwise subject to third party proprietary rights, including privacy rights, unless the User is the owner of such rights or has permission from the owner to post the material and to grant rights to AuctionsPlus as set out in clause [11.1\(b\)](#);
  - (b) publish falsehoods or misrepresentations that could damage AuctionsPlus or any third party;
  - (c) post or transmit any material or information which is offensive, defamatory, obscene, unlawful, misleading, deceptive, vulgar, harmful, threatening, abusive, harassing, ethnically objectionable, or is otherwise inappropriate; or
  - (d) impersonate another person.
- 13.4 AuctionsPlus does not endorse any User opinion, recommendation, or advice expressed through the feedback mechanism on the AuctionsPlus System, and expressly disclaims

any and all liability in connection with any User feedback provided including liability relating to breaches of third party's proprietary rights and claims for defamation.

- 13.5 The information and Data on or referable through the AuctionsPlus System is not, and is not intended to constitute advice or the making of any recommendation or representation of whatever nature. No User should act or omit to act on the basis of any of the information and Data on or referable through the AuctionsPlus System without first satisfying themselves as to the completeness, truth or accuracy of any such information and Data. Each User should seek independent technical, expert and legal advice.
- 13.6 Without prejudice to any other provision of this User Agreement or applicable Sale Terms, AuctionsPlus has no liability for any Loss incurred by any User or any other person as a result of reliance by a User or any other person on the information and Data contained on or referable through the AuctionsPlus System, or in relation to any derivative work derived from such.
- 13.7 Each User is responsible for taking its own precautions to ensure that the process that each employs for accessing and using the AuctionsPlus System does not expose the User or any other person to the risk of viruses, malicious computer code, or other forms of interference which may damage any User computer or communications systems or networks. For the avoidance of doubt, AuctionsPlus does not accept responsibility to any User or any third party for any viral attacks, hacking, interference or damage to any User computer or communications systems or networks which arises in connection with any use of the AuctionsPlus System or any linked website, including, but not limited to any delays or disruptions in the use or operation of the AuctionsPlus System, any misdescriptions or errors on the AuctionsPlus System, or any bugs, viruses or other malware received due to accessing the AuctionsPlus System, or the loss, deletion, impairment, corruption, misfiling or miscategorisation of any information, content or Data.
- 13.8 Each User accepts sole liability for their acts, errors and omissions and the legality of any information, content or Data which a User uploads or references directly or indirectly on or through the AuctionsPlus System.
- 13.9 Each User accepts that there are risks when trading online and using the AuctionsPlus System, including dealing with fraudulent persons. No User may hold AuctionsPlus liable for the information, content or Data on or referenced through the AuctionsPlus System or the acts, errors, omissions, fault or negligence of any third party.
- 13.10 When a Purchaser buys a Lot from a Vendor, each enters into a Contract of Sale with each other and a legally binding contract is made. Each User must ensure that it complies with its obligations to that other User and is aware of any laws relevant to that User as a Vendor, Assessor, Purchaser, Agent, or other User as applicable. If another User breaches any obligation to a User, it is that User, and not AuctionsPlus, which is responsible for enforcing any rights that User may have.
- 13.11 Each User, and not AuctionsPlus, is responsible for ensuring that its Listing, marketing, content, Data, bidding and selling and any other activities conducted on the AuctionsPlus System are lawful. AuctionsPlus does not police the activities of any User. Each User must ensure that it complies with all applicable laws in Australia and other countries as applicable. Each User must also ensure that it strictly complies with these User Agreement terms, any applicable Sale Terms and any other policies as notified by AuctionsPlus from time to time.
- 13.12 AuctionsPlus excludes all implied warranties, terms and conditions to the maximum extent permitted by law. To the extent that AuctionsPlus is able to limit the remedies available under these User Agreement terms in accordance with the law, AuctionsPlus

expressly limits its liability for breach of a non-excludable statutory guarantee to the following remedies:

- (a) the supply of the services again; or
  - (b) the payment of the cost of having the services supplied again.
- 13.13 AuctionsPlus is not liable to any Vendor, Purchaser, Agent, Assessor or any other person for payment in respect of any Lot sold through the AuctionsPlus System or by a Negotiated Sale.
- 13.14 Without prejudice to any other provision of this User Agreement or Sale Terms, the Purchaser shall indemnify AuctionsPlus on demand against all claims for payment in respect of any Lot sold through the AuctionsPlus System or by a Negotiated Sale and each Vendor (and any interested person through the Vendor) shall release AuctionsPlus from all such claims.
- 13.15 AuctionsPlus is not liable for any Loss or any other indirect loss or economic loss (including pure economic loss) of whatever nature incurred by any User or to any third party in connection with the AuctionsPlus System, its use or any information, content or Data on, referenced or available through it.
- 13.16 If any User has a dispute with one or more Users, each User releases AuctionsPlus (and AuctionsPlus' officers, directors, Agents, subsidiaries, joint venturers and employees) from all claims, demands, Loss, direct loss and economic loss (including pure economic loss) of whatever nature, costs and expenses arising out of or in any way connected with such disputes.
- 13.17 Each User shall indemnify AuctionsPlus on demand against all Loss, any direct and economic loss (including pure economic loss) of whatever nature, and any other claims, costs and expenses incurred or made against AuctionsPlus by any person in connection with the existence or their use of the AuctionsPlus System.

## **14 Malfunction of AuctionsPlus System**

AuctionsPlus does not guarantee continuous or uninterrupted service of, or secure Access to, the AuctionsPlus System. The operation of the AuctionsPlus System may be interfered with by numerous factors outside of AuctionsPlus' control. AuctionsPlus is not liable to any person for any Loss, or any direct or economic loss (including pure economic loss) of whatever nature due to any malfunction, corruption, interruption, security breach or break down of the AuctionsPlus System (including any communications network), the act, error, omission, fault or negligence of AuctionsPlus or any User or third party, or any non-receipt, non-transmission or loss of Data by the AuctionsPlus System.

## **15 Variation**

AuctionsPlus may vary any of the functions or services of the AuctionsPlus System or any hardware or software included in the AuctionsPlus System, and will not be liable to any person for any change in functionality, performance or specifications by reason of any such variation.

## **16 Suspension and termination of registration**

- 16.1 Despite any other provision of the User Agreement or Sale Terms, AuctionsPlus may restrict, suspend or terminate the registration of a User for any reason at any time and

without the need to provide notice. The restriction, suspension or termination will take effect immediately or from the date specified by AuctionsPlus.

- 16.2 Upon the restriction, suspension or termination of the registration of a User, the User remains liable to comply with any applicable obligations arising out of the Access and use the AuctionsPlus System and website, for any unpaid Listing Fees (whether or not invoiced), and for any debt, Loss, other liability or obligation incurred in relation to any sale, and for any claim arising from failure to comply with the User Agreement or Sale Terms.

## **17 Force Majeure**

AuctionsPlus will not be in breach of these User Agreement terms or any applicable Sale Terms or be liable for any failure or delay in the performance of AuctionsPlus' obligations under these User Agreement terms to the extent that the failure or delay is wholly or partially, directly or indirectly, caused by a Force Majeure event or any breach, fault, error, act, omission or negligence of any User.

## **18 Entire agreement**

This User Agreement, together with the Conduct of Auction, Conditions of Sale, Sale Terms and the Schedule, constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## **19 Assignment**

No User may assign the performance or any part of these User Agreement terms without the prior written consent of AuctionsPlus.

## **20 Governing law and jurisdiction**

- 20.1 This User Agreement and the Sale Terms and any matter arising out of or in connection with any subject matter governed by those terms are governed by the laws of New South Wales. Save as expressly provided for otherwise in clause [5](#) of this User Agreement, every User agrees to the exclusive jurisdiction of the courts of New South Wales in relation to any matter in connection with the User Agreement and the Sale Terms.
- 20.2 If any User Accesses this website in a jurisdiction other than New South Wales, the User is responsible for compliance with the laws of that jurisdiction, to the extent that they apply.

