

# AuctionsPlus User Agreement

**Effective 1 September 2023**

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# AuctionsPlus User Agreement

## 1. Introduction

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### 1.1 Operation of this User Agreement

- (a) The AuctionsPlus Platform is owned and operated by AuctionsPlus Pty Ltd ACN 072 403 984 (**AuctionsPlus, we, us**).
- (b) By registering for an account on the AuctionsPlus Platform, or participating in any sale facilitated via the AuctionsPlus Platform (whether as a Buyer, Vendor, Assessor, Agent or otherwise), you agree to be bound by this User Agreement.
- (c) If you are an individual who is using the AuctionsPlus Platform on behalf of a company, partnership, unincorporated association or other legal body, you represent and warrant that you have the authority (and will continue to have the authority) to act on behalf of the relevant legal entity. That legal entity must ensure that any individual acting or purporting to act on its behalf or using its access credentials complies with this User Agreement.
- (d) References in this User Agreement to 'you' and 'user' means the individual using the AuctionsPlus Platform or where use is on behalf of a legal entity, that legal entity, and any individual acting or purporting to act on its behalf or using its access credentials.
- (e) Further terms and conditions may apply in relation to particular sales, and will be set out in the Listing or Catalogue.
- (f) This User Agreement contains important terms and conditions that apply to your use of the AuctionsPlus Platform, including those relating to:
  - (i) variations to the User Agreement and AuctionsPlus Code of Conduct – please see clause 1.3;
  - (ii) limitations to the AuctionsPlus Platform – please see clause 13;
  - (iii) our exclusions and limitations of liability - please see clauses 14;
  - (iv) your obligation to indemnify us – please see clauses 3.3(c), 8.2(b) and 14.3; and
  - (v) our rights to suspend and terminate your AuctionsPlus Account in certain circumstances – please see clauses 2.5(c), 5.5(a), 6.5(b) and 15.

### 1.2 Role of AuctionsPlus

- (a) AuctionsPlus provides the AuctionsPlus Platform and its functionality to you and other users. AuctionsPlus is not an agent of any user (including any Vendor or Buyer), has no authority to execute a contract on any user's behalf and is not an auctioneer. Our role under this User Agreement is limited to:
  - (i) providing a platform that enables users to list, buy and sell Livestock, Machinery and other commodities; and
  - (ii) facilitating the dispute resolution processes set out in Schedule 2 and Schedule 3.
- (b) AuctionsPlus does not own any Lots listed for sale on the Platform, and does not itself buy or sell any Lots using the Platform.
- (c) All sales are performed by a Selling Agent (on behalf of a Vendor). When you purchase a Lot listed on the AuctionsPlus Platform, you are entering a contract directly with the Vendor for the purchase of that Lot on the terms and conditions as set out in clauses 10.2 and 10.3 (**Contract of Sale**). AuctionsPlus is not party to the Contract of Sale, and is not responsible for ensuring compliance with the terms of any Contract of Sale. The Vendor and the Buyer agree to appoint AuctionsPlus to undertake certain roles regarding disputes, as set out in the Schedules to this User Agreement.

### 1.3 Variations to this User Agreement or the AuctionsPlus Code of Conduct

- (a) We may amend this User Agreement or the AuctionsPlus Code of Conduct from time to time by posting an updated version of it on the AuctionsPlus Platform, with the effective date of the update shown. The amendment will not apply to any transactions that have occurred prior to the effective date of the update or to any Lots that have been listed prior to the effective date of the update. In addition, if the amendment is detrimental to you, we will post the updated version not less than 30 days prior to the change taking effect.
- (b) You should review this User Agreement and the AuctionsPlus Code of Conduct from time to time. Your continued use of the AuctionsPlus Platform following the effective date of the amendment will constitute your acceptance of this User Agreement or AuctionsPlus Code of Conduct as amended. If you are an existing user at the time of us posting an updated version, AuctionsPlus will notify you of the change by email (or by another form of communication) or when you next log into the AuctionsPlus Platform.
- (c) If the amendment is detrimental to you, and you do not wish to continue to use the AuctionsPlus Platform, you may terminate your registration and use of the AuctionsPlus Platform.

### 1.4 Definitions and interpretation

Capitalised terms used in this User Agreement are defined in clause 18.

## 2. Registration for an AuctionsPlus Account

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### 2.1 Requirement to be registered

- (a) In order to participate in the sale of a Lot via the AuctionsPlus Platform (whether as a potential Buyer, Vendor, Assessor, Agent or otherwise) or access certain other features of the AuctionsPlus Platform, you must:
  - (i) hold an AuctionsPlus Account; and
  - (ii) depending on whether you are seeking to participate on the Platform as a Buyer, Vendor, Assessor or Agent, obtain separate approval from AuctionsPlus to perform that role.
- (b) You may apply for an AuctionsPlus Account by completing the registration process on the AuctionsPlus Platform or through any other registration process agreed by us from time to time. If you wish to participate in the Platform as a Buyer, Vendor, Assessor, Agent or otherwise, you may also need to undertake specific training, and hold particular accreditations, which will be notified to you during the registration process.
- (c) During the registration process, you must provide AuctionsPlus with all information and supporting documentation (such as a copy of your drivers licence) requested by AuctionsPlus for the purpose of verifying your identify and your eligibility to be a Buyer, Vendor, Assessor, Agent or otherwise.
- (d) AuctionsPlus may refuse your application for an AuctionsPlus Account, or your approval to use the Platform as a Buyer, Vendor, Assessor or Agent, for any reason, including where we:
  - (i) have been unable to verify your identify or eligibility to hold an AuctionsPlus Account or perform the role you are applying for approval to perform; or
  - (ii) are aware that you have previously engaged in Prohibited Conduct on the Platform.

### 2.2 Eligibility

- (a) In order to be eligible to hold an AuctionsPlus Account you must:
  - (i) not be bankrupt or subject to any form of insolvency or administration;
  - (ii) not previously have held an AuctionsPlus Account that was terminated by AuctionsPlus, unless we have provided consent in writing for you to re-apply for an AuctionsPlus Account; and

- (iii) meet any other minimum requirements for registration notified to you by AuctionsPlus during the registration process.
- (b) Additionally:
  - (i) you must be at least 18 years of age in order to be a user on the Platform;
  - (ii) if you are applying for approval to be a Buyer on the Platform, you must have completed and passed our user induction training as outlined on the AuctionsPlus Platform;
  - (iii) if you are applying for approval to be an Agent, you must be an appropriately licensed agent of good standing, with all qualifications and licences, authorisations and consents necessary to lawfully carry out the role of an agent for Buyers and Vendors on or in connection with the Platform; and
  - (iv) if you are applying for approval to be an Assessor, you must have completed and passed the AuctionsPlus assessor accreditation program and have demonstrated the expertise and industry experience necessary to carry out your role as an Assessor.

### 2.3 Warranties

You represent, warrant and undertake that:

- (a) you have capacity to enter into this User Agreement;
- (b) you will only use the AuctionsPlus Platform for lawful purposes;
- (c) all of the information you submit to us is true, correct, complete and submitted in good faith;
- (d) if you are an Agent, you have the authority to represent and act on behalf of the Vendor or Buyer, as relevant;
- (e) you have and will continue to have all necessary authorisations, licences, and consents required by Law to perform your activities in connection with this User Agreement including, where applicable, if you act as an agent or an auctioneer; and
- (f) you will use the AuctionsPlus Platform in good faith, in accordance with this User Agreement and the AuctionsPlus Code of Conduct.

### 2.4 Security of your AuctionsPlus Account

- (a) You must update your AuctionsPlus Account if any of your details change. We are not responsible for any loss or damage (including misdirected emails) that occurs because you did not provide us with complete or accurate information.
- (b) You are responsible for maintaining the confidentiality of your AuctionsPlus Account user identification code and password and for restricting access to your computer or mobile device. You agree to accept responsibility for all activities that occur under your AuctionsPlus Account, including bids placed by a third party using your user identification code.
- (c) You must notify us immediately if you become aware of any unauthorised use of your AuctionsPlus Account.

### 2.5 Deactivating or closing your AuctionsPlus Account

- (a) You may deactivate your AuctionsPlus Account at any time by contacting us, and asking us to close your AuctionsPlus Account.
- (b) Your AuctionsPlus Account may be suspended or terminated by us in accordance with clause 15.
- (c) We may also deactivate your AuctionsPlus Account if we have been unable to reach you after making two or more attempts to contact you in relation to your use of the AuctionsPlus Platform, where we need your response in relation to the proper operation of the AuctionsPlus Platform and you have not responded in a reasonable period. If we deactivate your AuctionsPlus Account for this reason, clause 15.5(b) will apply.

### 3. Your use of the AuctionsPlus Platform

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#### 3.1 Your rights

- (a) We grant you a personal, non-transferable (non-sub-licensable) and non-exclusive licence to access and use the features and functionality of the AuctionsPlus Platform that we make available to you via your AuctionsPlus Account.
- (b) The features and functionality that we make available to you may include the ability to:
  - (i) peruse Listings, Catalogues and Auction results;
  - (ii) search our databases of Agents and Assessors;
  - (iii) created Listings and upload Assessments;
  - (iv) place bids or make offers on Lots; and
  - (v) buy and sell Livestock, Machinery and other commodities.
- (c) Some features of the Platform are only available to certain categories of users. For example, you will only be granted access to functionality that allows you to place bids, if you are an approved Buyer.

#### 3.2 Compliance with Laws and Code of Conduct

You must comply with the AuctionsPlus Code of Conduct and all Laws that apply to the use of the AuctionsPlus Platform or that apply to your activities in connection with the AuctionsPlus Platform including any Laws that apply to you acting as an agent or an auctioneer.

#### 3.3 Prohibited Conduct

- (a) You agree that the AuctionsPlus Platform must be used solely for the purposes and functions contemplated by this User Agreement and you must refrain from using the AuctionsPlus Platform for any other purpose or in breach of clause 3.3(b) (**Prohibited Conduct**).
- (b) Prohibited Conduct includes:
  - (i) using your AuctionsPlus Account to bid, or make offers for or on behalf of any other person, except as permitted at clause 7.4;
  - (ii) listing a Lot for sale unless you own that Lot, or you are an Agent for the Vendor of that Lot and you have been authorised to list that Lot for sale on the Vendor's behalf;
  - (iii) using the Platform to bid on your own Lots or on behalf of the Vendor of the Lot, including if you are the Selling Agent of the relevant Vendor;
  - (iv) posting reviews or other User Data that could be considered defamatory, prejudicial, racist, off-topic, inflammatory, repetitive, discriminatory, vexatious, insensitive, offensive or otherwise inappropriate or unlawful;
  - (v) re-selling, sub-licencing or distributing access to the Platform to another person;
  - (vi) inducing or attempting to induce, another person by a collusive practice to abstain from bidding, bid to a limited extent, or do any other act or thing that may prevent free or open competition;
  - (vii) engaging in any misleading or deceptive conduct, unconscionable conduct or any fraudulent or unlawful conduct;
  - (viii) with the exception of sales in connection with Display Price Listings (which are intended to be concluded outside of the AuctionsPlus Platform), contacting a Vendor directly for the purpose of concluding a sale outside of the AuctionsPlus Platform;
  - (ix) preparing, uploading (or allowing to be uploaded) to the Platform, an Assessment or Listing that is incorrect, incomplete or misleading;



- (x) tampering with or attempting to access user accounts of other users;
  - (xi) attempting to gather and use information available from the AuctionsPlus Platform to transmit any unsolicited advertising;
  - (xii) reproducing, duplicating, broadcasting, copying, selling, trading, reselling, redistributing in any medium, or exploiting, directly or indirectly, for any commercial purposes any portion of the AuctionsPlus Platform or the Content without AuctionsPlus' prior written consent; and
  - (xiii) using the Platform in a way that is likely to disrupt or cause technical problems with the Platform, including the knowing transmission of any viruses, Trojan horses, trap doors, back doors, worms, time bombs or other malicious code or computer programming routines.
- (c) Subject to clause 14.1(e), you shall indemnify, defend and hold AuctionsPlus harmless from and against any losses, claims or other damages it may incur as a result of Prohibited Conduct by you specified in clauses 3.3(b)(i) to 3.3(b)(iv) (inclusive), 3.3(b)(vii), 3.3(b)(xii) and an intentional breach of clause 3.3(b)(xiii).
- (d) You also must not induce a Vendor to breach its sole agency with a Selling Agent during the sole agency period set out in clause 6.1(d)(ii).

## 4. User Data and AuctionsPlus Content

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### 4.1 Ownership of User Data

All information, descriptions, data, images, videos, reviews and other content that you input or upload via the AuctionsPlus Platform (**User Data**) remains owned by you.

### 4.2 Our right to use your User Data

You grant us a perpetual, irrevocable, transferable, non-exclusive, royalty-free licence (including the right to grant sublicenses) to use, modify, reproduce, host, store, transmit and display your User Data for the purposes of:

- (a) performing our obligations, or exercising our rights, under this User Agreement and enabling your access to, and use of, the AuctionsPlus Platform;
- (b) publishing the Purchase Price, and other data relating to sales facilitated via the AuctionsPlus Platform, including on LivestockBI or any data or visualising tool;
- (c) de-identifying or aggregating your User Data (or both) including with any Content of AuctionsPlus or user data of other users, and creating derivative works of them and owning all right, title and interest in and to the aggregated material or derivate works;
- (d) allowing us to improve the Platform and our associated services, and to develop new products and services; and
- (e) marketing products and services to you that we think you may be interested in.

### 4.3 Your responsibilities

- (a) You must ensure that all User Data is true, accurate and complete.
- (b) You warrant that your User Data does not (and will not cause AuctionsPlus to) breach any applicable Laws (including privacy laws) or infringe any third party rights (including Intellectual Property Rights).

### 4.4 AuctionsPlus Content

- (a) You acknowledge and agree that:
  - (i) we do not warrant, represent or guarantee the completeness, accuracy, reliability, or currency of Assessments, Listings or any other Content downloaded, uploaded, or

otherwise viewed or obtained through the use of the AuctionsPlus Platform that is provided by a user or other third party;

- (ii) all information, data and other Content we provide through the AuctionsPlus Platform is of a general nature and should not be considered as specific advice or relied upon in place of appropriate professional advice or valuation; and
  - (iii) any data, information or other Content downloaded or otherwise viewed, obtained or acquired through the use of the Platform that is provided by a user or other third party is at your sole risk and, to the extent permitted by Law, we will not be liable or responsible for any damage to you in connection with such data and information.
- (b) To the full extent permitted by Law, AuctionsPlus excludes all liability for any loss or damage howsoever arising suffered by you as a result of your reliance on the Content that is provided by a user or other third party we make available to you through the AuctionsPlus Platform.

#### 4.5 **Our right to use audio and video content from Interfaced Auctions**

If you are a Selling Agent or Vendor for the Listing of any Interfaced Auction or if you or individuals associated with you attend an Interfaced Auction in person, you acknowledge and agree that we may take audio and/or video content of the Interfaced Auction. This includes content of you and other individuals attending the Interfaced Auction in person, and that we will own that content and may use that content (or permit third parties to use that content) for the Interfaced Auction and for our other business purposes, including for promotional and marketing material. If you are an individual who is an attendee in person at an Interfaced Auction (other than the auctioneer) and you do not wish to be identifiable in any promotional or marketing material, please notify us prior to your attendance at the Interfaced Auction.

## 5. AuctionsPlus Fees

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### 5.1 **Listing Fees**

- (a) In order to list a Lot for sale on the AuctionsPlus Platform, you (the Selling Agent) must pay the applicable Listing Fees.
- (b) Unless AuctionsPlus has an alternative arrangement in writing with you concerning Listing Fees:
  - (i) the Listing Fees payable will be the listing fees published on the AuctionsPlus Platform at the time the Lot is listed;
  - (ii) for Auctions, Buy Now and Request to Buy Listings, the applicable Listing Fees may be invoiced by AuctionsPlus once the relevant Catalogue for the Lot is first published (or if there is no Catalogue, when the Lot is first listed);
  - (iii) for Display Price Listings, the applicable Listing Fees may be invoiced by AuctionsPlus once the Listing is first published on the AuctionsPlus Platform;
  - (iv) the invoice for the Listing Fees will be issued to the Selling Agent; and
  - (v) all invoices are payable within 7 days of the date of the invoice.
- (c) The Listing Fees are payable for listing the Lot for sale, irrespective of whether or not the Lot is ultimately sold or whether it is sold but then rejected or the Purchase Price is refunded. You will not be entitled to a refund of any portion of the Listing Fee in the event your Lot is passed in or if there are no bids placed at Auction or your Lot otherwise fails to sell via the Platform. Without limiting your rights if we have breached this User Agreement or any Law, you will also not be entitled to a refund of any portion of the Listing Fee if the Buyer is entitled to reject the Lot or claim a refund from the Selling Agent or Vendor pursuant to this User Agreement.

## 5.2 Sale Premiums

- (a) Sales of some Lots may be subject to a Sale Premium, a fee payable by the Selling Agent to AuctionsPlus upon the sale of the Lot. You (the Selling Agent) must pay the applicable Sale Premium.
- (b) Unless AuctionsPlus has an alternative arrangement in writing with you concerning Sale Premiums:
  - (i) the categories of Lots to which a Sale Premium applies, and the Sale Premium payable will be, the categories and amounts, respectively, published on the AuctionsPlus Platform at the time the Lot is listed;
  - (ii) the applicable Sale Premium may be invoiced by AuctionsPlus on or following the sale of the Lot;
  - (iii) the invoice for the Sale Premium will be issued to the Selling Agent; and
  - (iv) all invoices are payable within 7 days of the date of the invoice.
- (c) The Sale Premium is payable by the Selling Agent upon sale of the Lot. The Sale Premium is not contingent on you (the Selling Agent) receiving the Purchase Price or any associated buyer's premium from the Buyer, if you (the Selling Agent) elect to charge such a buyer's premium. Without limiting your rights if we have breached this User Agreement or any Law, you will not be entitled to a refund of any portion of the Sale Premium if the Buyer is entitled to reject the Lot or claim a refund from the Selling Agent or Vendor pursuant to this User Agreement.

## 5.3 Other Fees

AuctionsPlus may charge Fees (other than the Listing Fees and Sale Premiums) where specified in this User Agreement. AuctionsPlus may also offer optional additional products and services in connection with the AuctionsPlus Platform at an additional Fee from time to time. When purchasing a product or service from AuctionsPlus, you must pay the applicable Fees notified to you at the time of purchase. Unless AuctionsPlus has an alternate arrangement in writing with you, all invoices are payable within 7 days of the date of invoicing.

## 5.4 GST

Unless otherwise stated, all Fees payable to AuctionsPlus are exclusive of GST and you must pay the applicable GST in addition to the Fees stated.

## 5.5 Late payments and interest

Where Fees owed to AuctionsPlus by a user are overdue, then without limiting any other rights or remedies AuctionsPlus may have:

- (a) we may, if the user does not pay the overdue amount within 5 Business Days of our notice to the user requesting the user to pay the overdue amount, suspend that user's AuctionsPlus Account until payment of the outstanding amount (including any accrued interest charged) is received in full;
- (b) AuctionsPlus is entitled to charge interest on the unpaid balance of the Fees at the rate of 4% above the cash rate of the Reserve Bank of Australia per annum compounded monthly; and
- (c) the user must pay our reasonable costs of debt collection and enforcement, including any associated legal fees.

# 6. Listing and selling Lots

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## 6.1 General requirements

- (a) If you list a Lot for sale on the AuctionsPlus Platform, you must be a Selling Agent and:

- (i) nominate your chosen Buy Type;
- (ii) for sale by Auction, nominate the reserve price;
- (iii) comply with all listing requirements notified by AuctionsPlus; and
- (iv) provide all relevant information and supporting documents notified to you during the listing process, including:
  - (A) a description of the Lot;
  - (B) details for Delivery;
  - (C) in the case of Assessed Lots, an Assessment;
  - (D) in the case of a Lot that is a motor vehicle sold at Auction, a current inspection report, if required under Law; and
  - (E) the Vendor Terms and Conditions and Selling Agent Terms and Conditions (if applicable).
- (b) By listing a Lot on the AuctionsPlus Platform, the Vendor warrants to AuctionsPlus that:
  - (i) the Vendor is the legal and beneficial owner of the Lot free of all mortgages, charges, liens, encumbrances and adverse interests (or will be at the time of entering into a Contract of Sale);
  - (ii) the Vendor is entitled and competent to sell, deliver and transfer unencumbered title to the Lot in accordance with the User Agreement and Contract of Sale; and
  - (iii) the Listing is accurate and complete.
- (c) As a Selling Agent, you must not list a Lot where you know or consider it likely that any of the above warranties provided by the Vendor in clause 6.1(b) are untrue.
- (d) As a Vendor you must:
  - (i) disclose all relevant information and supporting documentation to your Agent;
  - (ii) agree to sole agency with your Agent for at least the period commencing from the date the Lot is Assessed or described until 3 Business Days after the day of the nominated AuctionsPlus sale date, or expiration or removal of the Listing;
  - (iii) review the Listing, and all accompanying information and supporting documents submitted by your Agent and immediately notify AuctionsPlus and your Agent if any of the information or supporting documents are (or become) inaccurate or misleading and remedy the inaccurate or misleading information or supporting documents.
  - (iv) not list for sale, or deliver, Livestock that is lame, blind or diseased unless the faults are disclosed in the Listing, Catalogue or Assessment and the Livestock is within the Land Transport Standards and MLA Fit to Load Guidelines;
  - (v) in the case of Assessed Lots, maintain the Livestock as close as possible to the Assessment (and at all times within the permitted tolerances specified in Schedule 3); and
  - (vi) in the case of Described Lots, maintain the Lot as close as possible to the description in the Listing.
- (e) If you are an Agent and list a Lot, you will be deemed to have done so on your own account and you will be deemed to be the Vendor acting as principal including under the Contract of Sale unless:
  - (i) you are acting in your capacity as Agent for a Vendor and you have been authorised in writing by the Vendor to offer the Lot for sale; and
  - (ii) you have disclosed through the AuctionsPlus Platform to AuctionsPlus and Buyers that you are acting on behalf of the Vendor.

- (f) AuctionsPlus acts neither as agent nor auctioneer for any Vendor or Selling Agent.
  - (i) If you list a Lot you must ensure that your Listing and your activities in connection with the Listing and associated sale complies with Law including where the Buy Type is an Auction. AuctionsPlus does not perform any of this for you. Where the Buy Type is an Auction, this includes your duties as an auctioneer to properly complete the auction record and not allow a sale at a price lower than the highest bid.
  - (ii) If the Buy Type is an Auction that under Law requires the person that acts as auctioneer to have an authorisation, licence or consent under Law (or any other Buy Type that under Law requires the person performing an activity to have an authorisation, licence or consent under Law), you are only permitted to list a Lot for that Buy Type and conduct an Auction or other sale under that Buy Type if you are a Selling Agent with the necessary authorisation, licence or consent.
  - (iii) You must also ensure that you provide any Vendor Terms and Conditions, Selling Agent Terms and Conditions and any legal notices or prescribed conditions that are required by Law in connection with any sale including where the Buy Type is an Auction. You acknowledge and agree that this User Agreement may not contain legal notices that are required by Law in connection with any sale including where the Buy Type is an Auction.
- (g) All Listings on the AuctionsPlus Platform are subject to approval by AuctionsPlus. AuctionsPlus may refuse to publish a Listing, or any Vendor Terms and Conditions or Selling Agent Terms and Conditions, if AuctionsPlus becomes aware of or reasonably considers that:
  - (i) the Lot or any proposed sale in connection with the Lot is in breach of the User Agreement; there is a dispute as to the ownership of the Lot that may adversely affect the sale; there is an error in the Assessment; there is fraud or misconduct; or
  - (ii) there is any other issue relating to the Lot that AuctionsPlus acting reasonably considers could adversely affect a Buyer.
- (h) We will notify you of such action prior to, or as soon as reasonably practicable after, we have taken such action. If you have already paid a Fee for the Listing and AuctionsPlus withholds approval to the Listing, then:
  - (i) AuctionsPlus will provide a refund, unless AuctionsPlus has withheld approval because your Listing does not comply with this User Agreement; and
  - (ii) if your Listing does not comply with the User Agreement, AuctionsPlus will give you an opportunity to remedy the breach.

## 6.2 Assessments

Each user involved in preparing an Assessment, or submitting an Assessment to the Platform, must ensure that the Assessment meets the following requirements:

- (a) all traits must be appraised and entered accurately in the designated data entry field of the Assessment, which will be the point of reference in the event of any dispute concerning the Assessment; and
- (b) a copy of the Assessment in the designated form must be signed by the Vendor and the Assessor.

## 6.3 Changes to Listing details

- (a) AuctionsPlus will use its reasonable endeavours to accommodate requests from Vendors and Selling Agents to amend Listings.
- (b) If the requested changes are not received by AuctionsPlus with sufficient time to make the change, or with sufficient information to enable AuctionsPlus to make the change, AuctionsPlus will not be liable for any loss suffered by the Vendor or Selling Agent as a result of the change not being made.

#### 6.4 Order of Lots for Auctions

- (a) For Lots selected for Auction, Lots will be available for sale in the order the Lots appear in the Catalogue.
- (b) AuctionsPlus will determine the final Catalogue order. For Interfaced Auctions, the order of Lots in the Catalogue will be determined by AuctionsPlus in conjunction with the relevant Agent(s).
- (c) AuctionsPlus may, acting in its absolute discretion, if requested by a Vendor or Selling Agent, amend the order of Lots in a Catalogue. AuctionsPlus may make its agreement to make such a change subject to the Vendor or Selling Agent paying an administrative fee.

#### 6.5 Withdrawal of Lots

- (a) AuctionsPlus may withdraw any Lot from sale on the Platform at any time if AuctionsPlus becomes aware of or reasonably considers that:
  - (i) the Lot or any proposed sale in connection with the Lot is in breach of this User Agreement; there is a dispute as to the ownership of the Lot that may adversely affect the sale; there is an error in the Assessment; there is fraud or misconduct; or
  - (ii) there is any other issue relating to the Lot that AuctionsPlus acting reasonably considers could adversely affect a Buyer.
- (b) If reasonably practical and the failing is capable of remedy, AuctionsPlus will first suspend the Lot and give the Selling Agent an opportunity to remedy the failing. If AuctionsPlus withdraws a Lot from the Platform under clause 6.5(a)(ii), where the Selling Agent or Vendor is not at fault, AuctionsPlus will refund all Listing Fees and any other fees paid by the Vendor or Selling Agent (as applicable) in connection with that Listing.
- (c) If a Lot is withdrawn by, or on behalf of, a Vendor or Selling Agent, after the Lot has been published in a Catalogue, AuctionsPlus is not required to refund any of the Listing Fees paid. This clause does not apply if the Vendor or Selling Agency lawfully terminates for AuctionsPlus' breach and this clause does not affect a Vendor's or Selling Agent's rights under any consumer guarantee.

#### 6.6 Stop Trade Mechanism

- (a) The AuctionsPlus Platform may include functionality that enables a Selling Agent to apply a mechanism to prevent certain potential Buyers from bidding on the sale of all Lots offered for sale by that Selling Agent (the **Stop Trade Mechanism**). The Stop Trade Mechanism will apply in respect of all transactions connected with the Selling Agent (and does not include functionality to apply to a specific Lot or Lots of a specific Vendor on whose behalf the Selling Agent acts).
- (b) Although AuctionsPlus will take reasonable steps to apply or facilitate the Stop Trade Mechanism (to the extent permitted by Law and the functionality of the AuctionsPlus Platform allows), there is no guarantee that the Stop Trade Mechanism will be effective in preventing the intended person from purchasing the Lot.
- (c) By applying (or requesting AuctionsPlus to apply) the Stop Trade Mechanism to particular prospective Bidders, you agree that AuctionsPlus is not liable for any failure of the Stop Trade Mechanism to work as intended by you.

#### 6.7 Requirement to sell to highest Bidder in Auction if reserve price met

Once there is a valid bid equal to or above the reserve price for a Lot at Auction, the Vendor and the Selling Agent (if any) agrees to sell the Lot to the highest Bidder.

#### 6.8 Passed in Lots

- (a) A Lot will be passed in when, at the completion of the Auction for that Lot, the highest bid that is placed is less than the reserve price.
- (b) Where a Lot is passed in:

- (i) AuctionsPlus may notify the highest Bidder of the reserve price (where applicable);
- (ii) the Vendor and the Selling Agent (if any) must negotiate exclusively with such highest Bidder for 90 minutes following the conclusion of the Auction;
- (iii) the Bidder who made the highest bid may, within the time period specified in clause 6.8(b)(ii), increase their bid to a price equal to the reserve price, in which case the Lot will be deemed to have sold at the Auction at that price; and
- (iv) the Vendor and the Selling Agent must not sell the Lot to another party until the earlier of:
  - (A) expiry of the period in clause 6.8(b)(ii); or
  - (B) the highest Bidder notifying the Selling Agent in writing that they do not wish to negotiate with the Selling Agent.
- (c) The Selling Agent is responsible for updating the status of the Lot to “sold” on the AuctionsPlus Platform (or asking AuctionsPlus to do so on its behalf) and must provide AuctionsPlus with accurate information on the sale, including the Purchase Price.

## 6.9 Interfaced Auctions and Legal Compliance Terms

- (a) If the Auction is an Interfaced Auction, the auction process is also subject to the provisions of the In-Person Auction Terms and Conditions, and in the case of conflict between clauses 6.3 to 6.8 (inclusive) and the In-Person Auction Terms and Conditions, the In-Person Auction Terms and Conditions prevail.
- (b) In addition, to the extent of any conflict between clauses 6.6 to 6.8 (inclusive) and any Legal Compliance Terms, the Legal Compliance Terms take precedence.

## 7. Bids and offers

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### 7.1 General

- (a) When you bid at an Auction or make an offer (or any similar functionality) in relation to a Display Price, Buy Now or Request to Buy Listing, you are making an offer to buy the Lot at that price on the terms of the Contract of Sale.
- (b) Prior to placing a bid or making an offer in relation to a Lot, you must ensure that you:
  - (i) have read the Listing details in full;
  - (ii) have read and understand, and are able to comply with, the Contract of Sale; and
  - (iii) are able to lawfully take Delivery of the Lot.
- (c) You are strongly encouraged to physically inspect the Lot (or make the necessary enquiries) to assess its suitability, prior to bidding or making an offer.
- (d) If you have any questions concerning the Contract of Sale, you should contact the Selling Agent prior to bidding or making an offer.