## **SALE TERMS**

### **1 Terms**

Unless expressly provided for otherwise, the User Agreement terms, Sale Terms and Conditions of Sale shall govern the sale of any Lot listed for sale on the AuctionsPlus System.

### **2 Confirmation and Lots**

- 2.1 Only an accredited AuctionsPlus Agent for a Vendor may submit a Lot for sale. The Agent must be recognised as a qualified and appropriately licensed Agent in any States and Territories in which he practices.
- 2.2 A Vendor submitting a Lot for sale agrees to sole agency with his Agent. In the case of an Auction, the agreement to sole agency applies from the date the Lot is assessed until 3 Business Days after the day of the nominated AuctionsPlus sale. The relevant time for this clause is the time applying at the Agent's place of business.
- 2.3 By listing a Lot on the AuctionsPlus System, the Vendor confirms and warrants that it is the beneficial owner of the Lot free of all mortgages, charges, liens, encumbrances and adverse interests and that he is entitled and competent to sell, deliver and transfer unencumbered title to the Lot in accordance with the User Agreement and Sale Terms. This warranty may not be qualified by any applicable Vendor Terms and Conditions.
- 2.4 All users agree to respect the sole agency relationship between a Vendor and their Selling Agent and will not attempt to exclude the selling agent from any transaction while within the sole agency time period.
- 2.5 Any Lot listed must comply with any Listing requirements specified by AuctionsPlus from time to time. AuctionsPlus may delist any Lot which in its discretion does not comply with any such requirements.
- 2.6 Any Lot comprising Livestock must be tagged and all Lots must otherwise comply with all applicable laws, State or Territory legislation, regulations, codes and standards.
- 2.7 All users must comply with State or National Regulations with regard to livestock traceability, including the transferring of stock to a new PIC. It is the buyers responsibility to complete the NLIS transfer.
- 2.8 All descriptions, Assessments or other Data referenced in relation to any Lot must be based on the categories referenced on the AuctionsPlus website. If any Assessment also uses other descriptive language, it must use AUS-MEAT Language. Details of AUS-MEAT Language may be obtained from AUS-MEAT.
- 2.9 Vendors acknowledge and agree that Purchasers of Described Lots may be entitled to a remedy under clause 24 of the Conditions of Sale in circumstances where a Disputable Description exists.

### **3 Pricing and Payment**

- 3.1 The Vendor or Vendor's Agent must nominate the sale option or options upon which the Vendor offers the Lot for sale.
- 3.2 Pricing, as nominated on behalf of a Vendor, for sales conducted through the AuctionsPlus System or through Negotiated Sales can be on a:

- (a) **Per head** basis, where the price is in dollars and cents per head for all Livestock in the Lot;
  - (b) **Liveweight** basis, where the price is in cents per kilogram for the aggregate liveweight ascertained by Certified scales for all Livestock in the Lot;
  - (c) **Carcase weight** basis, where the price is in cents per kilogram for the aggregate weight ascertained by Certified abattoir scales of the carcasses of all Livestock in the Lot subject to adjustments for bruising as specified in the applicable AuctionsPlus bruising Schedule;
  - (d) **Grid** basis, where the price is in cents per kilogram as the maximum price applied on the Purchaser's submitted discount grid Schedule in relation to weight, fat and dentition. Factors other than weight, fat and dentition disclosed in the assessment cannot be discounted; or
  - (e) **Unit** basis, where the unit is specified by the Vendor depending upon the commodity or Machinery which is the subject of the Lot.
- 3.3 Unless otherwise agreed between a Vendor and Purchaser, all payments must be made by electronic funds transfer and the Purchaser is not entitled to possession of the Lot until payment for the Lot has been made in full and the Agent has authorised release of the Lot.

#### **4 Assessment of Lots and Listing Requirements**

- 4.1 An Assessed Lot is a Lot where an AuctionsPlus Assessment has been completed. Once an Assessment has been undertaken the Lot becomes an '**Assessed Lot**'. Clause 4.1 to clause 4.4 below:
- (a) apply only in relation to Assessed Lots; and
  - (b) do not apply to any Described Lots (such as Machinery), which have not been Assessed.
- 4.2 The Assessment must be uploaded on the AuctionsPlus System at the same time of the listing of the Assessed Lot. An Assessor must prepare the Assessment in accordance with the requirements designated by AuctionsPlus from time to time. An Assessment may be on an individual, group or unassessed basis.
- 4.3 Any photographs, graphics, videos or other material provided or used by the Assessor in connection with the sale of an Assessed Lot must be validly dated as the date of Assessment of the Assessed Lot. Unless expressly stated otherwise, graphics, photographs or videos provided by the Vendor or Assessor are for illustrative purposes only and do not form part of the Assessment provided by the Assessor but should still be a fair representation of the Assessed Lot.
- 4.4 A copy of the Assessment in the designated form signed by the Vendor and the Assessor shall be held by the Vendor or the Assessor before the Assessed Lot is listed. A Purchaser of an Assessed Lot purchased may immediately relist the Assessed Lot using the original Assessment only if:
- (a) the Assessor who produced the original Assessment gives permission; and
  - (b) the Vendor agrees to deliver to the sub-purchaser and agrees to any necessary extension of the date of Delivery under the original sale.

4.5 Unless otherwise indicated below, this clause 4.5 applies to both Assessed Lots and Described Lots. A User listing a Lot for sale on the AuctionsPlus System must:

- (a) comply with the User Agreement and these Sale Terms (or the Vendor's Terms and Conditions where applicable);
- (b) upload the Vendor's or Agent's Terms and Conditions, if they are to apply, at the same time as listing the Lot and uploading the Assessment;
- (c) remain liable for the accuracy, content and legality of the Lot listed and Assessment;
- (d) not make any false, misleading or deceitful representations or statements concerning the Lot;
- (e) comply with all applicable laws, requirements of any competent authority, any codes, standards, regulations and any policies and requirements of AuctionsPlus;
- (f) nominate the sale option permitted by the AuctionsPlus System for the Lot listed for sale;
- (g) for any Assessed Lot, nominate the Certified scales at which the Lot is to be weighed and delivered where the Vendor nominates a Liveweight basis;
- (h) unless agreed in writing by AuctionsPlus, for any Assessed Lot ensure the Livestock comprised in the Lot are assessed by an Assessor prior to Auction in the designated form completed not more than 21 days before the date of the Auction unless the Livestock comprises of:
  - (i) lambs and hoggets, in which case the Assessment must be done not more than 14 days before the date of the Auction; or
  - (ii) yearlings, vealers and weaners, in which case the Assessment must be done not more than 14 days before the date of the Auction.
- (i) ensure that at the time of Assessment and Delivery the Livestock comprised within the Lot (if any) are clearly identified by a suitable method described in the Assessment;
- (j) nominate the end Delivery destination and any other Delivery locations and specifications for the Lot;
- (k) specify if there are any special conditions or restrictions on the sale of the Lot. Any conditions imposed by a Vendor or Selling Agent must be described in the Assessment for the Listing and is subject to AuctionsPlus' discretion to veto special conditions or restrictions pursuant to clause [3.4](#) of the User Agreement; and
- (l) comply with any other conditions or requirements of AuctionsPlus as AuctionsPlus may specify from time to time.

## **5 Reserve Price**

5.1 A Vendor, Agent or Assessor arranging for the sale of a Lot must nominate a reserve price up to one hour before any sale by Auction. The reserve price will not be disclosed in a sale by Auction unless specified otherwise on behalf of the Vendor. The reserve price is automatically converted into a bid by AuctionsPlus on the Standard Bid Basis.

5.2 In a sale by Auction, the reserve price of a Lot may be modified on behalf of the Vendor

up to one hour before the commencement of the Auction.