### 7.2 Bidding in an Auction

- (a) All Auctions are subject to a reserve price. The Auction is complete when a notice appears on the Platform stating that the Auction is complete or otherwise indicating the completion of the Auction and, in the case of an Interfaced Auction, on the fall of the hammer. A bid must not be made or accepted after the auction is completed.
- (b) By placing a bid in an Auction, you acknowledge and agree that:
  - (i) a bid is made only when it is recorded in the bidding log on the AuctionsPlus Platform or, in the case of an Interfaced Auction, when the bid has been accepted by the auctioneer;

- (ii) the Selling Agent (or auctioneer, if different) may refuse to accept any bid where the bid fails to comply with this User Agreement, or any Vendor Terms and Conditions or Selling Agent Terms and Conditions relating to bidding;
  - (iii) the auctioneer may refuse to accept a bid that, in the auctioneer's opinion, is not in the best interests of the Vendor;
  - (iv) bids may advance only by the bidding increments available on the AuctionsPlus Platform and selected by the Selling Agent or the auctioneer for the Auction;
  - (v) if using the Max Bid functionality:
    - (A) placing a Max Bid does not guarantee that you will be the highest successful Bidder, even if the Lot is sold at the equivalent of your Max Bid;
    - (B) in a Sequential Auction, the Max Bid is subject to the bid increment set by the Selling Agent or auctioneer; and
  - (vi) in a Simultaneous Auction, the Max Bid is not always subject to a bid increment and as such may be inconsistent with previous increments.
- (c) Your bid or offer must be expressed in the format and unit type (such as price per head) nominated in the Listing.

### 7.3 **Penalty for collusive practices**

It is an offence against the Property and Stock Agents Act 2002 for a person to do one or more of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do any of the following:

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

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

### 7.4 **Bids placed by an Agent**

If you are an Agent and you place a bid, or make an offer, in respect of a Lot, you will be deemed to have done so on your own account and you will be deemed to be the Buyer under the Contract of Sale, unless you are acting in your capacity as Agent for a Buyer and you have been authorised in writing by the Buyer to place the bid, or make the offer, on that Buyer's behalf, and you have provided a copy of that written authority to the auctioneer.

### 7.5 **Withdrawing bids during Auctions**

- (a) A bid may not be withdrawn once recorded in the bidding log on the AuctionsPlus Platform or accepted by the auctioneer (as applicable), except in the limited circumstances contemplated in this User Agreement.
- (b) To the extent permitted by Law, at a Bidder's request, a bid may be withdrawn and a Lot reset if:
  - (i) in a Sequential Auction, the Lot is not yet open; or
  - (ii) the Selling Agent has authorised for the bid to be withdrawn and the Lot to be reset, and if the Lot is not reset, the Bidder remains liable.

### 7.6 **Disputes about bidding in Auctions**

If there is any dispute about the bidding in an Auction, the auctioneer's decision is final and binding. For Auctions (other than Interface Auctions), AuctionsPlus will provide the auctioneer an extract from the Platform that records the relevant bids and associated Buyer and timing of bid, and the Selling Agent (as auctioneer) must comply with that record, unless it is inaccurate.



## 7.7 Successful bidders

The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer:

- (a) the bidder's name; or
- (b) the name of the person on behalf of whom the successful bid was made.

## 7.8 Post-successful bid in an Auction

For an Auction, if you are the highest Bidder, and your bid meets or exceeds the reserve price, you must make payment of the Purchase Price and any applicable additional fees or other charges in accordance with the Contract of Sale.

## 7.9 Defaulting Buyer

If a Buyer seeks to withdraw from a Contract of Sale, the Vendor or Selling Agent may (at its election):

- (a) choose to enforce the Contract of Sale against the Buyer; or
- (b) elect to attempt to resell the Lot, in which case:
  - (i) the Buyer must:
    - (A) reimburse the Vendor or Selling Agent (as relevant) for any out-of-pocket expenses incurred by the Vendor in re-selling the Lot; and
    - (B) pay the Vendor or Selling Agent (as relevant) an amount equal to any shortfall between the Buyer's highest bid for the Lot and the Purchase Price achieved for the resale of the Lot; and
  - (ii) if the Lot is not successfully resold within 48 hours of the Auction closing (in the case of an Auction) or the sale being concluded (in the case of a Buy Now or Request to Buy offer) (or a longer period, if specified by the Selling Agent), the Buyer remains liable to the Vendor for the Purchase Price and must complete the Contract of Sale.

## 7.10 Interfaced Auctions and Legal Compliance Terms

- (a) If the Auction is an Interfaced Auction, the auction process is also subject to the provisions of the In-Person Auction Terms and Conditions and, in the case of conflict between this clause 7 and the In-Person Auction Terms and Conditions, the In-Person Auction Terms and Conditions prevail.
- (b) In addition, to the extent of any conflict between clause 7 and any Legal Compliance Terms, the Legal Compliance Terms take precedence.

# 8. Additional responsibilities of Agents and Assessors

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## 8.1 Agents

- (a) If you are an Agent, then in addition to your other obligations under this User Agreement, you acknowledge and agree that:
  - (i) you must have at all times all licences, authorisations and consents required by Law;
  - (ii) your authorisation to use the Platform as an Agent will be subject to ongoing review by AuctionsPlus and you may be required to complete additional training, at your own expense, from time to time to maintain your authorisation to act as an Agent on the Platform;
  - (iii) where you have a financial interest (other than direct commission from the Vendor you are acting as Agent for) in a Lot you are listing on the Platform, you must disclose that financial interest in the relevant Listing;

- (iv) you must disclose any potential Conflict of Interest in relation to a Listing to the Vendor prior to agreeing to list the Lot and you must also disclose the Conflict of Interest in the Listing;
  - (v) you will be liable for any Prohibited Conduct you engage in on, or in connection with the Platform, irrespective of whether such actions were at the direction of a Vendor or Buyer; and
  - (vi) you are responsible for ensuring that Assessors and Delivery Agents are engaged, where required, and you assume the responsibility for arranging payment for the services provided by such persons.
- (b) Each Agent warrants that:
- (i) before listing a Lot on the AuctionsPlus Platform on behalf of a Vendor, or bidding or making an offer on a Lot on the AuctionsPlus Platform on behalf of a Buyer, it has provided the Vendor or Buyer (as applicable) with a copy of this User Agreement; and
  - (ii) all actions taken by the Agent on a Vendor's or Buyer's behalf in connection with the AuctionsPlus Platform are within the authority of the relevant Vendor or Buyer (as applicable).

## 8.2 Assessors

- (a) If you are an Assessor, then in addition to your other obligations under this User Agreement, you acknowledge and agree that:
- (i) you must have at all times all licences, authorisations and consents required by Law;
  - (ii) your accreditation as an Assessor will be subject to ongoing review by AuctionsPlus and you may be required to complete additional training, at your own expense, from time to time to maintain your accreditation as an Assessor on the Platform;
  - (iii) you are responsible for maintaining appropriate industry knowledge and keeping abreast of new developments and regulatory updates with respect to the species for which you are accredited to assess;
  - (iv) where you have a financial interest in a Lot or any other Conflict of Interest in relation to a Lot you are assessing, you must disclose that financial interest or other Conflict of Interest in the Assessment;
  - (v) you must assess only those species of Livestock, and submit Assessments only for those Buy Types for which you are accredited or where no accreditation is required;
  - (vi) you must not permit any person to use your user identification code for the purposes of assessing any Livestock; and
  - (vii) you must handle complaints in a professional manner and advise AuctionsPlus promptly in writing of any customer concerns or complaints that you receive.
- (b) Subject to clause 14.1(e), you shall indemnify, defend and hold AuctionsPlus harmless from and against any Claim that is made by another person against AuctionsPlus or AuctionsPlus' liability to another person and costs and expenses in connection with such liability as a result of any Assessment prepared by you proving to be false, incomplete, inaccurate or misleading.
- (c) Subject to clause 8.2(d), AuctionsPlus may, acting reasonably, and on not less than 30 days' prior notice require additional terms and conditions from time to time to the accreditation of any Assessor for assessments or activities to be performed after that notice period. Subject to clause 8.2(d), if you are an existing Assessor and the additional terms and conditions are detrimental to you they will not apply to any activity that you are required to perform in connection with the Lot that was listed prior to the additional terms and conditions taking effect.
- (d) AuctionsPlus may give less than 30 days' prior notice of additional terms and conditions under clause 8.2(c) and AuctionsPlus may apply additional terms and conditions to any future activity

that you are required to perform in connection with a Lot that was listed prior to the additional terms and conditions taking effect where AuctionsPlus reasonably considers the additional terms and conditions are necessary to restrict or control the activities performed by the Assessor in order to prevent or mitigate the risk of loss or other harm to all of any AuctionsPlus, a Vendor or Buyer, arising from the Assessor's breach of this User Agreement or poor performance or misconduct.

### 8.3 Insurance

- (a) If you are an Assessor or Agent, you must effect and maintain the following insurances for the term of this User Agreement and for 6 years thereafter for any insurances that are 'claims based':
  - (i) professional indemnity insurance with a limit of indemnity of not less than \$5 million in the annual aggregate in respect of legal liability arising from a breach of professional duty or negligence whether that duty is owed in contract or otherwise by reason of any act, error or omission by you or your personnel, unless AuctionsPlus has notified you that professional indemnity insurance is not required, in which case you must instead effect and maintain public liability insurance of not less than \$5 million in the annual aggregate; and
  - (ii) all other insurances required by Law, or otherwise that an experienced and qualified Assessor or Agent (as applicable) in your position would take out and maintain.
- (b) You must provide AuctionsPlus with copies of evidence from your insurance broker endorsed by the insurer of the insurance policies set out in clause 8.3(a) within 14 days after a request by AuctionsPlus.

## 9. Additional responsibilities relating to Livestock

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### 9.1 Animal welfare

While any Livestock are in your possession or control, you must:

- (a) ensure the Livestock are handled and transported in accordance with the Australian Animal Welfare Standards and Guidelines for the Welfare of Animals, the current version of which is accessible at [www.animalwelfarestandards.net.au/](http://www.animalwelfarestandards.net.au/); and
- (b) comply with applicable Laws concerning the treatment, handling, transportation, slaughter and reporting of such Livestock, including Laws concerning the reporting of diseases affecting the Livestock.

### 9.2 NLIS

- (a) All users must comply with all Laws concerning Livestock traceability, including the transferring of stock to a new PIC.
- (b) If you buy Livestock, it is your responsibility to arrange for the purchased Livestock to be transferred onto your PIC in the NLIS databases, unless the Vendor or Selling Agent have specified in the Listing or Catalogue that they will take on this responsibility and this is confirmed post-sale by the Selling Agent.

### 9.3 Tagging

All Lots comprising Livestock must be tagged as required by Law.

## 10. Formation of Contract of Sale

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### 10.1 When a Contract of Sale is formed

A Contract of Sale is formed:

- (a) in the case of an Auction, when the Lot is sold at the Auction, and in the case of an Interfaced Auction as determined in accordance with the In-Person Auction Terms and Conditions;

- (b) in the case of a Lot purchased using the Buy Now feature, when the Buyer completes the online “Buy Now” purchase process for the Lot on the AuctionsPlus Platform;
- (c) in the case of a Lot purchased using the Request to Buy feature, when the Selling Agent accepts an offer submitted by the Buyer through the AuctionsPlus Platform; and
- (d) in the case of Display Price Listings, when a Selling Agent and Buyer agree a sale in respect of the Lot outside of the AuctionsPlus Platform.

## 10.2 Contract of Sale - Buy Types other than Interfaced Auctions

- (a) For all Buy Types other than Interfaced Auctions, the Contract of Sale is comprised of the following:
  - (i) Legal Compliance Terms;
  - (ii) the Standard Terms of Sale at Schedule 1;
  - (iii) the Vendor Terms and Conditions, as identified in the Listing; and
  - (iv) the Selling Agent Terms and Conditions, as identified in the Listing or Catalogue.
- (b) To the extent of conflict between the above documents, the document listed first will prevail to the extent necessary to resolve the conflict.

## 10.3 Contract of Sale - Interfaced Auctions

- (a) The terms of the Contract of Sale that apply to Interfaced Auctions will depend on whether or not the successful bid was transmitted through the AuctionsPlus Platform.
- (b) In the case of an Interfaced Auction where the successful bid was not transmitted through the AuctionsPlus Platform, the Contract of Sale will be governed solely by the In-Person Auction Terms and Conditions.
- (c) In the case of an Interfaced Auction where the successful bid was transmitted through the AuctionsPlus Platform, the Contract of Sale is comprised of the following:
  - (i) Legal Compliance Terms;
  - (ii) sections 3.2 (Inspection and acceptance of Lots), 7 (Warranties) and 8 (Liability) of Schedule 1 (collectively, **Sales Warranties and Acceptance**);
  - (iii) section 9 (Disputes) of Schedule 1 (and Schedule 2 and Schedule 3 of the User Agreement) but only as so far as they relate to Sales Warranties and Acceptance; and
  - (iv) the In-Person Auction Terms and Conditions.
- (d) To the extent of conflict between the above documents, the document listed first will prevail to the extent necessary to resolve the conflict, except that nothing in section 8 (Liability) of Schedule 1 shall limit the Vendor’s warranties or the Buyer’s rights under the In-Person Auctions Terms and Conditions.

## 11. Intellectual Property Rights

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- (a) The AuctionsPlus Platform consists of, and contains, Content that is owned by AuctionsPlus and its licensors. The AuctionsPlus Platform and associated Content is protected by intellectual property laws and must not be used or copied by you except as contemplated by this User Agreement, or otherwise with our prior written consent.
- (b) AuctionsPlus grants you a personal, non-transferable (non-sub-licensable) and non-exclusive licence to access and use the Content we have made available to you via the AuctionsPlus Platform in accordance with this User Agreement.
- (c) Without prejudice to any other provision of this User Agreement, you must not copy, adapt, reproduce (other than for the purpose of accessing and using the AuctionsPlus Platform), 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 Platform or commercialise any information or Content obtained from any part of the AuctionsPlus Platform, AuctionsPlus' websites, social media pages or marketing materials without AuctionsPlus' prior written consent.

## 12. Confidentiality and privacy

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### 12.1 Confidentiality

You acknowledge and agree that information relating to the function or operation of the AuctionsPlus Platform and associated Intellectual Property Rights, screen or menu hierarchies, techniques, algorithms, know-how, current and future, relating to the AuctionsPlus Platform other than information that is known publicly (**AuctionsPlus Confidential Information**) is confidential information of AuctionsPlus. You agree to keep confidential all AuctionsPlus Confidential Information and not to use the AuctionsPlus Confidential Information except to the extent necessary to use the AuctionsPlus Platform in accordance with this User Agreement.

### 12.2 Privacy

AuctionsPlus will collect and use your personal information in connection with providing the AuctionsPlus Platform, as described in AuctionsPlus' privacy policy as amended from time to time, the current version of which is located at: <https://auctionsplus.com.au/auctionsplus/privacy-policy>.

### 12.3 Disclosure to Government Agencies

You authorise us to disclose information relating to you including personal information to any Government Agency in response to a request from that Government Agency. We may also disclose information relating to you, including personal information, to the police, other enforcement authorities or Government Agencies regarding suspected unlawful activity or misconduct, whether directly or indirectly related to your use of the AuctionsPlus Platform. For example, where we have reason to suspect fraudulent activity or an infringement of animal welfare legislation.

## 13. Disclaimers

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### 13.1 General

- (a) Subject to clause 14.2(a), you acknowledge and agree that the AuctionsPlus Platform may have minor functionality defects and the AuctionsPlus Platform will be unavailable for scheduled maintenance and emergency maintenance. AuctionsPlus will use its reasonable endeavours to make the AuctionsPlus Platform available but there may be a reasonable number of interruptions or outages.
- (b) AuctionsPlus does not make any representation in relation to, nor guarantee nor accept any liability for:
  - (i) the existence, quality, condition, safety or legality of any Listing or Lot advertised;
  - (ii) the truth, completeness, or accuracy of any Listing, Assessment or the information or data submitted to the Platform by any Vendor, Buyer, Assessor, Agent or any other person (other than AuctionsPlus); or
  - (iii) the capacity of a Vendor to sell any Lot or the capacity of a Buyer to pay the Purchase Price for any Lot.
- (c) AuctionsPlus does not warrant the integrity or creditworthiness of any Vendor, Agent, Assessor, Bidder or Buyer and, in particular, does not provide or conduct any credit-related assessments of prospective Buyers.
- (d) As between you and AuctionsPlus, and subject to clause 14.2(a), each party excludes all conditions, representations, warranties and guarantees that are implied or applied by Law.

## 13.2 Reviews and feedback

AuctionsPlus does not endorse any user opinion, recommendation, or advice expressed through the feedback mechanism on the AuctionsPlus Platform, and expressly disclaims any and all liability in connection with any reviews or user feedback.

## 14. Liability and indemnity

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### 14.1 General liability

- (a) Subject to clause 14.1(d), we exclude any and all liability to you howsoever arising (including negligence) for:
  - (i) Consequential Loss;
  - (ii) losses that you suffer or incur in connection with:
    - (A) the acts or omissions of any Agent, Assessor or other third party you engage or interact with in connection with the Platform, including liability under any Contract of Sale entered between you and another user; and
    - (B) bids or offers not being received, processed or accepted due to technical issues affecting the Platform;
  - (iii) our reasonable actions in denying anyone access to the AuctionsPlus Platform for security reasons or default; and
  - (iv) actions taken in relation to this User Agreement in accordance with our obligations at Law or any order issued by a court of Law or relevant Government Agency, whether directly or indirectly arising in connection with the AuctionsPlus Platform, but excluding where arising from AuctionsPlus' breach of Law that is not caused by the acts or omissions of a user.
- (b) Subject to clause 14.1(d), you exclude any and all liability to us howsoever arising (including negligence) for Consequential Loss.
- (c) Subject to clause 14.1(d), the liability of AuctionsPlus for any loss or damage, howsoever arising (including negligence) suffered by you under or in connection with this User Agreement or your use of the AuctionsPlus Platform in connection with any Claim is limited in the aggregate to the greater of:
  - (i) the re-supply of the service or the payment of the cost of having such services supplied again; and
  - (ii) the Fees paid by you to AuctionsPlus in the 12 months preceding the date of the event or series of connected events giving rise to the Claim.
- (d) Clauses 14.1(a), 14.1(b), and 14.1(c) do not apply:
  - (i) to our liability to you for losses that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the Australian Consumer Law;
  - (ii) to your liability to us for non-payment of Fees or any other express obligation to pay us costs and expenses or any other amount or under any indemnity; or
  - (iii) to the extent that they would cause us or you to contravene a Law or cause the applicable clause to be void or unenforceable.
- (e) A party's liability to the other in connection with this User Agreement will be reduced proportionately to the extent that the other party or any of its personnel caused that loss.

### 14.2 Liability under Australian Consumer Law

- (a) Nothing in this User Agreement is intended to have the effect of excluding any consumer guarantees from AuctionsPlus under the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement of the parties.

- (b) If the Australian Consumer Law applies to any of the goods or services we provide to you under this User Agreement, our liability to you for loss that you suffer or incur relating to our failure to comply with any consumer guarantee set out in the Australian Consumer Law is limited to (at our election):
- (i) in the case of services, the re-supply of the services or the payment of the cost of having the services supplied again; and
  - (ii) in the case of goods, replacing those goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or acquiring equivalent goods, or paying the cost of having the goods repaired,

except that 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 or if the good or service is of a kind ordinarily acquired for personal, domestic, or household use or consumption.

### 14.3 Indemnities

Subject to clause 14.1(e), you agree to defend, indemnify and hold harmless AuctionsPlus from and against any Claim that is made by another person against AuctionsPlus or AuctionsPlus' liability to another person and costs and expenses in connection with such liability arising from:

- (a) a breach by you of this User Agreement or any Contract of Sale; and
- (b) your acts or omissions in connection with this User Agreement or any Contract of Sale including in connection with any Lot that you may offer or any bid or any dispute relating to a Contract of Sale,

except to the extent that the Claim or liability arises from our fraud, wilful misconduct, negligence or breach of this User Agreement.

## 15. Term, suspension and termination

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### 15.1 Term

This User Agreement is binding on you from the date that you first access, use or register for the AuctionsPlus Platform and continues until terminated in accordance with this User Agreement.

### 15.2 Suspension

- (a) We may, at any time, remove any User Data if we, acting reasonably, consider any User Data is in breach of the terms of this User Agreement, or harmful, until the issue has been resolved. We will notify you of such action, prior to or as soon as reasonably practicable after we have taken such action.
- (b) We may suspend your use of and access to the AuctionsPlus Platform and any Listing or other service:
  - (i) where we have been unable to verify your identify or information you have provided to us reasonably required by us to provide the AuctionsPlus Platform;
  - (ii) to mitigate or prevent actual or reasonably suspected fraud, effects of viruses or other harmful code, security breaches or malicious attacks of the AuctionsPlus Platform, illegal activity or other loss, damage or misuse of the AuctionsPlus Platform;
  - (iii) acting reasonably, you have or we suspect you have done all or any of the following: breached any obligations relating to your compliance with Law; committed fraud; by your acts or omissions undertaken Prohibited Conduct; defaulted under a Contract of Sale, including by failing to comply with the applicable dispute resolution process; or breached the AuctionsPlus Code of Conduct;
  - (iv) you have breached other terms of this User Agreement and, acting reasonably, we consider suspension is required to protect other users or AuctionsPlus from loss or damage; or

- (v) to comply with our obligations under any applicable Laws, or where requested by Law enforcement or other Government Agencies, except that where this is not caused by your acts or omissions, we will refund you the Fee for any Listing (or other service) that you have paid for and which we have yet to perform,

until the issue is remedied. We will notify you of such action, prior to or as soon as reasonably practicable after we have taken such action. If AuctionsPlus suspends any Listing or other service where you are not at fault, and the suspension materially affects the benefit of the Listing or other service, you may terminate the Listing or other service on notice and AuctionsPlus will refund the Listing Fees and any other fees paid by you in connection with that Listing or service.

### 15.3 Termination for convenience

- (a) You may terminate your AuctionsPlus Account at any time for convenience pursuant to clause 2.5(a).
- (b) Subject to clause 15.5(b), we may terminate your AuctionsPlus Account at any time for convenience on not less than 7 days' prior written notice to you.

### 15.4 Termination for cause

- (a) We may terminate your AuctionsPlus Account (and all services to you) or one or more services provided to you (including a Listing or other service for a Fee) for any of the following reasons:
  - (i) where we have been unable to verify your identify or any other information reasonably required to provide the AuctionsPlus Platform to you and you have failed to provide us with additional information to enable us to do so within 7 days of our request;
  - (ii) you have breached this User Agreement and fail to remedy the breach within 7 days of our notice to you, requesting you to remedy the breach;
  - (iii) you have repeatedly or persistently breached this User Agreement;
  - (iv) acting reasonably, you have or we suspect you have done any of the following: breached any obligations relating to your compliance with Law; committed fraud; by your acts or omissions undertaken Prohibited Conduct; or breached the AuctionsPlus Code of Conduct;
  - (v) to comply with our obligations under any applicable Laws, or where requested by Law enforcement or other Government Agencies, except that where this is not caused by your acts or omissions, we will refund you the Fee for any Listing (or other service) for which you have paid and which we have yet to perform; or
  - (vi) where you experience an Insolvency Event.
- (b) You may terminate your AuctionsPlus Account (and all services to you) or one or more services provided to you (including a Listing or other service for a Fee) for any of the following reasons:
  - (i) we breach this User Agreement and fail to remedy the breach within 7 days of your notice to us, requesting us to remedy the breach;
  - (ii) we repeatedly or persistently breach this User Agreement; or
  - (iii) where we experience an Insolvency Event.

### 15.5 Consequences of termination

- (a) Subject to clause 15.5(b), if your AuctionsPlus Account is terminated for any reason then in addition to any other rights we may have:
  - (i) your right to use the AuctionsPlus Platform will immediately be limited to the portions of the AuctionsPlus Platform which do not require registration;
  - (ii) we may immediately deactivate your AuctionsPlus Account; and



- (iii) we may retain records relating to your AuctionsPlus Account in accordance with general legal and accounting requirements.
- (b) Our termination of your AuctionsPlus Account for convenience pursuant to clause 15.3(b) or pursuant to clause 2.5(c) does not terminate or affect, any Listing (or other service) for a Fee, agreed to by AuctionsPlus and you prior to the date of termination or if you are a Buyer any Lot for which you have made an offer for or submitted, until completion of the sale of that Lot.

## 16. Dispute Resolution

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### 16.1 Disputes between you and AuctionsPlus

- (a) If a dispute arises between you and AuctionsPlus in relation to this User Agreement, the parties must endeavour to settle any dispute by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, or the Chair's designated representative.
- (b) The Resolution Institute Mediation Rules shall apply to the mediation.
- (c) It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.
- (d) The costs of the mediation must be paid by the parties in equal shares.
- (e) The parties are to use their best endeavours to have the mediation within 60 days of the service of the notice of dispute.
- (f) If the dispute is not resolved by the mediation within 60 days after receipt of the Dispute Notice, either party may commence court or arbitration proceedings. Nothing in this clause 16 shall prevent a party from seeking urgent interlocutory relief.

### 16.2 Disputes between parties to a Contract of Sale

Disputes between parties to a Contract of Sale must be resolved in accordance with the terms of the Contract of Sale.

## 17. General

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### 17.1 Force majeure

Neither party will be in breach of this User Agreement for a failure or delay of performance of its obligations (other than your obligation to pay Fees or any other express obligation to pay us an amount under this agreement) if caused by an event beyond its reasonable control, except that nothing in this clause affects your liability in connection with a Contract of Sale or obligations to another user of the AuctionsPlus Platform.

### 17.2 Notices

- (a) We may provide notices to you by any means including electronically by email, SMS or through the AuctionsPlus Platform.
- (b) Notices sent by regular post by a party shall be deemed to be received by the other party at 9:00am on the sixth Business Day after the date of posting.

### 17.3 Benefit of indemnities

In clauses 3.3(c), 8.2(b) and 14.3 a reference to AuctionsPlus includes its directors, officers, employees, contractors and agents (each, an **Indemnified Party**) and AuctionsPlus holds the benefit of the indemnities under those clauses for itself and on trust for each other Indemnified Party. AuctionsPlus is entitled to vary, amend, enforce, or otherwise act under, this User Agreement without seeking the approval of any other Indemnified Party.

## 17.4 Enduring clauses

Any term that by its nature is intended to survive termination of this User Agreement, including clauses 3.3, 4, 5.5, 11, 12, 13, 14, 15.5, 16 and 17, will survive the termination of this User Agreement for whatever reason.

## 17.5 Jurisdiction

The laws of New South Wales, Australia apply to this User Agreement and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

## 17.6 Severability

To the extent any provision of this User Agreement conflicts with Law, it shall be read down and amended to comply with Law. If any provision of this User Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this User Agreement.

## 17.7 Waiver

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

## 17.8 Assignment

- (a) If you owe us a debt in connection with this User Agreement, we may assign that debt collection claim to a third party at any time by notice to you. Additionally, we may assign our rights or transfer our rights and obligations under this User Agreement to an affiliate or a purchaser of our assets or business, or the part of our assets or business to which this User Agreement relate, on notice to you. Upon assignment or novation, our rights and obligations are binding on and will benefit our respective representatives, successors and assigns.
- (b) You are not entitled to assign your rights under this User Agreement (other than your rights under a Contract of Sale) without AuctionsPlus' prior written consent.

# 18. Definitions and interpretation clauses

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## 18.1 Definitions

In this User Agreement:

- Acceptable Variance** means the permitted variation (if any) with respect to quantity, weight or other characteristic in accordance with the tolerances specified in section 3 of Schedule 2 or Part B of Schedule 3.
- Agent** means a person that is registered and authorised by AuctionsPlus to act as agent for Buyers or Vendors or both, of Livestock, Machinery and other commodities on the AuctionsPlus Platform.
- Assessed Lot** means a Lot for Livestock that is indicated as being 'Assessed' and the Listing for the Lot includes an Assessment.
- Assessment** means a compilation of data pertaining to a Lot for Livestock prepared by a qualified Assessor after physically inspecting the Lot, and presented as an 'Assessment'.
- Assessor** means a Livestock assessor that is registered and authorised by AuctionsPlus to prepare Assessments for Lots listed, or proposed to be listed, for sale on the Platform.
- 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, and includes an Interfaced Auction.

<b>AuctionsPlus (or we, us)</b>	means AuctionsPlus Pty Ltd ACN 072 403 984.
<b>AuctionsPlus Account</b>	means a registered user account on the AuctionsPlus Platform.
<b>AuctionsPlus Platform (or Platform)</b>	means the digital online trading platform for the sale of Lots made available by AuctionsPlus at <a href="http://www.auctionsplus.com.au">www.auctionsplus.com.au</a> , or at such other domain as AuctionsPlus nominates from time to time and any other services provided by AuctionsPlus to you.
<b>AUS-MEAT</b>	means AUS-MEAT Limited ACN 082 528 881.
<b>AUS-MEAT Language</b>	means the terminology and criteria for description of Livestock and measurement of carcasses prescribed or adopted by AUS-MEAT.
<b>Australian Consumer Law</b>	means Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth) and the corresponding provisions of the fair trading legislation.
<b>Bidder</b>	means any user who is registered as a Buyer and includes when a bid is placed and recorded in the bid log and who makes an offer or places a bid through the AuctionsPlus Platform.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.
<b>Buy Now</b>	means a category of Listing where Buyers are given the option to purchase the Lot immediately, at a price nominated by the Selling Agent, without having to bid at an Auction.
<b>Buy Types</b>	means the various categories of Listings and sale formats AuctionsPlus makes available from time to time, such as Auctions, Buy Now, Request to Buy and Display Price.
<b>Buyer</b>	means any user who is registered and approved by AuctionsPlus to buy Livestock, Machinery and other commodities (or any one or more of these things) on the AuctionsPlus Platform.
<b>Catalogue</b>	means the catalogue of Lots published on the AuctionsPlus Platform in advance of an Auction that sets out, among other things, the order in which the Lots will be auctioned.
<b>Certified</b>	means, in respect of scales, weighbridge scales or abattoir scales that are approved or authorised by the competent authority in the State or Territory where the scales are situated.
<b>Claim</b>	means any claim, notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this User Agreement or third party.
<b>Code of Conduct (or AuctionsPlus Code of Conduct)</b>	means AuctionsPlus' code of conduct as amended from time to time, the current version of which is available at <a href="https://media.auctionsplus.com.au/Uploads/auctionsplus-code-of-conduct.pdf">https://media.auctionsplus.com.au/Uploads/auctionsplus-code-of-conduct.pdf</a> .
<b>Conflict of Interest</b>	means any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise and includes, where you are an Assessor, Selling Agent or Delivery Agent in respect of a Lot: <ul style="list-style-type: none"> <li>(a) you own the Lot or have a financial interest in the Lot (directly or indirectly, including where the Vendor is a company in which you are a director or shareholder); or</li> <li>(b) the person that owns the Lot is a family member, partner, or otherwise related to you in some way, or financially dependent on you.</li> </ul>