- 5.3 Where the reserve price is nominated on a hot standard carcass weight basis (including value of skin), it shall be free of levy other charges to the Vendor.
- 5.4 Where the Lot is submitted for sale by Auction, the reserve price will not be disclosed. Where a Lot is passed in, the bidder who makes the highest underbid may, within the time period specified by AuctionsPlus, increase his bid to a price equal to the reserve price on the Standard Bid Basis in which case the Lot will be deemed sold at the Auction at that price

## **6 Delivery**

- 6.1 Subject to clause [5](#) in the Conditions of Sale, the Assessment must specify:
- (a) the end Delivery destination;
  - (b) any other Delivery locations;
  - (c) the date(s) on which he intends to deliver the Lot; and
  - (d) any transport arrangements that the Vendor requires the Purchaser to use for Delivery, specifying the cost per kilometre for Delivery.
- 6.2 For Described Lots, the above delivery details will be specified in the Catalogue.
- 6.3 The period for Delivery shall commence at midnight on the day of the sale (unless otherwise specified in the Assessment for an Assessed Lot).
- 6.4 If the Purchaser requests an extension of the Delivery date and the Selling Agent or Vendor agrees to the extension of the Delivery date for an Assessed Lot, the Purchaser forfeits all Delivery Assessment protections on factors that change over time, including weight, fat score and dentition.

## **CONDUCT OF AUCTION**

### **1 Auction**

A registered User who is a Vendor, Agent, Assessor or other authorised party may apply to AuctionsPlus to book the date and time for the conduct of any Auction it wishes to conduct through the AuctionsPlus System. A booking may be altered or cancelled by giving at least two (2) working days' notice to AuctionsPlus prior to the scheduled commencement of the Auction. Where a booking is altered and cancelled within two (2) working days of the scheduled commencement of the Auction, AuctionsPlus will charge the Agent 50% of the total sale cost including Listing Fees, travel, flights and accommodation charges.

### **2 Types of Auctions**

2.1 The Auction types available are:

- (a) Simultaneous online – where all Lots are available at the same time;
- (b) Sequential online - where Lots are sold sequentially one after the other; and
- (c) Interface Auction - where both a Simultaneous online and a Sequential Online Auction may be interfaced with a traditional live Auction:
  - (i) Simultaneous live – a simultaneous live Auction may take place concurrently with a Simultaneous Online Auction. A facilitator will be present to facilitate the Auction however all bids will be placed online and the Auction concluded online; or
  - (ii) Sequential live – a sequential live Auction will take place in a saleyard under the control and terms of an Auctioneer.

### **3 Conduct of Auction**

3.1 AuctionsPlus shall conduct all Auctions unless an Auctioneer is appointed. An Auction conducted by AuctionsPlus is governed by the User Agreement and Sale Terms (subject to the application of any Vendor Terms and Conditions as permitted by the User Agreement and Sale Terms).

3.2 Where an Auctioneer has been appointed, the Auctioneer shall conduct the Auction. The terms and conditions of the saleyard and Auctioneer shall apply unless stated otherwise.

### **4 Order of sale**

4.1 Where applicable, AuctionsPlus shall determine in its discretion the order in which Lots will be submitted for sale. This may vary from the order set out in any Catalogue. For interface sales this will occur in conjunction with the Agent(s).

4.2 The order shall not be varied after compilation of the Catalogue unless agreed to by AuctionsPlus. Charges may be incurred by the Vendor, Agent, Assessor or related parties if changes are required after the compilation of the Catalogue.

## **5 Bidding**

- 5.1 Once there is a valid bid equal to or above the reserve price for a Lot, the Vendor agrees to sell the Lot to the highest bidder:
- (a) for sales conducted by AuctionsPlus, at the conclusion of the sale; and
  - (b) for sales conducted by an Auctioneer, on the drop of the hammer.
- 5.2 At a sequential live Auction, on the fall of the hammer the Vendor may elect (but is under no obligation to) to sell to the highest bidder in circumstances where the highest bid is below the reserve price.
- 5.3 All bidders and every Purchaser participate in an Auction and buy a Lot on a caveat emptor basis.

## **6 Withdrawal of a Lot**

- 6.1 AuctionsPlus may withdraw a Lot from sale before or during the Auction of the Lot. For the avoidance of doubt and without prejudice to any other provision of the User Agreement terms or Sale Terms, AuctionsPlus has no liability for any Loss, or any direct or economic loss (including pure economic loss) of whatever nature arising out of any act, error, omission, breach, fault or negligence of AuctionsPlus.
- 6.2 Withdrawal of a Lot will not affect any claim AuctionsPlus might have against the Vendor for costs incurred by AuctionsPlus in hosting the Lot for sale.

## **7 Bidder's bid basis**

- 7.1 A bidder may, before making a bid at an Auction, enter his bid basis subject to any requirements or guidelines which AuctionsPlus may specify from time to time.
- 7.2 AuctionsPlus does not warrant the integrity or creditworthiness of any Vendor, Agent, Assessor, bidder or Purchaser and, in particular, does not provide or conduct any credit related review or assessments in connection with a bidder or Purchaser.
- 7.3 A Vendor engages an Assessor and Agent, and lists and sells his Lot on the AuctionsPlus System at his own risk.

## **8 Bidder as a principal**

A bidder is deemed to be bidding on his own account as principal. Where a purchase is made by an Agent, he shall be deemed to be the Purchaser and shall be so referenced in the sale confirmation notice outlining the terms of the sale unless he has previously disclosed that he is acting as disclosed Agent to AuctionsPlus prior to the start of the sale.

## **9 Limit bids**

Any bidder may Enter a limit bid directly or through an AuctionsPlus Market Operator before or during the Auction.

## **10 Standard Bid Basis**

Each bid will be converted by the AuctionsPlus System into a bid on the Standard Bid Basis.

## **11 Making a bid**

- 11.1 A bid is made only when it is recorded in the AuctionsPlus System bidding log or, in the case of a sequential live Auction, has been accepted by the Auctioneer.
- 11.2 AuctionsPlus may refuse to accept any bid that in their opinion is not in the best interests of the Vendor.

## **12 Advance of bidding**

A bidder may advance only by the bidding increments available on the AuctionsPlus System and selected by AuctionsPlus or the Auctioneer for the Auction.

## **13 Withdrawal of bids**

- 13.1 A bidder may not withdraw a bid. Where the bid was mistakenly placed by the bidder, AuctionsPlus may, in its sole discretion, allow the withdrawal of a bid. If AuctionsPlus permits the withdrawal of a bid the bidder is liable for any difference in price between the withdrawn bid and the bid of any successful underbidder where the underbidder's bid is lower and the underbidder is willing to accept and any associated selling costs if required to relist.
- 13.2 A bid may not be withdrawn in any circumstances in traditional live Auctions.

## **14 Vendor's bids**

- 14.1 Subject to clause 14.2, a Vendor or its Agent may only bid for its own Lot through an Auctioneer, in accordance with all applicable State and Territory laws and regulations.
- 14.2 A Vendor or its Agent must not bid on its own Lot using the AuctionsPlus System and acknowledge that the AuctionsPlus System is not capable of allowing a Vendor or its Agent to comply with various State and Territory laws and regulations. The Vendor indemnifies AuctionsPlus for any Loss AuctionsPlus suffers in connection with a breach of this clause 14.2 by the Vendor or its Agent.

## **15 Disputes about bidding**

If there is any dispute about the bidding in a simultaneous online, sequential online or simultaneous live Auction, AuctionsPlus is the sole arbitrator and their decision is final.

In a sequential live Auction, the Auctioneer's decision is final.

## **16 Compliance with Vendor's restrictions**

- 16.1 Where the Vendor has imposed conditions, bidders must not make bids inconsistent with those conditions. AuctionsPlus or Auctioneer as applicable may refuse to take any such bid or cancel any contract resulting from any such bid.
- 16.2 Where the Lot is submitted for sale by Auction, the reserve price will not be disclosed. If a Lot does not sell, the reserve price may be disclosed to the highest passed-in bidder at the end of the sale. In sales where AuctionsPlus have nominated a post-sale meet reserve time, the highest passed in bidder can increase its bid to the reserve price. If input then the Lot is deemed to be sold at Auction under these Operating Conditions.

## **17 Compliance**

The Vendor and Purchaser must comply with their respective obligations under the Contract of Sale, including in relation to the payment obligations of the Purchaser.