<b>Consequential Loss</b>	means: <ul style="list-style-type: none"> <li>(a) loss or corruption of data, loss of opportunity, loss of revenue, loss of profits, loss of contract, loss of business, loss of production and loss of goodwill; and</li> <li>(b) any punitive, exemplary, indirect or consequential loss.</li> </ul>
<b>Content</b>	means all data, statistical information, graphs, reports, branding (including registered and unregistered trade marks), images, information, videos, training resources and other content published or otherwise made available by AuctionsPlus on the Platform.
<b>Contract of Sale</b>	has the meaning given in clause 1.2(c).
<b>Defect</b>	means: <ul style="list-style-type: none"> <li>(a) in respect of an Assessed Lot, a failure of a Lot to conform to an Assessment by reference to: <ul style="list-style-type: none"> <li>(i) any of the traits specified in Table 1 or other issues specified in Tables 2 or 3 in Part B of Schedule 3, where such failure is outside of the permitted tolerances for that type of Lot specified in Part B of Schedule 3; or</li> <li>(ii) in relation to carcasses of Slaughter Stock, seed damage, chemical residue(s), or carcass condemnation (in addition to anything falling under (a)(i) above); and</li> </ul> </li> <li>(b) in respect of a Described Lot, a failure of a Described Lot to conform to the Catalogue or Listing by reference to any of the characteristics specified in the table at section 3.1 of Schedule 2 where such failure is outside of the permitted tolerances specified in that table.</li> </ul>
<b>Delivery</b>	means the delivery of the Lot by any of the methods set out in the Contract of Sale, and <b>Deliver</b> has a corresponding meaning.
<b>Delivery Agent</b>	means a person who has been accredited by AuctionsPlus as a 'Delivery Agent' and is nominated by the Selling Agent to be the point of contact for the Buyer in relation to purchasing the Lot, invoicing and Delivery.
<b>Described Lot</b>	means any Lot that is not an Assessed Lot.
<b>Display Price</b>	means a category of Listing where a Lot is listed in classified advertisement format, with contact details for the Selling Agent, and an indicative price, displayed.
<b>Fees</b>	means all fees payable by you to AuctionsPlus in connection with this User Agreement, including Listing Fees and Sale Premiums.
<b>Force Majeure Event</b>	means any event or circumstance beyond the reasonable control of the affected party, including an act of god, war, strike, or act of terrorism, but excluding: <ul style="list-style-type: none"> <li>(a) livestock market conditions; or</li> <li>(b) adverse seasonal conditions not physically preventing Delivery, mechanical failures, or delayed shipping.</li> </ul>
<b>Government Agency</b>	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.
<b>GST</b>	means goods and services tax and includes any replacement or subsequent similar tax.

<b>In-Person Auction Terms and Conditions</b>	means, in connection with an Interfaced Auction, the terms and conditions that the auctioneer announces or posts as applicable to the sale for an auction in person.
<b>Insolvency Event</b>	in relation to a party means any of the following: <ul style="list-style-type: none"> <li>(a) the party enters into a scheme of arrangement with its creditors;</li> <li>(b) the party is wound up or dissolved, or an administrator, liquidator or receiver is appointed;</li> <li>(c) the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence; or</li> <li>(d) the party is otherwise bankrupt or insolvent or unable to pay its debts when they fall due.</li> </ul>
<b>Intellectual Property Rights</b>	means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, circuit layouts, copyright and analogous rights, trade secrets, confidential information, know how, processes, concepts and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time, but excluding moral rights.
<b>Interfaced Auction</b>	means an Auction on the AuctionsPlus Platform that is facilitated alongside an in-person auction, where bids can be made online using the AuctionsPlus Platform or placed with an auctioneer in-person.
<b>Laws</b>	means: <ul style="list-style-type: none"> <li>(a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;</li> <li>(b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the supply of the Lot under this User Agreement; and</li> <li>(c) common law, equity and all other laws from which legal rights and obligations may arise.</li> </ul>
<b>Legal Compliance Terms</b>	means: <ul style="list-style-type: none"> <li>(a) any term or condition prescribed by Law including any term or condition mandated by Law relating to auctions; and</li> <li>(b) provisions of the Vendor Terms and Conditions or Selling Agent Terms and Conditions that are required for compliance with Law, including any term or condition mandated by Law relating to auctions.</li> </ul>
<b>Listing</b>	means a listing for a Lot (or Lots) on the AuctionsPlus Platform.
<b>Listing Fee</b>	means the fee payable to AuctionsPlus for listing a Lot for sale on the Platform in accordance with clause 5.1.
<b>Livestock</b>	means cattle, sheep, goats, pigs or any other animals listed for sale on the AuctionsPlus Platform.
<b>LivestockBI</b>	means the market intelligence platform made available by AuctionsPlus at <a href="https://pages.auctionsplus.com.au/livestockbi">https://pages.auctionsplus.com.au/livestockbi</a> , or at such other domain as AuctionsPlus nominates from time to time.

<b>Lot</b>	means any Livestock, Machinery or other commodity listed for sale on the AuctionsPlus Platform by a Selling Agent on behalf of a Vendor, which includes both Assessed Lots and Described Lots.
<b>Machinery</b>	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 Platform.
<b>Max Bid</b>	means the functionality of the AuctionsPlus Platform that allows a user to set a maximum bid price in advance of an Auction, that is then placed automatically on behalf of the user during the Auction.
<b>NLIS</b>	means the National Livestock Identification System.
<b>PIC</b>	means Property Identification Code.
<b>Prohibited Conduct</b>	has the meaning given in clause 3.3(a).
<b>Purchase Price</b>	means: <ul style="list-style-type: none"> <li>(a) in the case of an Auction, the amount of the highest bid where the bid equals or exceeds the Vendor's reserve price; or</li> <li>(b) otherwise, the amount of the offer accepted by the Selling Agent for the Lot.</li> </ul>
<b>Quality/ Compliance with Description Warranty</b>	has the meaning given in section 7.2(c) of Schedule 1.
<b>Request to Buy</b>	means a category of Listing that enables users to submit offers for a Selling Agent's consideration and acceptance outside of an Auction.
<b>Sale Premium</b>	means the fee (if any) applicable to the Lot, payable by the Selling Agent to AuctionsPlus in accordance with clause 5.2.
<b>Sales Warranties and Acceptance</b>	has the meaning given in clause 10.3(c)(ii).
<b>Selling Agent</b>	means an Agent for a Vendor.
<b>Selling Agent Terms and Conditions</b>	means any terms and conditions mandated by the Selling Agent for the sale of a Lot through or in connection with the AuctionsPlus Platform, as specified in the Listing.
<b>Sequential Auction</b>	means an Auction where Lots are sold sequentially one after the other.
<b>Simultaneous Auction</b>	means an Auction where all Lots are available for sale at the same time.
<b>Slaughter Stock</b>	means animals purchased by a processor for immediate slaughter following Delivery.
<b>Standard Terms of Sale</b>	means Schedule 1 (Standard Terms of Sale).
<b>Tick Area</b>	means an area that is designated by a Government Agency as a "cattle tick infested zone".
<b>User Agreement</b>	means this document, including the Schedules.
<b>User Data</b>	has the meaning given in clause 4.1.
<b>Vendor</b>	means the seller of any Lot through or in connection with the Platform.
<b>Vendor Terms and Conditions</b>	means terms and conditions mandated by a Vendor for the sale of a Lot through or in connection with the AuctionsPlus Platform, as specified in the Listing.

## 18.2 Interpretation

In this User Agreement, unless the contrary intention appears:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this User Agreement;
- (b) the singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a 'person' or 'entity' includes any individual, firm, company, partnership, joint venture, unincorporated body or association, trust, corporation or other body corporate and any authority (whether or not having a separate legal personality);
- (e) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this User Agreement and a reference to this User Agreement includes any clause, annexure, exhibit and schedule;
- (f) a reference to a document (including this User Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to a party to any document includes that party's successors and permitted assigns;
- (h) a reference to time is to time in Sydney, Australia;
- (i) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (j) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this User Agreement do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (k) a reference to a body, other than a party to this User Agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (l) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to Australian dollars.

# Schedule 1 Standard Terms of Sale

## 1. Overview

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### 1.1 Application

These Standard Terms of Sale apply to all sales facilitated using the AuctionsPlus Platform, including sales that occur outside of the AuctionsPlus Platform in respect of a Display Price Listing.

### 1.2 When Contract is formed

A Contract of Sale is formed between the Buyer and Vendor, in conjunction with the Selling Agent, at the time specified in clause 10.1 of this User Agreement, depending on the Buy Type.

### 1.3 Documents that form Contract of Sale

The documents that form the Contract of Sale are those specified at clauses 10.2 and 10.3 of this User Agreement. If there is any inconsistency between the documents which make up the Contract of Sale, then the order of precedence specified at clauses 10.2 and 10.3 shall apply.

### 1.4 Slaughter Stock

The Vendor and Buyer acknowledge and agree that where a Lot is Slaughter Stock, the additional terms set out in Part C of Schedule 3 will apply. Where there is inconsistency between these Standard Terms of Sale and Part C of Schedule 3, Part C of Schedule 3 will prevail to the extent necessary to resolve the inconsistency.

### 1.5 Interpretation

The definitions and rules of interpretation in this User Agreement apply to the Contract of Sale.

## 2. Supply of Lots

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### 2.1 Supply of Lots

The Vendor must, sell and the Buyer will buy, the Lot at the Purchase Price on the terms of the Contract of Sale.

## 3. Delivery and acceptance of Lots

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### 3.1 Transportation obligations

(a) Unless another method of Delivery is specified in the Listing, or agreed between the Buyer, Selling Agent and Vendor in writing:

(i) the Vendor must:

(A) prepare the Lot for Delivery, including where the Lot is Livestock by tagging Livestock with appropriate NLIS devices and ensuring Livestock are fit for their intended journey for the purposes of the Land Transport Standards and MLA Fit to Load Guidelines; and

(B) ensure each Lot is available for collection from the pick-up address nominated in the Listing at the time and date specified in the Listing (or, if no pick-up date is listed, immediately following the sale);

(ii) the Buyer must arrange for its nominated service provider to collect and transport the Lots from the Vendor's property within the time specified in the Listing (or if no pick-up date is listed at any time immediately following the listing until 7 days thereafter); and

(iii) the Buyer is responsible for all transportation costs associated with the Delivery of the Lots.



- (b) The Buyer must take delivery of and pay for the entirety of all Lots purchased by it from the Vendor and which the Vendor makes available for Delivery to the Buyer in accordance with the Contract of Sale.
- (c) Delivery occurs on collection of the Lot from the Vendor by the Buyer.

### 3.2 Inspection and acceptance of Lots

- (a) The Buyer must visually inspect the Lot, and check for any Defects within 48 hours of receiving Delivery of the Lot (regardless of day of the week).
- (b) The Lot will be considered to have been Delivered in compliance with the Quality/Compliance with Description Warranty and accepted by the Buyer unless the Buyer gives the Selling Agent and AuctionsPlus written notice of the Defect within 48 hours of receiving Delivery of the Lot (or such longer applicable period set out in Schedule 3).
- (c) If the Buyer gives the Selling Agent and AuctionsPlus notice under section 3.2(b), then subject to section 1.4, it must:
  - (i) preserve the Lot and maintain the value of the Lot, including, in the case of Livestock, providing appropriate food, water and veterinary treatment for the Lot, until such time as the dispute is resolved; and
  - (ii) follow all instructions provided by AuctionsPlus pertaining to the management of the Lot.
- (d) The Buyer, Selling Agent and Vendor agree that any dispute concerning a Defect will be subject to the dispute resolution process in Schedule 2 (if the Lot is a Described Lot) or Schedule 3 (if the Lot is an Assessed Lot).

## 4. Title and risk

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### 4.1 Title

- (a) Title to a Lot will pass to the Buyer on payment of the Purchase Price.
- (b) If prior to payment of the Purchase Price, the Buyer takes possession of the Lot, then except in the case of Slaughter Stock, the Buyer must not dispose of, or deal with, the Lot in any manner inconsistent with the Vendor's title, until payment of the Purchase Price and if the Buyer fails to pay the Purchase Price by the due date, the Buyer authorises the Vendor and its representatives to enter the Buyer's premises and any premises occupied by it or its Agent at any time and without notice and take possession of the Lot.

### 4.2 Risk

Subject to section 5 of these Standard Terms of Sale, risk in a Lot passes to the Buyer:

- (a) in the case of Livestock sold on the basis of carcase weight, when the Lot is weighed over the abattoir scales; and
- (b) in all other cases, at the time the Buyer takes possession and control of the Lot. In the case of Livestock, the Buyer takes possession and control of the Lot (and risk transfers) for each animal individually, as each animal is loaded onto the truck of the Buyer's freight services provider.

## 5. Tick Areas and other issues affecting Livestock

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### 5.1 General

The Vendor agrees to comply with clause 6.1(d)(iv) of the User Agreement (lame, blind or diseased Livestock). Each of the Vendor and Buyer agree to comply with clause 9 of the User Agreement (Additional responsibilities relating to Livestock).

### 5.2 Tick Areas

If the Lot is Livestock and is sold from a Tick Area:

- (a) the Selling Agent and Vendor must specify that the Lots are being sold from a Tick Area in the Listing and must also specify whether the Lots will be sold as 'clear of the dip' or 'not clear of the dip';
- (b) where Lots are specified as being sold 'clear of the dip':
  - (i) the Vendor must arrange at its cost (unless the Assessment or Vendor Terms and Conditions specify otherwise) for all Livestock comprised in the Lot to be dipped and pass any inspection required in order for the Livestock to be lawfully transferred outside of the Tick Area; and
  - (ii) risk in the Lot passes to the Buyer on the later of:
    - (A) the time the Lot is cleared of the dip; and
    - (B) the time the Buyer takes possession and control of the Lot; and
- (c) where Lots are specified as being sold 'not clear of the dip':
  - (i) the Selling Agent and Vendor must nominate a Delivery location within the Tick Area;
  - (ii) risk in the Lot passes to the Buyer at the time the Buyer takes possession and control of the Lot; and
  - (iii) if the Buyer wishes for the Lot to be transferred outside of the Tick Area, the Buyer shall be responsible for all costs associated with lawfully doing so.

### 5.3 Quarantine and movement restrictions

The Vendor indemnifies the Buyer in respect of losses, fines, liability and costs and expenses suffered or incurred by the Buyer as a result of the Buyer transporting Livestock from the location for Delivery specified in the Listing in breach of Laws concerning quarantine restrictions or movement restrictions if the Vendor did not disclose in the Listing that the Livestock was being sold from an area subject to such quarantine or movement restrictions.

### 5.4 Identification and declaration requirements

The Vendor must comply with any identification and declaration requirements, including those relating to hormonal growth, that apply in the State or Territory from which the Livestock are sold.

## 6. Purchase Price and payment

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### 6.1 Purchase Price

The Buyer must pay the Selling Agent the Purchase Price, any applicable premiums charged by the Selling Agent and taxes in accordance with the payment terms specified in the Listing. If no payment terms are specified in the Listing, the Buyer must pay the Selling Agent the Purchase Price in full:

- (a) in the case of Livestock sold on the basis of carcase weight, within 7 days after the Lot is weighed over the abattoir scales; and
- (b) in all other cases, prior to Delivery (or, if later, the last date for Delivery).

### 6.2 Components of the Purchase Price

- (a) Unless otherwise stated in this agreement, the Purchase Price is inclusive of all federal, state and territory taxes and duties (other than GST). The Purchase Price excludes GST.
- (b) The Vendor is responsible for payment of any applicable cattle, sheep or goat transaction levy.

### 6.3 Price adjustments

Price adjustments, including price adjustments and refunds applicable to Slaughter Stock, will be calculated in accordance with Schedule 3 (Dispute Resolution for Assessed Lots).

## 7. Warranties

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### 7.1 Mutual warranties

Each party warrants to the other party that:

- (a) it has the power to execute, deliver and perform its obligations under the Contract of Sale;
- (b) all necessary corporate and other action has been taken to authorise the execution, delivery and performance of the Contract of Sale; and
- (c) it is not the subject of an Insolvency Event.

### 7.2 Vendor warranties

The Vendor warrants that:

- (a) it is the legal and beneficial owner of the Lot free of all mortgages, charges, liens, encumbrances and adverse interests;
- (b) it is entitled and competent to sell, deliver and transfer unencumbered legal and beneficial title to the Lot in accordance with the Contract of Sale; and
- (c) the Lot complies with:
  - (i) the details set out in the Listing or any Acceptable Variance to those details;
  - (ii) in the case of Assessed Lots, the Assessment (except that the Lot, as delivered may vary with respect to quantity, weight or other characteristic in accordance with the tolerances specified in Part B of Schedule 3); and
  - (iii) any express representation, warranty, condition or other assurance provided by the Vendor in the Vendor Terms and Conditions or the Selling Agent Terms and Conditions that are additional to those set out in section 7.2(c)(i) and (ii) of these Standard Terms of Sale that relate in any way to the quality, compliance with any description, fitness for purpose, compliance with Laws or standards of the Lot (but excluding any provision dealing with any period for acceptance or any remedy associated with such warranty),  
  
(collectively the **Quality/Compliance with Description Warranty**).

### 7.3 Buyer warranties and acknowledgement

- (a) The Buyer warrants to the Vendor and Selling Agent that it has fully informed itself in relation to all legal and operational requirements related to the purchase, handling and transportation of the Lot and made its own assessment of the suitability of the Lot for the use to which the Lot will be put.
- (b) The Buyer acknowledges that unless expressly stated otherwise, for Assessed Lots graphics, photographs or videos provided by the Vendor, Assessor or Selling Agent are for illustrative purposes only and do not form part of the Assessment.

## 8. Liability

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### 8.1 Non-Excludable Rights

- (a) Nothing in this Contract of Sale is intended to have the effect of excluding any consumer guarantees under the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement of the parties (**Non-Excludable Rights**).
- (b) If a consumer guarantee under the Australian Consumer Law applies to the Lot, and the Vendor fails to comply with that guarantee, to the extent permitted by Law, the Vendor's liability for that failure is limited to (at the Vendor's option), 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 or if a Lot is of a kind ordinarily acquired for personal, domestic, household use or consumption.

## 8.2 Described Lots

Subject to any Non-Excludable Rights the Buyer may have:

- (a) subject to the express provisions of the Contract of Sale, all Described Lots are purchased on an "as is, where is" basis; and
- (b) subject to the express provisions of the Contract of Sale and Schedule 2, the Buyer is not entitled to a refund or any form of compensation from the Vendor as a result of any faults or imperfections in the Lot.

## 8.3 No liability for Lots within tolerance

The Buyer agrees there may be a variance between the Lot and the details set out in the Listing of the Lot (and in the case of Assessed Lots, the Assessment); however, provided the variance is no greater than the Acceptable Variance, the Buyer will have no claim against the Vendor whatsoever by reasons of this variance.

# 9. Disputes

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## 9.1 Described Lots

Disputes relating to whether there are any Defects in a Described Lot are subject to Schedule 2 of this User Agreement.

## 9.2 Assessed Lots

Disputes relating to whether there are any Defects in an Assessed Lot, including Assessed Lots that are Slaughter Stock, are subject to Schedule 3 of this User Agreement.

## 9.3 Delivery of entire Lot

The Buyer is only entitled to have a dispute resolved in accordance with Schedule 2 or Schedule 3 (whichever is applicable) if the Buyer has taken delivery of the entire Lot.

# 10. Force Majeure

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- (a) Where a Vendor is impacted by a Force Majeure Event and cannot Deliver the Lot (or make the Lot available for Delivery), within the nominated period for Delivery, the Buyer may:
  - (i) agree to an extension of the due date for Delivery; or
  - (ii) terminate the Contract of Sale, in which case the Vendor must provide a full refund of the Purchase Price (if already paid).
- (b) Where the Buyer is impacted by a Force Majeure Event and cannot take delivery of the Lot by the agreed date for Delivery, the Vendor may elect to:
  - (i) agree to an extension of the due date for Delivery; or
  - (ii) terminate the Contract of Sale, and refund the Purchase Price.
- (c) A party seeking to be excused from its performance of an obligation under the Contract of Sale because of a Force Majeure Event must provide evidence to the other party substantiating the existence of the Force Majeure Event.
- (d) Where a Buyer requests an extension of the Delivery date (whether because of a Force Majeure Event or otherwise) then, subject to section 10(e), the Buyer will no longer be entitled to raise a Notice of Dispute under Schedule 3 (Dispute Resolution for Assessed Lots) in relation to any factors that change over time (such as weight, fat score and dentition).
- (e) Where a Selling Agent and Buyer have agreed in writing that the Lot may be Delivered on a date that is outside of the window for Delivery specified in the Listing, and the Selling Agent has confirmed in writing that the Lot will be delivered in accordance with the Assessment notwithstanding the alternative date for Delivery, the Buyer will not lose its entitlement to raise a

Notice of Dispute under Schedule 3 (Dispute Resolution for Assessed Lots) in relation to factors that change over time (such as weight, fat score and dentition).

## 11. GST

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### 11.1 Preliminary

Words or expressions used in this section that are defined in *A New Tax System (Lot and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

### 11.2 GST exclusive

Unless otherwise stated, any amount specified in this agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### 11.3 Liability to pay GST

If a party makes a taxable supply under this agreement (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

### 11.4 Tax invoice

Notwithstanding the foregoing, the Recipient is not obliged under this agreement to pay the amount of any GST payable until the Selling Agent provides it with a valid tax invoice for the taxable supply.

### 11.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this agreement, the amount paid or payable by the Recipient pursuant to section 11.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

### 11.6 Reimbursement of expenses

If a third party makes a taxable supply and this agreement requires a party to this agreement (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

### 11.7 Non merger

This section does not merge on completion and will continue to apply after expiration or termination of this agreement.

## 12. General

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### 12.1 Jurisdiction

The laws of New South Wales apply to this Contract of Sale and subject to section 9, the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

### 12.2 Severability

If any provision of this Contract of Sale is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this Contract of Sale.

## Schedule 2 Dispute Resolution for Described Lots

### 1. Application of this schedule

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- 1.1 This Schedule 2 applies to disputes relating to alleged Defects in a Described Lot where the Described Lot has been updated as “sold” on the AuctionsPlus Platform only.
- 1.2 If a dispute arises in relation to an alleged Defect in a Described Lot, the parties agree that it must be decided in accordance with the provisions of this Schedule 2. Each party hereby undertakes not to commence any court or arbitration proceedings in relation to such a dispute until all provisions described in this Schedule 2 (where applicable) have been carried out, except for urgent interlocutory relief.
- 1.3 The parties agree that for the duration of the dispute resolution process, the party in possession of the Described Lot must preserve, manage and maintain the Lot.

### 2. Disputes as to the description of a Described Lot

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#### 2.1 Reporting and negotiating period

- (a) If, upon receipt by the Buyer, a Buyer of a Described Lot identifies a Defect in the Described Lot, the Buyer must:
  - (i) report the Defect in writing to AuctionsPlus and the Selling Agent or Vendor within 48 hours of receipt of the Described Lot. Adequate supporting evidence (such as photographs or a third party inspection report) must be supplied to AuctionsPlus and the Vendor within 48 hours of receipt of the initial report; and
  - (ii) seek to resolve the dispute by entering good faith negotiations with the Vendor or Selling Agent within 7 days of notification to the Selling Agent or Vendor of the Defect.
- (b) If notified of the existence of a Defect, the Selling Agent (or Vendor, as applicable) must promptly negotiate in good faith to resolve the dispute with the Buyer. A negotiated outcome may include, for example, a price adjustment.

#### 2.2 If no negotiated resolution reached

- (a) If the Buyer has followed the process set out in section 2.1 of this Schedule 2 and has been unable to reach a negotiated outcome with the Vendor within 7 days of notification to the Selling Agent (or Vendor, as applicable) of the Defect, the Buyer must promptly notify AuctionsPlus and provide AuctionsPlus and the Vendor or Selling Agent any other evidentiary material on which it relies.
- (b) The Vendor or Selling Agent must within 5 days of receiving the documents and materials referred to in section 2.2 of this Schedule 2:
  - (i) advise AuctionsPlus and the Buyer whether it agrees or disagrees with the Buyer's allegations and, if it disagrees, the reasons why it disagrees; and
  - (ii) provide to AuctionsPlus and the Buyer all relevant supporting documents and other evidentiary material on which it relies.
- (c) The Buyer and the Vendor and Selling Agent agree as follows:
  - (i) the AuctionsPlus CEO shall determine the Dispute as expert in accordance with this Schedule 2 and according to law;
  - (ii) the expert determination shall be conducted in accordance with Expert Determination Rules being the expert determination rules published at [expert determination rules](#)<sup>1</sup> except that the AuctionsPlus CEO is agreed to be the Expert for the purposes of these Rules;

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<sup>1</sup> <https://5152284.fs1.hubspotusercontent-na1.net/hubfs/5152284/Expert%20Determination%20Rules.pdf>  
AuctionsPlus User Agreement

- (iii) terms of the Expert Determination Rules are hereby deemed incorporated into the Contract of Sale;
  - (iv) AuctionsPlus CEO does not act as arbitrator and is deemed not to be acting in an arbitral capacity;
  - (v) the decision of the AuctionsPlus CEO is final and binding in respect of all matters other than matters of law or in the case of manifest error, fraud or bad faith;
  - (vi) the costs and expenses of AuctionsPlus shall be borne and paid equally by both parties; and
  - (vii) the AuctionsPlus CEO may, in his or her absolute discretion, decide on the procedure to be adopted in reaching the expert's determination and the parties shall comply with AuctionsPlus' requirements.
- (d) You agree that AuctionsPlus and the AuctionsPlus CEO are not liable to you for or in respect of any act or omission in the discharge or purported discharge of their respective functions under this agreement unless such act or omission is shown to have been fraudulent or in bad faith;
- (e) The Buyer will be entitled to a full refund from the Vendor for the Purchase Price for the Described Lot (or if the Buyer 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:
- (i) the Buyer has reported the Defect in writing to AuctionsPlus and the Selling Agent or Vendor within 48 hours of receipt of the Described Lot, together with adequate supporting evidence (such as photographs) to enable the AuctionsPlus CEO to confirm the existence of a Defect; and
  - (ii) the AuctionsPlus CEO determines that a Defect exists in accordance with Contract of Sale.
- (f) Unless otherwise agreed between a Buyer and Selling Agent or Vendor, within 7 days of receiving notice from AuctionsPlus under section 2.2(e)(ii) of this Schedule 2:
- (i) if the Buyer has not paid for the Described Lot, the Buyer must return the Described Lot subject of the Defect to the Vendor or Selling Agent and the Vendor or Selling Agent must promptly pay any associated costs of the return (including freight costs, any emergency animal health costs required to prevent health implications, and agistment at pro rata rates according to the number returned); and
  - (ii) if the Buyer has paid for the Described Lot, the Selling Agent or Vendor must refund the Purchase Price paid by the Buyer for that Described Lot and the Buyer must return the Described Lot subject to the Defect to the Selling Agent or Vendor and the Selling Agent or Vendor must promptly pay any associated costs of the return (including freight costs, any emergency animal health costs required to prevent health implications, and agistment at pro rata rates according to the number returned).
- (g) No remedy other than those provided for in sections 2.2(e) and 2.2(f) above is available to the Buyer through the expert determination process set out in this Schedule.

### 3. Tolerances for Described Lots

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3.1 The permitted tolerances for a Described Lot are set out below.

<b>Commodity</b>	<b>Characteristic</b>	<b>Tolerance (if applicable)</b>
Machinery	Make	Nil
	Model	Nil
	Hours	+ or - 50 hours (based on hours specified in Catalogue)
	Odometer (Kilometers)	+ or – 100 kilometers (based on kms specified in Catalogue)
	Registration	Nil
Livestock – Sheep, Cattle, Goats	Sex or Individual Animal ID	Nil
Equine	Sex or Individual Animal ID	Nil
Alpacas	Sex or Individual Animal ID	Nil
Dogs	Sex or Individual Animal ID	Nil



## Schedule 3 Dispute Resolution for Assessed Lots

### Part A Dispute Resolution Framework

#### 1. Application of this schedule

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- 1.1 This Part A of Schedule 3 applies to all disputes relating to alleged Defects in Assessed Lots.
- 1.2 If a dispute arises in relation to an Assessed Lot, the parties agree that it must be decided in accordance with the provisions of this Schedule 3. Each party hereby undertakes not to commence any court or arbitration proceedings in relation to such a dispute until all provisions described in this Schedule 3 (where applicable) have been carried out, except for urgent interlocutory relief.
- 1.3 The parties agree that for the duration of the dispute resolution process, the party in possession of the Assessed Lot must preserve, manage and maintain the Lot.
- 1.4 In this Schedule 3:
- (a) **Dispute** means any dispute that arises out of or in connection with a Defect in the Assessed Lot;
  - (b) **Expert Determination Rules** means the expert determination rules published at [expert determination rules](#)<sup>2</sup>; and
  - (c) **Mediation Rules** means the mediation rules published at [mediation rules](#)<sup>3</sup>.

#### 2. Stage 1: Negotiation

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- 2.1 If, upon receipt by the Buyer, a Buyer of an Assessed Lot identifies a Defect in the Assessed Lot, the Buyer must:
- (a) give written notice of the Defect (**Notice of Dispute**) to AuctionsPlus or the Vendor or Selling Agent within 48 hours of Delivery of the Lot (or such longer period specified in column 2 of Table 3 in Part B of this Schedule or Part C of this Schedule), with such notice to specify:
    - (i) the nature of the Defect;
    - (ii) the legal and factual issues involved;
    - (iii) its contentions in relation to those issues; and
    - (iv) the quantum of its claim or other remedy being sought calculated by reference to Part B and Part C of this Schedule 3, where applicable; and
  - (b) provide relevant supporting documents and other evidentiary material on which it relies to the Selling Agent and AuctionsPlus within 48 hours of giving of the Notice of Dispute unless third party reports (such as from a vet) are required then the time for providing these reports is 7 days from the giving of the Notice of Dispute. Adequate supporting evidence (such as photographs or a third party inspection report) must be supplied within those time frames; and
  - (c) promptly seek to resolve the Dispute by entering informal good faith negotiations with the Selling Agent or Vendor.
- 2.2 If notified of the existence of a Defect in accordance with section 2.1 of this Schedule 3, the Selling Agent or Vendor must promptly negotiate in good faith to resolve the Dispute with the Buyer. A negotiated outcome may include, for example, a price adjustment calculated by reference to the tables at Part B of this Schedule, where applicable.