## **18 Passed in Lots and Negotiated Sales**

- 18.1 A Lot will be passed in when, at the completion of the Auction for that Lot, the highest bid on the Standard Bid Basis that is accepted by AuctionsPlus is less than the reserve price on the Standard Bid Basis.
- 18.2 Where a Lot is passed in, the bidder who makes the highest underbid may, within the time period specified by AuctionsPlus, increase his bid to a price equal to the reserve price on the Standard Bid Basis in which case the Lot will be deemed sold at the Auction at that price.
- 18.3 If a Lot is not sold or deemed to be sold at the Auction under clause [18.2](#), the Vendor may negotiate a sale of the Lot with the bidder who made the highest bid at the Auction. Where a sale of the Lot is negotiated, the Vendor must give AuctionsPlus and the Purchaser a written sale confirmation notice by 12 noon the next day or such later time as agreed between the Vendor and Purchaser advising that the sale is governed by these User Agreement terms and Sale Terms or Vendor Terms and Conditions where applicable, and notifying the sale price, the number of head sold where Livestock is concerned and any other terms relevant to the sale.

## **19 Goods and Services Tax**

All Auctions shall be conducted on the basis that the bid and sale price shall be exclusive of Goods and Services Tax (GST). Where applicable, GST is to be added after the conclusion of the Auction to those Lots sold, or deemed to be sold.

## CONDITIONS OF SALE

### 1 Conditions of Sale apply to all sales

All sales made through the AuctionsPlus System shall be subject to the User Agreement terms, the Sale Terms, any terms or conditions nominated in the Listing or Catalogue or the Vendor Terms and Conditions where applicable.

### 2 Warranty of Assessment and other information

- 2.1 The Vendor warrants that the content of Assessment and Listing (including any Catalogue entry) is true, complete and accurate and that all material information required by any designated form of Assessment, the User Agreement terms or Sale Terms has been included in the Assessment (if applicable).
- 2.2 The Assessor is engaged by and is acting for and on behalf of the Vendor. The Vendor will indemnify AuctionsPlus on demand against all Loss arising out of any act, error, omission, breach, default or negligence of the Vendor, Assessor, or any Agent.
- 2.3 The Vendor is liable for adjustments in price due to misdescription in the Listing or the Assessment (if applicable). The Selling Agent is responsible for management of this process.

### 3 Maintenance of Lot

The Vendor warrants that at the Delivery date, the Lot will be delivered in accordance with the condition described in the Listing, Assessment (for Assessed Lots) and Catalogue within the relevant tolerances permitted by the User Agreement and Sale Terms. No other tolerances other than those contained in the User Agreement and Sale Terms are permitted.

### 4 Variation of composition of Lot

- 4.1 Where a Lot consists of Livestock a Vendor may deliver between 95% and 105% of the number of head listed for sale in the Listing or Catalogue without any additional liability.
- 4.2 Subject to clause [4.1](#), the composition of a Lot may not be changed from that nominated in the Listing or Catalogue.

### 5 Delivery of Lot

- 5.1 If, in the Assessment (for Assessed Lots) or in the Catalogue (for Described Lots), the Vendor has nominated more than one place of end Delivery or more than one date of Delivery, the Purchaser shall within 24 hours of the sale notify the Vendor of the chosen place and date for end Delivery, or the Vendor and Purchaser may mutually agree on a place and date for Delivery.
- 5.2 Where the sale is on a Liveweight basis, the Vendor must nominate the Certified scales where the Livestock are to be weighed plus any applicable conditions or adjustments, unless the Vendor and Purchaser mutually agree otherwise.
- 5.3 The Vendor will deliver and the Purchaser will take delivery of the Lot at the place and time agreed in the Contract of Sale or as otherwise agreed.

- 5.4 The Vendor, Agent, or Assessor (acting on behalf of the Vendor), and the Purchaser shall disclose any discrepancy in the number of head or other Units of the Lot and any other matter that might reasonably be expected to result in a claim to AuctionsPlus in writing.
- 5.5 A Vendor shall not list for sale or deliver Livestock that are lame, blind or diseased unless the faults are disclosed in the Listing, Catalogue or Assessment before the sale and the stock are within the Land Transport Fit to Load guidelines.
- 5.6 The Purchaser must provide AuctionsPlus with feedback in relation to the Lot delivered within a reasonable period after the Purchaser has received the stock.
- 5.7 For Lots that are Livestock, the Purchaser, acting in good faith, provided they have not fundamentally altered the condition, description, saleability or market value of the stock through animal husbandry or health treatments, has 48 hours after arrival of stock to reject some or all of the Livestock delivered if:
- (a) the Purchaser identifies latent diseases in the Livestock (provided that the Assessor has taken due care in the Assessment and there has been no intentional withholding of information); or
  - (b) there is a gross misdescription in the Assessment or other manifest or obvious error.
- 5.8 Notwithstanding clause [5.7](#), if there is a dispute that relates to any unborn offspring of purchased Livestock being incorrectly described in the Assessment, the buyer must notify AuctionsPlus and the Selling Agent within a reasonable time frame of the claimed mis-described offspring being born. A tolerance level of 10% will apply and any claimed mis-description of less than 10% of the total offspring of purchased Livestock will not be considered a dispute. A dispute pursuant to this clause 5.8 will be referred to arbitration in accordance with clause [5.5](#) or [5.6](#) in the Interpretation schedule as applicable. The Vendor will be liable for any adjustment in sale price as determined by the arbitration panel.
- 5.9 If the Purchaser rejects a Lot in accordance with these User Agreement terms and Sale Terms, the Vendor is responsible for all costs including trucking and freight costs to return the misdescribed Lots to the Seller from the original specified end destination. For clarity, for Assessed Lots, the freight costs will be adjusted on a pro rata basis according to the affected Livestock delivered.
- 5.10 Where a Lot is offered for forward delivery, the Vendor and/or the selling Agent shall inspect the Lot at delivery and, for Assessed Lots, draft to the Assessment specifications.
- 5.11 If the Vendor proves that for reasons beyond his control and that after taking all reasonable steps to deliver the Lot by other available means he is unable to deliver the Lot on the date of Delivery or any later date that the Purchaser may agree to, the Vendor may rescind the contract.
- 5.12 If the Purchaser proves that for reasons beyond his control and that after taking all reasonable steps to take delivery of the Lot by other available means he is unable to take delivery of the Lot on the date of Delivery or any later date that the Vendor may agree to, the Purchaser may rescind the Contract of Sale.
- 5.13 Where the contract is rescinded under clauses [5.11](#) or [5.12](#), neither the Vendor nor the Purchaser will have any claim against the other in respect of the rescission.

- 5.14 Reasons beyond the control of the Vendor or the Purchaser include act of God, strikes or other industrial disputes, flood, fire, failure of any third party to perform obligations under a contract and intervention by a government authority.
- 5.15 Rescission of the contract under clauses [5.11](#) or [5.12](#) will not prejudice any claim AuctionsPlus or the selling Agent has for fees in respect of the sale.

## **6 Vendor's required transport arrangements**

If the Vendor, in the Listing or Catalogue, has nominated transport arrangements for Delivery, the Purchaser must comply with those transport arrangements, including as to costs, unless the Vendor and Purchaser mutually agree otherwise.