#### 3. Stage 2: Mediation

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- 3.1 If within 10 days (or such shorter period agreed by the parties) of the Notice of Dispute being served, the Dispute is not resolved, the parties must refer the Dispute to AuctionsPlus to facilitate a mediation in

<sup>2</sup> <https://5152284.fs1.hubspotusercontent-na1.net/hubfs/5152284/Expert%20Determination%20Rules.pdf>

<sup>3</sup> <https://5152284.fs1.hubspotusercontent-na1.net/hubfs/5152284/Mediation%20Rules.pdf>

accordance with this Schedule 3 and the Mediation Rules. The parties must co-operate with AuctionsPlus as facilitator.

- 3.2 The mediator will be a person, nominated by the CEO of AuctionsPlus (or his or her delegate for this purpose) (and may be a person who is an employee of AuctionsPlus), who accepts the appointment as mediator.
- 3.3 The mediator is entitled to appoint a third party to investigate and provide a report to the mediator in relation to some or all of the matters in Dispute.
- 3.4 The mediation will commence not later than 5 days (unless a longer period is agreed by the parties) after the date of referral to AuctionsPlus for mediation.
- 3.5 If notwithstanding this section 3, the Vendor and/or Selling Agent does not comply with the requirements for mediation in accordance with the timeframes in this section 3 then the Dispute will automatically proceed to Expert Determination.

#### 4. Stage 3: Expert determination

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- 4.1 If the Dispute is not settled 7 days after the first day of mediation (or such longer period as may be agreed between the parties) the Dispute can be referred to expert determination. If the Buyer elects one of the other remedies available pursuant to Part B of this Schedule and the Vendor and/or Selling Agent accepts the Buyer's election, then the Dispute shall not proceed to expert determination. If the Vendor and/or Selling Agent disputes the Buyer's election, then the dispute shall proceed to expert determination.
- 4.2 The expert determination shall be conducted by three experts who are not within the employ of AuctionsPlus (decision to be by majority).
- 4.3 Unless otherwise agreed between the parties within two Business Days of the referral to expert determination, the experts will be the persons nominated by the CEO of AuctionsPlus (or his or her delegate for this purpose) who accepts the appointment as experts.
- 4.4 The expert determination will commence not later than 7 days after the date of referral to AuctionsPlus for expert determination.
- 4.5 The expert determination shall be administered by AuctionsPlus and a representative of AuctionsPlus is entitled to attend any hearings (but will not be one of the experts).
- 4.6 The expert determination shall be conducted in accordance with this Schedule 3 and the Expert Determination Rules.
- 4.7 The experts shall not include the mediator unless all of the parties consent in writing to the mediator so acting, however, the mediator may attend any hearings as part of the expert determination process (unless objected to by any of the parties).
- 4.8 The experts or AuctionsPlus are entitled to appoint a third party to investigate and provide a report to the experts in relation to some or all of the matters in Dispute and the experts are entitled to take into account the matters in this report in making their determination.
- 4.9 The identity of the experts will not be disclosed to the parties in the Dispute and the identity of the parties will not be disclosed to the experts.
- 4.10 The experts may, at their absolute discretion, decide on the procedure to be adopted in reaching the experts' determination and the parties shall comply with the experts' requirements.
- 4.11 The experts do not act as arbitrators.
- 4.12 The decision of the experts is final and binding in respect of all matters other than matters of law or in the case of manifest error, fraud or bad faith.
- 4.13 The parties must pay AuctionsPlus a fixed sum of \$1,000 plus GST plus any reasonable disbursements incurred by AuctionsPlus. Those costs and expenses shall be borne and paid equally by both parties.

## 5. General provisions

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- 5.1 All sections of this Schedule 3 survive termination of the Contract of Sale.
- 5.2 The terms of the Mediation Rules and the Expert Determination Rules are hereby deemed incorporated into the Contract of Sale.
- 5.3 You agree that the mediator, the experts and AuctionsPlus are not liable to you for or in respect of any act or omission in the discharge or purported discharge of their respective functions under this agreement unless such act or omission is shown to have been fraudulent or in bad faith.

## Part B Defects and Remedies in respect of Assessed Lots

### 1. Introduction

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- 1.1 This Part B applies to all disputes relating to alleged Defects in Assessed Lots (including Slaughter Stock). Part C also applies to Slaughter Stock.
- 1.2 The rights and remedies provided for in Table 1 and Table 2 below only apply if the claim has been notified to the Selling Agent, Vendor, or AuctionsPlus within 48 hours of the Lot being delivered to the Buyer, except where Table 2 provides to the contrary.
- 1.3 In relation to the issues identified in column 1 of Table 3, a claim may be able to be made if notified outside the 48 hours of the Lot being delivered to the Buyer under the circumstances identified in Table 3.
- 1.4 None of the Buyer, Vendor or Selling Agent may refer a claim to expert determination unless both negotiation and mediation have occurred and have been unsuccessful.
- 1.5 If the Buyer rejects any animals in accordance with this Schedule, the Vendor must pay the Buyer's direct costs associated with the rejection (including freight costs, any emergency animal health costs required to prevent further health implications, and agistment at pro rata rates according to the number rejected).
- 1.6 With the exception of emergency or critical animal health treatments to avoid causing detriment to animal health and welfare, the Buyer is not entitled to reject the Livestock if it has fundamentally altered the condition, description, saleability or market value of the stock through animal husbandry or health treatments.
- 1.7 To the extent there is any inconsistency between this Part B and Part C below, Part C prevails.

### 2. Traits - Table 1

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#### Single Descriptor

- 2.1 If 100% of the Lot is assessed to fit within a single descriptor of a Trait (**Single Descriptor**) and the Buyer claims that the Single Descriptor does not apply to one or more of the animals in the Lot and the parties are unable to agree a resolution following negotiation and mediation then section 2.2 below applies.
- 2.2 The Buyer may (at the Buyer's option):
  - (a) reject:
    - (i) any animals that the Single Descriptor does not apply to; or
    - (ii) all of the Lot if the Single Descriptor does not apply to more than 15% of the Lot;
  - (b) refer the claim to expert determination; or
  - (c) withdraw the claim.
- 2.3 If the Vendor and/or Selling Agent disputes the Buyer's entitlement to reject any animal or animals in accordance with section 2.2(a) above then the Vendor must refer the claim to expert determination.

#### Multiple Descriptors

- 2.4 If a Lot is assessed by reference to multiple descriptors of a Trait (**Multiple Descriptors**) and the Buyer claims that some or all of the Lot does not fit within the Multiple Descriptors and the parties are unable to agree a resolution following negotiation and mediation, then the parties' rights depend on which tolerance model is applicable to the Trait as detailed below. The tolerance models for the Traits are set out in column 2 of Table 1 below.

##### **Tolerance Model 1**

- 2.5 For a Trait that has the Tolerance Model 1 applicable then the Buyer may (at the Buyer's option):
  - (a) reject:
    - (i) any animals to which the Multiple Descriptors do not apply;

- (ii) any animals that are in excess of the number as assessed in relation to each of the Multiple Descriptors;
- (iii) the entire Lot if, by reason of sections 2.5(a)(i) to 2.5(a)(ii) above, more than 15% of the Lot is entitled to be rejected by the buyer;

- (b) refer the claim to expert determination; or
- (c) withdraw the claim.

2.6 If the Vendor and/or Selling Agent disputes the Buyer's claim to reject any animal or animals in accordance with section 2.5(a) above, then the Vendor must refer the claim to expert determination.

***Tolerance Model 2***

2.7 In Tolerance Model 2 there is a tolerance of 10% of the number of animals in the entire Lot (**10% Tolerance**) for each of the Multiple Descriptors.

2.8 For a Trait that has the Tolerance Model 2 applicable then the Buyer may (at the Buyer's option):

- (a) reject:
  - (i) any animals to which the Multiple Descriptors do not apply;
  - (ii) any animals that are in excess of the number as assessed in relation to each of the Multiple Descriptors less the 10% Tolerance;
  - (iii) the entire Lot if by reason of sections 2.8(a)(i) to 2.8(a)(ii) above more than 15% of the Lot is entitled to be rejected by the Buyer;
- (b) refer the claim to expert determination; or
- (c) withdraw the claim.

2.9 If the Vendor and/or Selling Agent disputes the Buyer's claim to reject any animal or animals in accordance with section 2.8(a) above, then the Vendor must refer the claim to expert determination.

***Tolerance Model 3***

2.10 In Tolerance Model 3:

- (a) 80% of the animals in the Lot must fit within one or more of the Multiple Descriptors;
- (b) There is a tolerance in relation to animals that fit within an unused descriptor that is adjacent to a descriptor used in the Assessment (**Adjacent Unused Descriptor** and **Adjacent Assessed Descriptor**, respectively). The amount of the tolerance for animals in the Adjacent Unused Descriptor is the lesser of 10% of the entire Lot or the number of animals in the Adjacent Assessed Descriptor (**Adjacent Tolerance Amount**);
- (c) No animal may be more than two descriptors away from the Multiple Descriptors.

2.11 For a Trait that has the Tolerance Model 3 applicable then the Buyer may (at the Buyer's option):

- (a) reject:
  - (i) the number of animals in the Adjacent Unused Descriptor that exceeds the Adjacent Tolerance Amount;
  - (ii) any animal that fits within a descriptor that is two or more descriptors away from the Multiple Descriptors; or
  - (iii) the entire Lot if, by reason of sections 2.11(a)(i) to 2.11(a)(ii), more than 15% of the Lot is entitled to be rejected by the Buyer;
- (b) refer the claim to expert determination; or
- (c) withdraw the claim.

2.12 If the Vendor and/or Selling Agent disputes the Buyer's claim to reject any animal or animals in accordance with section 2.11(a) above, then the Vendor must refer the claim to expert determination.

**Table 1 - Traits  
Tolerance Model where multiple descriptors are used and the  
Assessment is incorrect regarding a Trait**

Trait	Tolerance Model	Trait	Tolerance Model
Age	Model 1	Mixed sex lines  If a line is assessed as mixed sex and no sex breakup is given, it is deemed that one sex will be no more than 60% of the entire Lot.	Model 2
Bloodline	Model 1 <sup>4</sup>	Mulesing	Model 3
Breed	Model 1	Muscle Score	Model 3
Breeding quality	Model 3	Seed and Burr (in wool, hair or coat)	Model 3
Carcase quality	Model 3	Sex	Model 1
Crutching	Model 2	Temperament	Model 3
Dentition	Model 3	Wither height	Model 1
Fat Score	Model 3	Wool length	Model 3
Hip Height	Model 3	Wrinkle score	Model 3
Horn Status	Model 2		

### 3. Additional Traits – Table 2

- 3.1 Where the Buyer claims that there is an issue with one of the traits in column 1 of Table 2 below (**Additional Traits**) and that claim has not been resolved by negotiation or mediation then the Buyer may (at the Buyer's option):
- (a) reject animals where provided for in Column 2 of Table 2;
  - (b) claim a price adjustment where provided for in Column 2 of Table 2;
  - (c) refer the claim to expert determination; or
  - (d) withdraw the claim.
- 3.2 If Column 2 of Table 2 does not provide that the Buyer may:
- (a) reject some or all of the animals; or
  - (b) claim a price reduction,
- and the dispute is referred to expert determination, the experts may nevertheless decide that the appropriate remedy is that some or all of the animals may be rejected and/or there should be a price reduction.
- 3.3 If the Vendor and/or Selling Agent disputes the Buyer's entitlement to reject any animal or animals in accordance with section 3.1(a) above or claim a price adjustment in accordance with 3.1(b) above then the Vendor must refer the claim to expert determination.
- 3.4 None of the Buyer, Vendor or Selling Agent may refer a claim to expert determination unless both negotiation and mediation have occurred and been unsuccessful.

<sup>4</sup> However, if progeny is weaned and its Bloodline or registered sire/dam details are incorrect then, the Buyer may reject the progeny only and not the dam (assuming the dam is correctly described). If progeny is unweaned and its Bloodline or registered sire/dam details are incorrect then, the Buyer may reject the progeny and the dam.

**Table 2 – Additional Traits**

Issue	Tolerance/Buyer's remedy																																
Animal Health Scenario 1 Non-transmittable disease <sup>5</sup>	If symptoms of disease are detected within 48 hours of delivery to the Buyer, and the disease was acquired by the animals before they were delivered to the Buyer, then the Buyer may reject any affected livestock.  If more than 15% of the Lot have the disease, then the Buyer may reject the entire Lot.																																
Animal Health Scenario 2 Transmittable disease that MAY impact other animals.	If symptoms of disease are detected within 48 hours of delivery to the Buyer, and the disease was acquired by the animal(s) before delivery to the Buyer, then the Buyer may reject any affected livestock.  If more than 15% of the Lot have the disease, then the Buyer may reject the entire Lot.																																
Animal Health Scenario 3 Transmittable disease where if any % is showing symptoms, it is accepted that ALL will, or there is a significant risk all will, have the underlying cause present	If symptoms of a transmittable disease are detected within 48 hours of delivery to the Buyer, and the disease was acquired by the animals before delivery to the Buyer, then the Buyer may reject the entire Lot.																																
Assessor comments Descriptors which reference dedicated Assessment fields must be in line with the set descriptors, including, but not limited to: breeding quality, frame, condition etc.	If there is an inconsistency between a Dedicated Input Field in the Assessment and the Assessor's comments, and the Lot as delivered fits within the Dedicated Input Field, then the Buyer may not bring a claim.  In all other cases where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.																																
Bruising (Cattle only) This only applies to Slaughter Stock. For timing requirements relating to bruising, please refer to Part C below.	If the animals are bruised, then the Buyer is entitled to a price adjustment for each bruised animal using the following percentage price adjustments by reason of the bruise scores as defined by the AUS-MEAT Language: <table border="1" data-bbox="507 1361 1099 1883" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th rowspan="2">Bruise Score</th> <th colspan="2">Adjustment</th> </tr> <tr> <th>Group A</th> <th>Group B</th> </tr> </thead> <tbody> <tr><td>1</td><td>2%</td><td>1%</td></tr> <tr><td>2</td><td>2%</td><td>2%</td></tr> <tr><td>3</td><td>4%</td><td>2%</td></tr> <tr><td>4</td><td>2%</td><td>1%</td></tr> <tr><td>5</td><td>5%</td><td>2%</td></tr> <tr><td>6</td><td>6%</td><td>4%</td></tr> <tr><td>7</td><td>5%</td><td>2%</td></tr> <tr><td>8</td><td>9%</td><td>6%</td></tr> <tr><td>9</td><td>15%</td><td>15%</td></tr> </tbody> </table> <p>Group A comprises calves, vealers, weaners, yearlings, steers, heifers, and cows. Group B comprises bulls and manufacturing.</p>	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%
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%																															

<sup>5</sup> "disease" means any illness or disease that adversely affects animal health and welfare  
 AuctionsPlus User Agreement