## **7 Livestock sold for immediate slaughter**

- 7.1 Where the sale of a Lot is to a Purchaser who is a processor or a Purchaser acting on behalf of a processor for immediate slaughter, the Purchaser will:
- (a) ensure that the Lot is slaughtered in accordance with any requirements of the User Agreement and Sale Terms or as provided for in the Vendor Terms and Conditions if applicable;
  - (b) notify the Vendor of the location and date of the slaughter within 24 hours of the sale;
  - (c) bear the slaughter costs;
  - (d) permit AuctionsPlus, the Vendor or the selling Agent to attend and observe the slaughter of the Livestock;
  - (e) provide a valid stock delivery and kill confirmation note in the AUS-MEAT accredited form as evidence of receipt of the Lot at the abattoir and disclosing any discrepancy in the Lot save as permitted by the User Agreement and Sale Terms, including as to tolerances; and
  - (f) in the case of misdescription of carcase attributes:
    - (i) by the end of the next Business Day following slaughter, notify the selling Agent, Vendor or AuctionsPlus;
    - (ii) take photos of the carcasses that are misdescribed; and
    - (iii) provide the opportunity for the selling Agent or Vendor to come and view the carcasses.
  - (g) Gross misdescription in the case of sex and breed must be notified prior to slaughter.
- 7.2 The Purchaser will take all reasonable steps to ensure that any Lot purchased comprising cattle or sheep is slaughtered within 48 hours, and any Lot comprising lambs or hoggets is slaughtered within 24 hours, after receipt of the Lot at the abattoir after receipt of stock via the most reasonable and direct route.
- 7.3 If the Purchaser needs to extend the time for slaughter, the Purchaser must obtain the Vendor's prior consent.

- 7.4 If the Purchaser fails to meet the time for slaughter as provided for in clause [7.2](#) and the failure is not due to force majeure, the Purchaser will pay the Vendor for the Lot in accordance with the Assessment or the actual results of the slaughter when it occurs, whichever is more favourable with the Vendor.
- 7.5 If the Purchaser fails to meet the time for slaughter as provided for in clause [7.2](#) due to force majeure, the Purchaser is responsible for the care and maintenance of the Livestock and will immediately notify the Vendor and the Vendor and the Purchaser will agree on one of the following:
- (a) extend the time for slaughter by another 24 hours;
  - (b) the Purchaser will, at the Vendor's option, pay the price for the Lot in accordance with the Assessment or the actual results of the slaughter when it occurs;
  - (c) rescind the Contract of Sale and procure the return of the Lot to the Vendor at the Purchaser's cost unless quarantine or movement restrictions apply; or
  - (d) such other course of action as the Vendor and Purchaser agree.
- 7.6 Where the Purchaser is unable to get the results of residue tests back in time to meet the requirements of clause [7.2](#), the time for slaughter may be extended by an additional 24 hours, subject to the Purchaser notifying the Vendor or the selling Agent by telephone and in writing, immediately if it becomes necessary to extend the time for slaughter.
- 7.7 If for reasons that the Purchaser proves were or are beyond his control, the Lot is not slaughtered or will not be slaughtered within the period required under clause [7.2](#), the Purchaser shall immediately notify the Vendor or the selling Agent and the Vendor and the Purchaser may agree on one of the following courses of action:
- (a) complete slaughter of the Lot within 24 hours of the end of the period required under clause [7.2](#);
  - (b) the price will be paid in accordance with the Assessment or the actual results of slaughter (without price adjustment for misdescription in the schedules, whichever is the more favourable to the Vendor;
  - (c) unless quarantine restrictions or movement restrictions apply, the Contract of Sale will be rescinded and the Lot will be returned to the Vendor at the Purchaser's cost;
  - (d) the Lot will be kept at the abattoir and maintained until slaughter and the costs of maintaining the Lot will be borne equally by the Vendor and the Purchaser; or
  - (e) any other course of action agreed to by the Vendor and the Purchaser.
- 7.8 If for reasons within the control of the purchaser or otherwise through the fault of the Purchaser the Lot is not slaughtered or will not be slaughtered within the period required under clause [7.2](#), the Vendor may require that the price be determined in accordance with the Assessment.
- 7.9 Where the sale is on a Carcase weight basis, the price will be calculated on the basis of carcase measurement and kill data supplied as evidenced by the stock delivery and kill confirmation note.
- 7.10 Where the sale is purchased as Slaughter Stock and a carcase is partially condemned:

- (a) the Vendor will receive no Purchase price for the condemned part except as provided for in clause [7.10\(c\)](#);
- (b) the part not condemned will be priced:
  - (i) at the average of the remainder of the Lot; and
  - (ii) for the purpose of price adjustment, where the fat measurement site is condemned, the fat measurement of the carcass will be the average of the remainder of the Lot;
- (c) where the carcass is partially condemned as a result of any act, error, omission, fault or negligence occurring in or in connection with the slaughter process, the Vendor has no liability.

7.11 Where the sale is purchased as Slaughter Stock and a carcass is totally condemned:

- (a) the Purchaser shall pay and bear the costs of slaughter and shall provide the Vendor with a copy of the condemnation note;
- (b) except as provided for in clause [7.11\(c\)](#) , the Vendor will receive no return from the Purchaser for hides and offal but may apply for compensation from the appropriate competent authority in the case of a notifiable disease; and
- (c) where the carcass is totally condemned as a result of any act, error, omission, fault or negligence occurring in or in connection with the slaughter process, the Vendor has no liability.

7.12 Where the sale is on a carcass weight basis and the carcass is retained for further reinspection by inspection authorities and subsequently condemned after the carcass is weighed over the abattoir scales, the liability for losses will remain with the Vendor and the procedures outlined in clauses [7.10](#) and [7.11](#) will apply.

7.13 Where the Lot is purchased as Slaughter Stock and any Livestock in the Lot fail to pass ante mortem inspection including by reason of disease, illness, dirt, wetness or fly strike, the Vendor shall indemnify the Purchaser on demand against reasonable costs incurred in preparing the Livestock for subsequent ante mortem inspection unless the reasons are disclosed in the Assessment or the Vendor shows reasonably that they were sustained after the time of Delivery.

## **8 Transport to abattoir**

- 8.1 Where the sale is for Slaughter Stock, the Purchaser will ensure that the Lot is transported to the abattoir by the most direct route without unreasonable delay.
- 8.2 The Vendor shall bear all costs of transporting the Lot to the place of Delivery, and any marshalling yard. The Purchaser shall bear all costs of transporting the Lot from the place of Delivery (including the cost of transport to incorrect destinations).

## **9 Quarantine and movement restrictions**

The Vendor shall indemnify the Purchaser on demand against Loss resulting from infringement of quarantine restrictions or movement restrictions unless such restrictions were disclosed in the Assessment or Catalogue.

## **10 Weighing a Lot sold on a Liveweight basis**

Where the sale is on a Liveweight basis, the Vendor will nominate the sale terms and the Certified scales where the Livestock are to be weighed and pay for the cost of weighing the Lot unless the Vendor and Purchaser agree otherwise.

## **11 Tick areas**

If the Lot for Auction comes from a tick area and the Vendor has not restricted bids from bidders located in tick free areas, the Vendor warrants that the Lot will be tick free at time and place of Delivery and will pay associated dipping costs, including any costs associated with holding cattle for treatment, unless otherwise provided for in the Assessment.

The Purchaser indemnifies the Vendor for any cost in transport or other associated loss due to delays in clearing not including yarding and feed costs.

## **12 Title and risk**

- 12.1 Where the sale is on a per head or Liveweight basis, the Lot will be at the Purchaser's risk at the place and time of loading the Lot onto the Purchaser's truck.
- 12.2 Where the sale is on a Carcase weight basis, the carcase will be at the Purchaser's risk at the place and time when the carcase is weighed over the abattoir scales.
- (a) The Purchaser shall notify the selling agent in writing of any losses/deaths in transit prior to the lot being slaughtered
  - (b) The Selling Agent or Vendor may request photographic evidence of any losses/deaths in transit, including evidence of the origin of the stock (such as eartags, brands or other identifying features)
  - (c) Any losses/deaths not reported prior to slaughter will be invoiced to the Purchaser at the average price of the consignment
- 12.3 Where the sale is interfaced with a physical sale, the lot will be at the Purchaser's risk at the place and time of the auctioneer's hammer fall
- 12.4 For all Lots not referred to in clause 12.1 or 12.2, risk in the Lot will pass to the Purchaser on Delivery.
- 12.5 Title to and property in the Lot will not pass to the Purchaser until the full purchase price for the Lot has been paid. If, prior to payment of the full purchase price, the Purchaser takes possession of the Lot, the Purchaser must not dispose of or deal with it in any manner inconsistent with the Vendor's title. Additionally, for Lots that are Machinery, until payment is received, the Purchaser:
- (a) holds the Lot as bailee only for the Vendor;
  - (b) must keep the Lot separated from other property of the Purchaser so that it is readily distinguishable from other property owned by the Purchaser;
  - (c) is responsible for the Lot;
  - (d) where a Lot is Machinery, the Purchaser may make a bona fide sale for market value of

any or all of the Machinery. As between the Purchaser and the subsequent buyer, the sale shall be made by the Purchaser in its own name and not as agent for the Vendor, however as between the Vendor and buyer, the sale shall be made as bailee and agent for the Vendor; and

- (e) must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds, together with the benefits of any rights against subsequent buyers, on trust for the Vendor.

12.6 In addition to clause 12.5, for Lots that are Described Lots, if payment is not made according to clause 3.3 of the Sale Terms, but Delivery has been made to, or possession obtained by, the Purchaser or its representative:

- (a) the Vendor or its Agent may repossess and resell the Lot and enter property owned or occupied by the Purchaser or its representative if necessary to do so; and
- (b) interest may be charged at the rate usually charged by the Agent for overdue accounts on any amounts which remain owing at any time.

### **13 Statutory Charges**

13.1 The Vendor is responsible for payment of the Cattle Transaction Levy or any other applicable tax (including GST), or other levy imposed by any competent authority. The Purchaser may deduct buyer allowances from the gross purchase price (excluding any GST), subject to the amounts deducted being no greater than the amounts Entered in the bid basis of the Purchaser's successful bid.

### **14 Price adjustment for misdescription**

14.1 Where at the time of Delivery the Livestock in the Lot are not in the condition described in the Listing, Catalogue or Assessment, the Vendor (except where the Selling Agent has guaranteed the Assessment) will be liable to reimburse the related Purchaser price and any out of pocket costs where such is due to the act, error, omission, fault or negligence of the Vendor, Agent, or Assessor.

14.2 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee arising out of or in connection with any sale pursuant to the User Agreement or Sale Terms, and the Vendor's liability for failing to comply with that guarantee cannot be excluded but may be limited, then the Vendor's liability for that failure is limited to (at the Vendor's option), Vendor supplying or replacing the Lot with an equivalent Lot. This limitation does not apply to a breach of consumer guarantees relating to clear title, undisclosed securities and undisturbed possession under sections 51 to 53 of the Australian Consumer Law.

### **15 Seed damage**

15.1 Where the sale is purchased as Slaughter Stock, the Purchaser may seek price adjustment for seed damage to the carcass exceeding that disclosed in the Assessment.

15.2 Claims for price adjustment for seed damage to the carcass shall be submitted to the selling Agent within 48 hours of the slaughter of the Lot and must include evidence including photographs to support the claim.

15.3 If the Agent and the Purchaser are unable to negotiate a settlement, the matter is to be

resolved subject to clause [5](#) of the User Agreement.

## **16 Purchaser default**

- 16.1 Unless otherwise provided, if the Purchaser fails to comply with the User Agreement and Sale Terms, or the Vendor Terms and Conditions (if applicable) or the Contract of Sale:
- (a) where delivery has occurred and the Purchaser price has not been paid, the Purchaser authorises the Vendor and his representatives to enter on its premises and any premises occupied by it or its Agent at any time and without notice and take possession of the Lot; and
  - (b) the Purchaser will indemnify the Vendor on demand for all Loss incurred.
- 16.2 The Vendor shall indemnify the Purchaser on demand against all Loss incurred as a result of the Vendor's act, error, omission, breach, fault or negligence.

## **17 Vendor default**

- 17.1 If a Vendor does not comply with the User Agreement and Sale Terms, the Vendor Terms and Conditions (if applicable), or the Contract of Sale, the Purchaser will notify AuctionsPlus and the Selling Agent within 48 hours of the Auction or on becoming aware.

## **18 Contract of sale**

- 18.1 The Contract of Sale that results from acceptance of a bid or a Negotiated Sale is a contract made in the State or Territory from which the Lot is offered for sale and the proper law of the Contract of Sale is the law of or applicable in that State or Territory.
- 18.2 Subject to clause [18.3](#), the terms of the sale and the parties to the sale, shall be documented in the sale confirmation notice generated from the AuctionsPlus System at the time of contracting the sale and following acceptance of the bid.
- 18.3 Any variations to the Contract of Sale, including but not limited to Delivery date, weight specifications to be supplied, breed, age, dentition, accreditations or certifications and number of head may only be permitted if agreed to in writing by the Vendor and the Purchaser.

## **19 Chemical residues in Slaughter Stock**

- 19.1 All Livestock are sold on the condition that the Vendor is liable for payment of any industry agreed voluntary levy to fund the cost of residue testing.
- 19.2 The Vendor shall guarantee the residue status of the Livestock comprised within his Lot subject to:
- (a) a carcass sample being taken within seven (7) days of Delivery;
  - (b) where a violation is found in a sample carcass prior to the remainder of the Vendor's Lot being processed, the other animals or carcasses from that Lot shall be held in live or carcass form where commercially practicable;
  - (c) the Vendor may request further testing of those animals or carcasses at his expense or negotiate alternative arrangements, and the Purchaser shall assist the Vendor to

maximise returns on those animals or carcasses;

- (d) where a violation is found in a sample carcass after the remainder of the Vendor's Lot has been processed, the Vendor is liable for the Purchaser's Loss; or
- (e) where the Purchaser is proved by the relevant state authority to be responsible for a contamination, the Purchaser shall be liable.

## **20 Hormonal growth promotants**

The Vendor shall comply with any identification and declaration requirements that apply in the State or Territory from which the Livestock comprised within a Lot are sold.

## **21 Purchaser liability**

A Purchaser of a Lot will pay the Vendor or the Vendor's Agent for the Lot purchased in accordance with the User Agreement and Sale Terms, or the Vendor Terms and Conditions if applicable, or the saleyard requirements if a sequential live sale.

## **22 Owner's risk on sales**

- 22.1 Any Lot comprising Livestock is deemed the Vendor's risk for actinobacillosis, actinomycosis, anthrax, arthritis, buckshot, cancer, icterus, illegal residues, lymphadenitis, multiple abscesses, peritonitis, pyaemia, red water, tick fever and uraemia.
- 22.2 The Vendor is liable to refund the sale price of any animal comprised within a sold Lot to the extent provided for in clause [22.1](#) if the Purchaser presents a condemnation certificate specifying one or more of the diseases to Vendor within seven (7) days of the sale and notifies the Vendor within 48 hours of Delivery of the Lot in accordance with clause [5.2](#) of the User Agreement.

## **23 Bids for Described Lots**

- 23.1 This clause 23 applies to Described Lots only.
- 23.2 Before bidding on any Described Lots, prospective Purchasers are encouraged to physically inspect the Described Lots, or make the necessary enquiries regarding the Described Lots with the relevant parties.
- 23.3 By bidding for a Described Lot that is Machinery, the Purchaser:
  - (a) undertakes that before the Machinery is used the Purchaser will inspect the Machinery and ensure that it is safe to use in accordance with manufacturer's directions (if applicable) and without risks to health and will provide for the provision of adequate information to those who use it or to those others to whom it may be supplied, to ensure its safe use;
  - (b) agrees to comply with all applicable laws requiring electrical appliances to be inspected by a registered electrical contractor prior to use; and
  - (c) agrees to comply with all safety laws that may apply in the State or Territory in which the Machinery will be used.

## **24 Purchaser protection for Described Lots**

- 24.1 This clause 24 applies to Described Lots only.
- 24.2 Except as otherwise agreed between a Purchaser or Vendor or as specifically provided for in this clause 24, all Described Lots are purchased on an "as is, where is" basis and no Purchaser may reject a Lot or be entitled to a refund or any form of compensation from the Vendor or AuctionsPlus as a result of any faults, imperfections, or errors in description of the Described Lot.
- 24.3 If, upon receipt by the Purchaser, a Purchaser of a Described Lot identifies a Disputable Description in the Described Lot, the Purchaser must:
- (a) report the Disputable Description in writing to AuctionsPlus and the Vendor within 48 hours. Adequate supporting evidence (such as photographs or a third party inspection report) must be supplied within 7 days of receipt to enable AuctionsPlus to confirm the existence of a Disputable Description; and
  - (b) seek to resolve the dispute by entering good faith negotiations with the Vendor or Selling Agent within 7 days of notification to the Vendor of the Disputable Description.
- 24.4 If notified of the existence of a Disputable Description, the Vendor (or Selling Agent, as applicable) must promptly negotiate in good faith to resolve the dispute with the Purchaser. A negotiated outcome may include, for example, a price adjustment.
- 24.5 If the Purchaser has followed the process set out in clause 24.3 and has been unable to reach a negotiated outcome with the Vendor within 7 days of notification to the Vendor (or Selling Agent, as applicable) of the Disputable Description, the Purchaser must promptly notify AuctionsPlus. AuctionsPlus will then consider the supporting evidence before it and make an assessment of whether there is in fact a Disputable Description. Once AuctionsPlus has made its decision, it will notify the Purchaser and Vendor.
- 24.6 The Purchaser will be entitled to a full refund from the Vendor for the price paid for the Described Lot (or if the Purchaser has yet to pay for the Described Lot, it will not be obliged to pay for the Described Lot) and must return the Described Lot at the Vendor's cost, if all of the following conditions are satisfied:
- (a) the Purchaser has reported the Disputable Description in writing to AuctionsPlus and the Vendor within 48 hours of receipt of the Described Lot, together with adequate supporting evidence (such as photographs) to enable AuctionsPlus to confirm the existence of a Disputable Description; and
  - (b) AuctionsPlus agrees that a Disputable Description exists after assessing any supporting materials provided by the Purchaser, and has notified this to the Purchaser and Vendor. For clarity, AuctionsPlus will make its decision the basis of the supporting evidence provided by the Purchaser, and will not play an active role in gathering evidence.
- 24.7 Unless otherwise agreed between a Purchaser and Vendor, within 7 days of receiving notice from AuctionsPlus under clause 24.6(b):
- (a) the Purchaser must return the Described Lot subject of the Disputable Description to the Vendor and the Vendor must promptly pay any associated costs of the return; and
  - (b) if the Purchaser has already paid for the Described Lot, the Vendor must refund the price paid by the Purchaser for that Described Lot.

## SCHEDULE

### Price Adjustments for Breach of Permitted Tolerances - Cattle

Any reference to Stock Category will be as per the AuctionsPlus definition of Stock Category:

<b>Stock Category</b>	<b>Description</b>
<b>Calves</b>	Any sex. No permanent incisors.
<b>Vealers</b>	Any sex. No permanent incisors. Still on cow until Delivery.
<b>Weaners</b>	Any sex. No permanent incisors.
<b>Yearlings</b>	Any sex. No permanent incisors.
<b>Heifers</b>	Females, 1 but no more than 7 permanent incisors
<b>Steers</b>	Castrated males, 1 or more permanent incisors
<b>Steers &amp; Heifers</b>	Mixed sex, 1 but no more than 7 permanent incisors
<b>Cows</b>	Females, full mouth (Slaughter) or have had a calf (Store)
<b>Cows &amp; Calves</b>	Females with calves at foot
<b>Bulls</b>	Entire males
<b>Manufacturing</b>	Mixed sex manufacturing cattle

#### **Gross Misdescription**

A purchaser may only claim gross misdescription where:

- (a) the age, sex or breed of the cattle delivered were obviously and substantially different to the specification included in the Catalogue;
- (b) dentition is not defined by the stock category and not described in an assessment, and is found to not correlate with the defined age of cattle/sheep
- (c) dentition is incorrectly assessed in at least 10% of the cattle in the Lot; or
- (d) AuctionsPlus has determined in its absolute discretion that any other misdescriptions constitute a gross misdescription.

Where the error occurs in dentition, the extent of price adjustment shall be determined as follows:

- (e) by negotiation between the selling Agent and purchaser; or
- (f) the matter is to be submitted to arbitration under these Operating Conditions.

#### **LIVEWEIGHT**

##### **Acceptable degree of error by Assessor**

Except where provided for under the forward contract terms, claims for misdescription may only be sought by the purchaser in the following circumstances:

1. Where the average liveweight at delivery (after adjustment for gut shrink) varies from that in the Catalogue by more than the allowed tolerance of + or - **3%**.  
This tolerance is applicable to all Stock Categories.

##### **Calculation of tolerated gut shrinkage**

The base time for measuring gut shrinkage is the time Livestock are assessed by the Assessor. The

end time for measuring gut shrinkage is the time Livestock are weighed at delivery. Assessors should adjust the delivery weights to include the industry standard of Full minus 5% unless otherwise stated on the Assessment.

Hours off Feed	Cows	Other Livestock
	Heifers (non-yearlings)	Categories
	Percentage Loss Per Hour	
1 - 4	1.00%	0.75%
5 - 12	0.50%	0.50%

The following example is illustrative only –

Yearlings described as 380 kg by a Level 2 Assessor - 2 hours off feed and water. Cattle weighed at delivery by Purchaser at 340 kg, 9 hours off feed and water.

Calculation of gut shrinkage is as follows:

2 hours x 0.75% plus 5 hours x 0.50% = 4.00% or 15.2kg gut shrink.

### **Price adjustment procedure**

1. Calculate the average liveweight at delivery adjusted for gut shrink.
2. Where the difference between the average liveweight in the Catalogue and the average liveweight at delivery adjusted for gut shrink is in excess of the tolerance level, the price payable, if adjustment is sought, is determined by applying a discount to the price bid of 1.5% for every 1% that the designated tolerance level is exceeded.

The following example is illustrative of the application of this adjustment –

Using the above, the adjusted liveweight at delivery is 352.2kg (340kg plus gut shrink of 15.2kg) - that is 27.8kg less than the liveweight at assessment or 7.3%. The variance is 4.3% in excess of the tolerance level for a Level 2 accredited assessor, thereby providing for an adjustment downwards of 6.45% on the price payable, should the purchaser seek the adjustment.

### **SLAUGHTER STOCK**

#### **Acceptable degree of error by Assessor**

Claims for misdescription may only be sought by the purchaser in the following circumstances where;

1. With respect to traits that can be identified before slaughter, the accredited Assessor grossly misdescribes the Lot, and the claim is made in writing to the selling Agent prior to slaughter
2. With respect to carcass attributes including dentition, the Lot was purchased on a cents per kilogram Carcass Weight basis; or was purchased \$ per head or cents per kilogram liveweight when a cents per kilogram Carcass Weight sale was not made available by the Assessor

**a. Carcase Weight acceptable degree of error –**

Cows and Bulls	Other Stock Categories
+ or – 5%	+ or – 3%

Cows and Bulls	Other Stock Categories
+ or – 30%	+ or – 30%

If the tolerance is exceeded, Price Adjustment may be sought by negotiation or arbitration.

**b. Fat score**

**Acceptable degree of error by Assessor**

An acceptable assessment requires at least 70% of the number of animals to be in the fat score designated in the Catalogue and the balance in the adjacent score; additionally the number of animals in any single adjacent score must not exceed 15% of the number in the lot, even where the required 70% are as described.

A claim of misdescription may be made where:

- The number of head outside the designated Fat Scores, while in an adjacent Fat Score, exceeds 30% of the number in the lot;
- The number of head in any adjacent Fat Score exceeds 15% of the number in the lot;
- Any animal is in a Fat Score that is not adjacent to the designated Fat Scores

Price Adjustment may be sought by negotiation or arbitration on the number of animals that exceed the defined tolerances.

**c. Dentition**

**Acceptable degree of error by Assessor**

For all categories, an acceptable assessment requires at least 90% of the number of animals to exhibit the dentition designated in the Catalogue and the balance in the adjacent dentition category. For clarity, if cattle are defined as two-tooth, no more than 10% may be four-tooth, and nil may be six- or eight-tooth, otherwise price adjustment may be sought.

If Dentition is **not** defined by the stock category and **not** described in an assessment, and is found to **not** correlate with the defined age of cattle, a claim of misdescription (subject to clause 5 - 5.1 – Disputes) may be settled via negotiation or submitted to arbitration.

Example:

Steers 15-16 months, found to have 4 teeth

#### **d. Bruising**

Where a Purchaser seeks price adjustment for bruising, the following percentage adjustments will be applied to bruise scores as defined by the AUS-MEAT Language.

Bruise Score	Adjustment	
	Group A	Group B
1	2%	1%
2	2%	2%
3	4%	2%
4	2%	1%
5	5%	2%
6	6%	4%
7	5%	2%
8	9%	6%
9	15%	15%

Group A comprises calves, vealers, weaners, yearlings, steers, heifers and cows.

Group B comprises bulls and manufacturing mixed.

#### **e. Offspring Breed**

If there is a dispute that relates to any unborn offspring of purchased Livestock being incorrectly described in the Assessment, the buyer must notify AuctionsPlus and the Selling Agent within a reasonable time frame of the claimed mis-described offspring being born. A tolerance level of 10% will apply and any claimed mis-description of less than 10% of the total offspring of purchased Livestock will not be considered a dispute. The dispute will be referred to arbitration in accordance with the operating terms and conditions and the Vendor will be liable for any adjustment in sale price as determined by the arbitration panel.

#### **Price Adjustments for Breach of Permitted Tolerances – Sheep**

Any reference to Stock Category will be as per the AuctionsPlus definition of Stock Category:

<b>Stock Category</b>	<b>Description</b>	
<b>Suckers</b>	Unweaned lambs	No permanent incisors
<b>Lambs</b>	Weaned lambs	No permanent incisors
<b>Hoggets</b>	Any sex	Up to 2 permanent incisors
<b>Ewes</b>	Females	3 or more permanent incisors
<b>Ewes &amp; Lambs</b>	Females with lambs at foot	
<b>Wethers</b>	Castrated males	3 or more permanent incisors
<b>Ewes &amp; Wethers</b>	Mixed sex	3 or more permanent incisors
<b>Rams</b>	Entire males	1 or more permanent incisors
<b>Goats</b>	Any age, any sex	

## **Gross Misdescription**

A purchaser may only claim gross misdescription where

- (a) the age, sex or breed of the Sheep delivered were obviously and substantially different to the specification included in the Catalogue.
- (b) dentition is incorrectly assessed in any animal in a Lot listed as sucker, lamb or hogget.
- (c) dentition is not defined by the stock category and not described in an assessment, and is found to not correlate with the defined age of sheep
- (d) dentition is incorrectly assessed in at least 10% of the animals in a Lot listed in a Stock Category other than sucker or lamb.

The extent of price adjustment is to be determined by negotiation between the selling Agent and the purchaser, and if settlement cannot be negotiated, the matter is to be submitted to arbitration under these Operating Conditions.

## **LIVEWEIGHT**

### **Acceptable degree of error by Assessor**

Claims for misdescription may only be sought by the purchaser in the following circumstances:

1. Where the average liveweight at delivery (after adjustment for gut shrink) varies from that in the Catalogue by more than the allowed tolerance of **+ or - 5%**

This tolerance is applicable to all Stock Categories.

### **Calculation of gut shrinkage**

The following adjustments for calculation of gut shrink are applicable:

The base time for measuring gut shrinkage is the time the Sheep are Delivered ("**0 hours**"). Assessors Should adjust the Delivery weights to include an expected minimum 12-hour curfew prior to delivery, unless otherwise agreed between the parties.

1. Shrinkage to be applied from 0 hours -
  - 0.50% per hour for first six hours
  - 0.30% per hour for next six hours
  - 0.25% per hour for next twelve hours
  - 0.125% per hour for next twenty-four hours
  - 0.10% per hour for next twenty-four hours

The following example is illustrative only:

Sheep described as 54.8 kg by an Assessor - 0 hours off feed and water. Sheep weighed at delivery by Purchaser at 51.1kg - 20 hours off feed and water.

Calculation of gut shrink is as follows -

$$6 \text{ Hours} \times 0.50 = 3.00 \%$$

$$6 \text{ Hours} \times 0.30 = 1.80 \%$$

8 Hours x 0.25 = 2.00 %

= 6.80 % or 3.7 kg gut shrink

### **Price adjustment procedure**

1. Calculate the average liveweight at delivery adjusted for gut shrink.
2. Where the difference between the average liveweight in the Catalogue and the average liveweight at delivery adjusted for gut shrink is in excess of the tolerance level, the price payable, if adjustment is sought, is determined by applying a discount to the price bid of 1.5% for every 1% that the designated tolerance level is exceeded.

### **SLAUGHTER STOCK**

#### **Acceptable degree of error by Assessor**

Claims for misdescription may only be sought by the purchaser in the following circumstances

1. With respect to traits that can be identified before slaughter, the accredited Assessor grossly misdescribes the Lot, and the claim is made in writing to the selling Agent prior to slaughter
2. For carcase attributes including dentition, the Lot was purchased on a cents per kilogram Carcase Weight basis; or was purchased \$ per head or cents per kilo liveweight, when a cents per kilogram Carcase Weight sale was not made available by the Assessor

#### **a. Carcase weight**

Acceptable degree of error by Assessor: + or – 5%

This tolerance is applicable to all Stock Categories.

If this tolerance is exceeded, Price Adjustment may be sought by negotiation or arbitration.

#### **b. Fat score**

#### **Acceptable degree of error by Assessor**

An acceptable assessment requires at least 70% of the number of animals to be in the fat score designated in the Catalogue and the balance in the adjacent score; additionally the number of animals in any single adjacent score must not exceed 15% of the number in the lot, even where the required 70% are as described.

A claim of misdescription may be made where:

- The number of head outside the designated Fat Scores, while in an adjacent Fat Score, exceeds 30% of the number in the lot;
- The number of head in any adjacent Fat Score exceeds 15% of the number in the lot;

- Any animal is in a Fat Score that is not adjacent to the designated Fat Scores

Price Adjustment may be sought by negotiation or arbitration on the number of animals that exceed the defined tolerances.

**c. Dentition**

**Acceptable degree of error by Assessor**

For categories except Lambs, Suckers and Hoggets, an acceptable assessment requires at least 90% of the number of animals to exhibit the dentition designated in the Catalogue and the balance in the adjacent dentition category. For clarity, if sheep are defined as four-tooth, no more than 10% may be six-tooth, and nil may be eight-tooth, otherwise price adjustment may be sought.

If Dentition is **not** defined by the stock category and **not** described in an assessment, and is found to **not** correlate with the defined age of sheep, a claim of misdescription (subject to clause 5, 5.1 – Disputes) may be settled via negotiation or submitted to arbitration.

Example:

Ewes 3 years old, found to have broken mouths

Suckers/Lambs/ Hoggets	Other Stock Categories
0%	10%

Where the purchaser seeks price adjustment, the extent of price adjustment shall be determined as follows -

- (a) by negotiation between the selling Agent and purchaser; or
- (b) should agreement on price adjustment fail to be negotiated:
  - (i) the purchaser shall provide the kill data and their pricing grid as of the date of Auction;
  - (ii) price adjustment shall be determined by AuctionsPlus by application of the purchaser's grid; and
  - (iii) the value of the skin shall be adjusted according to MLA pricing data available on the day of the sale.

**d. Progeny Breed**

If there is a dispute that relates to any unborn offspring of purchased Livestock being incorrectly described in the Assessment, the buyer must notify AuctionsPlus and the Selling Agent within a reasonable time frame of the claimed mis-described offspring being born. A tolerance level of 10% will apply and any claimed mis-description of less than 10% of the total offspring of purchased Livestock will not be considered a dispute. The dispute will be referred to arbitration in accordance with the operating terms and conditions and the Vendor will be liable for any adjustment in sale price as determined by the arbitration panel.