<p>Faults</p> <p>Undisclosed faults or not true to type traits for the breed, class, or age of the livestock including, but not limited to: tails on adult sheep, long toes, warts, busted udders, vaccine lumps, blue or white eyes, pink eye scarring</p>	<p>If no faults are declared on the Assessment, the Buyer may reject any animal with a fault that is identified within 48 hours of delivery to the Buyer.</p> <p>If there is a fault declared on the Assessment and the number of animals with the declared fault is 5% more than the number of animals with the declared fault on the Assessment, then the Buyer may reject those animals with the declared fault in excess of 5% of the number of animals with the declared fault on the Assessment.</p> <p>If there is a fault declared on the Assessment and the number of animals with the declared fault is 15% more than the number of animals with the declared fault on the Assessment, then the Buyer may reject the entire Lot.</p>
<p>Grazing conditions</p>	<p>The Buyer may reject the entire Lot if, prior to delivery to the Buyer, some or all of the animals were grazed on species that are weeds, which are declared noxious or plant species that cause detriment to animal health.</p>
<p>Head Count</p>	<p>If the number of animals delivered differs from what is on the National Vendor Declaration (<b>NVD</b>), the Buyer will only be liable to pay for the number of animals delivered.</p> <p>If the number of animals delivered exceeds the number on the Assessment, the Buyer may reject the animals in excess of the number on the Assessment.</p> <p>If the number of animals delivered is more than 5% fewer than the number on the Assessment, and the Buyer wishes to make a claim (including for freight costs on a pro-rated basis), the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p> <p>If the number of animals delivered is more than 15% fewer than the number on the Assessment, the Buyer can reject the entire Lot, or alternatively seek a resolution (including in relation to freight costs on a pro-rated basis) through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p>
<p>Inaccurate or misleading information in the Assessment including but not limited to weaning details, joining dates and stock history.</p>	<p>In all cases where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p>
<p>Lameness</p>	<p>The Buyer may reject the affected animal(s) where there is lameness and there is evidence of a structural fault present prior to delivery or evidence of lameness still present 7 days after delivery after resting in a paddock (provided this does not relate to symptoms of disease). Lameness must be notified within 48 hours and must still be present 7 days after delivery.</p>
<p>Mismothering</p>	<p>Where any animal(s) are not paired or mothered up correctly prior to delivery, or are not paired or mothered up correctly as a result of transit, if the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p>
<p>Number per deck</p>	<p>If the number of animals per deck of the truck transporting the animals to the Buyer is specified, and the actual number per deck is out by more than 5%, then where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p>



<p>Paperwork issues - NVD</p> <p>If the Assessment does not match the NVD or other Vendor supplied statements/paperwork or the information on the National Livestock Identification System (NLIS) (together and separately, <b>Vendor Paperwork</b>)</p>	<p>If the Vendor Paperwork is correct and the Assessment is incorrect, the Buyer may reject any animals that do not fit within the Assessment.</p> <p>If more than 15% of the Lot does not fit within the Assessment in the above way, then the Buyer may reject the entire Lot.</p> <p>If the incorrect Vendor Paperwork was originally provided to the Buyer, the Vendor and/or Selling Agent must supply the correct Vendor Paperwork within 14 days of delivery of the animals to the Buyer.</p>
<p>Paperwork issues</p> <p>Lifetime Traceability (LT) Status and Vendor Bred Status</p>	<p>If more than 1% of the Lot are not LT, then the Buyer may reject that number of livestock in excess of the tolerance allowance of 1%.</p> <p>If there are more than 15% of the Lot that are not LT, then the Buyer may reject the entire Lot.</p>
<p>Pregnancy</p> <p>(Only when displayed as PTIC or SIL in lot title)</p>	<p>The following applies if AuctionsPlus Standard Terms are applied to an assessment.</p> <p>To be displayed as PTIC or SIL in the lot title, the pregnancy certificate can be no more than 30 days old at the time of Assessment.</p> <p>The Buyer must report the intention to pregnancy test some or all of the Lot within 48 hours of delivery. The Buyer has 14 days from delivery to have the animal(s) pregnancy tested and the notice of dispute must occur within 48 hours of testing.</p> <p>There is a 10% tolerance for sheep and goats and a 5% tolerance for cattle for animals found not to be pregnant.</p> <p>Where the above tolerances have been exceeded, and the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p> <p>The Vendor retains the right to have the stock re-tested at their own cost to confirm the results.</p>
<p>Pregnancy – Vendor Terms</p> <p>(Only when displayed as PTIC or SIL in lot title)</p>	<p>To be displayed as PTIC or SIL in the lot title, the pregnancy certificate must be no more than 30 days old at the time of Assessment.</p> <p>The Vendor must provide an opportunity for the Buyer to have the animal's pregnancy-tested (which must be no shorter than 24 hours after delivery) and the notice of dispute must occur within 48 hours of testing.</p> <p>Where the Vendor-nominated tolerances have been exceeded, and the Buyer has met the criteria regarding pregnancy testing timeframe and any other conditions nominated, the Buyer may make a claim. If the Buyer wishes to make a claim, they shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination; excluding circumstances in which the Vendor Terms include a resolution process.</p> <p>The Vendor retains the right to have the stock re-tested at their own cost to confirm the results.</p> <p>The Buyer has no claim in relation to any animal found not to be pregnant when No Pregnancy Terms were selected.</p>
<p>Transport (Trucking Access)</p>	<p>It is implied (unless expressly stated to the contrary) that trucking access covers both immediate access to the property and the closest road which has been named and published as a public road by the local council or state government.</p> <p>If costs are incurred by the transporter due to the negligence or fault of the Vendor or Selling Agent, the Vendor or Selling Agent are responsible for the costs incurred.</p>

	<p>If costs are incurred by the transporter due to their own fault or negligence, as between the Vendor and the Buyer, the Buyer is responsible for the costs incurred.</p>
<p>Weight - carcase</p> <p>This only applies to Slaughter Stock. For timing requirements relating to carcasses, please refer to Part C below.</p>	<p>The Buyer has no claim in relation to any animal that is within the following allowable tolerances:</p> <ul style="list-style-type: none"> <li>• Cattle – cows and bulls: + or - 5%;</li> <li>• Cattle – all other stock categories: + or - 3%;</li> <li>• Sheep and goats – all stock categories: + or - 5%.</li> </ul> <p>Where the above tolerances have been exceeded, and where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination. However, the Buyer is not entitled to reject any carcasses due to the allowable tolerance being exceeded.</p>
<p>Weight - live weight</p>	<p>Except where provided for under the forward contract terms, claims relating to weight may only be sought by the Buyer in the following circumstances:</p> <p>A Buyer may make a claim based on average live weight or weight range, not both.</p> <p><b>Average weight claims</b></p> <p>For cattle:</p> <p>Where the average live weight at delivery (after adjustment for gut shrink) varies from that in the Catalogue by more than the allowed tolerance of <b>+ or - 3%</b> the Buyer may claim a price adjustment, calculated as follows:</p> <p>Price adjustment = P x (WA-WD)</p> <p><b>Where:</b></p> <p>P = price per kilogram of the entire Lot as per the sold price results on the AuctionsPlus platform.</p> <p>WA = combined weight of entire Lot as assessed in kilograms.</p> <p>WD = combined weight of entire Lot as delivered in kilograms (adjusted for gut shrink).</p> <p>This tolerance is applicable to all stock categories.</p> <p>For sheep and goats:</p> <p>Where the average live weight at delivery (after adjustment for gut shrink) varies from that in the Catalogue by more than the allowed tolerance of <b>+ or - 5%</b> the Buyer may claim a price adjustment, calculated as follows:</p> <p>Price adjustment = P x (WA-WD)</p> <p><b>Where:</b></p> <p>P = price per kilogram of the entire Lot as per the sold price results on the AuctionsPlus platform.</p> <p>WA = combined weight of entire Lot as assessed in kilograms.</p> <p>WD = combined weight of entire Lot as delivered in kilograms (adjusted for gut shrink).</p> <p>This tolerance is applicable to all Stock Categories.</p> <p><b>Weight Range claims</b></p> <p>Where any individual animal(s) in the Lot are outside the defined weight range by more than an allowed variance of 10%, the Buyer may reject that animal(s).</p> <p>OR</p>

Where the number of animals in the Lot that are outside the defined weight range exceeds 5% of the total number of animals in the Lot, the Buyer may reject the number of animals in excess of that 5% tolerance.		
<b>Calculation of Gut Shrink</b>		
Gut shrink is to be calculated as set out below.		
Cattle:		
	Cows, Heifers (non-yearlings)	Other Livestock Categories
Hours off feed	Percentage loss per hour	
1-4	1.00%	0.75%
5-12	0.50%	0.50%
Sheep and Goats:		
Rate of liveweight loss	Time off feed (hours)	Cumulative liveweight loss
0.50% per hour for first 6 hours	3	1.5%
	6	3.0%
0.30% per hour for next 6 hours	12	4.8%
0.25% per hour for next 12 hours	24	7.8%
0.125% per hour for next 24 hours	48	10.8%
0.10% per hour for next 24 hours	72	13.2%

**Claims that may be notified outside 48 hours – Table 3**

- 3.5 In relation to the issues described in column 1 of Table 3, the Buyer has the longer period specified in column 2 of Table 3 in which to notify the claim.
- 3.6 Where the Buyer claims that one of the issues set out in column 1 of Table 3 below has arisen, the claim has been notified in accordance with the specified timeframe and that claim has not been resolved by negotiation or mediation then the Buyer may (at the Buyer’s option):
  - (a) reject animals where provided for in Column 2 of Table 3;
  - (b) refer the claim to expert determination; or
  - (c) withdraw the claim.
- 3.7 If Column 2 of Table 3 does not provide that the Buyer may reject some or all of the animals and the dispute is referred to expert determination, the experts may nevertheless decide that the appropriate remedy is that some or all of the animals may be rejected.
- 3.8 If the Vendor and/or Selling Agent disputes the Buyer’s entitlement to reject any animal or animals in accordance with section 3.6(a) above then the Vendor must refer the claim to expert determination.
- 3.9 None of the Buyer, Vendor or Selling Agent may refer a claim to expert determination unless both Negotiation and Mediation have occurred and been unsuccessful.

**Table 3**  
**Notification of claim outside 48 hours of delivery**

Issue	Tolerance/Buyer's remedy
Accompanying paperwork, documentation and/or vendor declarations do not match the Assessment	When paperwork required (e.g. NVD) or legitimately requested by the Buyer (e.g. Health Statement) is not provided by the Vendor within 48 hours of the animals being delivered to the Buyer for the entire Lot, then provided the claim is made within 14 days of delivery, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.
Defined Traits of unborn progeny (breed, sex)	<p>The claim must be notified within the following timeframes:</p> <ul style="list-style-type: none"> <li>• If relating to wrong sex, then within 7 days from birth;</li> <li>• If relating to breed inaccuracies evidenced by coat colour (e.g. Dorpers or Black Baldies), then within 7 days from birth;</li> <li>• If relating to breed inaccuracies that cannot be identified at birth, then 3 months from end of calving/lambing.</li> </ul> <p>If more than 5% of the entire Lot has problems with these Defined Traits, where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p> <p>If more than 15% of the entire Lot (not including unborn progeny) has problems with these Defined Traits, the Buyer may reject the entire Lot.</p>
Lifetime Traceability/Vendor Bred/EU/Other NLIS inaccuracies	<p>The claim must be notified within the timeframe of NLIS transfer requirements of the State of the purchase.</p> <p>Where more than 1% of the Lot is affected by these inaccuracies, the Buyer may reject affected animals in excess of the 1% affected.</p> <p>If more than 15% of the Lot are affected by these inaccuracies, the Buyer may reject the entire Lot.</p>
NSM females found pregnant if they were declared to have had no access to bulls/rams/bucks/stags If any access to bulls/rams/bucks/stags is declared, no claim can be made	<p>The Buyer must notify their intention to pregnancy scan livestock within 48 hours of delivery to the Buyer. The Buyer must have the animals tested at the Buyer's cost within 28 days of arrival.</p> <p>The Vendor retains the right to have the stock re-scanned at their own cost to confirm the results.</p> <p>There is a 5% tolerance for animals found to be pregnant.</p> <p>If the tolerance is exceeded and the Buyer elects to terminate the pregnancy via a PG injection, the Vendor is liable for the cost, but the Buyer cannot claim a further discount on these animals.</p> <p>If the number of animals found to be pregnant exceeds the 5% tolerance, and the Buyer does not terminate the pregnancy, where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination. The Vendor is responsible for the costs of having the livestock pregnancy tested.</p> <p>If the number of animals found to be pregnant is within the 5% tolerance, the Buyer remains responsible for the costs of having the livestock pregnancy tested and has no claim on detectable pregnant animals.</p>
Progeny born outside expected timeframe	Subject to the below, a claim may be brought in respect of progeny born (full term) at least 2 weeks outside the expected timeframe, based on joining dates. This only applies if the Lot is stated to have had no access to bulls/rams/bucks/stags outside of the nominated joining period. No claim can be brought where the Assessment states that the stock have been continuously joined.

	<p>The claim must be notified within 7 days of birth, however if progeny are born after the expected timeframe, buyers have 7 days from the end of that expected window.</p> <p>There is a 5% tolerance on the number of progeny which can be born outside the expected timeframe. If this tolerance is exceeded, where the Buyer wishes to make a claim, the Buyer shall seek a resolution through negotiation, mediation, and (if those processes are unsuccessful), through expert determination.</p>
<p>Specific Sire Details or Bloodlines (for assessed animals, progeny at foot or unborn progeny)</p>	<p>The Buyer must inform the Vender, Selling Agent or AuctionsPlus when the genetic testing occurs.</p> <p>The claim must be notified and evidence provided within 3 months from delivery to the Buyer (for live animals) or 3 months from end of calving or lambing (for unborn progeny).</p> <p>The Buyer may reject any affected animals and if more than 15% of the Lot are affected then the Buyer may reject the entire Lot.</p>

## Part C Livestock sold for immediate slaughter

### 1. General

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- 1.1 This Part C applies in respect of Slaughter Stock.
- 1.2 The Buyer must:
- (a) ensure that the Lot is slaughtered in accordance with any requirements in the Contract of Sale;
  - (b) ensure that any Lot purchased comprising cattle, sheep, or goats 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, subject to any extension period permitted in this Part C;
  - (c) transport the Lot to the abattoir by the most direct route without unreasonable delay;
  - (d) bear the slaughter costs;
  - (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 Contract of Sale, including as to tolerances;
  - (f) subject to subsection 1.2(g), in the case of Disputes regarding Defects in respect of carcasses of Slaughter Stock:
    - (i) before the end of 48 hours following slaughter, notify the Selling Agent, Vendor or AuctionsPlus of the claim in writing; and
    - (ii) take photographs of the carcasses or videos of the slaughter or grading process if requested by AuctionsPlus;
  - (g) in the case of Disputes with respect to traits that can be identified before slaughter:
    - (i) the claim must be notified in writing within 48 hours of receiving the Lot and prior to slaughter in accordance with Part B of Schedule 3; and
    - (ii) if:
      - (A) a claim is made prior to slaughter;
      - (B) the stock is then slaughtered; and
      - (C) the disputed trait cannot be defined or measured on the carcase,then other sufficient evidence must be provided to support the claim.
- 1.3 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.

### 2. Failure to meet time for slaughter

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- 2.1 If the Buyer fails to meet the time for slaughter as provided for in section 1.2(b) above due to a Force Majeure Event, the Buyer is responsible for the care and maintenance of the Livestock and must immediately notify the Vendor. The Vendor and the Buyer must negotiate in good faith to agree on one of the following:
- (a) an extension of the time for slaughter by another 24 hours;
  - (b) the Buyer to pay the price for the Lot in accordance with the Assessment or the actual results of the slaughter when it occurs, whichever is more favourable to the Vendor;
  - (c) rescission of the Contract of Sale and return of the Lot to the Vendor at the Buyer's cost unless quarantine or movement restrictions apply;
  - (d) the Lot to be kept at the abattoir and maintained until slaughter, and the costs of maintaining the Lot to be borne equally by the Vendor and the Buyer; or
  - (e) any other course of action.

- 2.2 If the Vendor and the Buyer fail to reach an agreement in accordance with section 2.1 above, the Buyer must pay the price for the Lot in accordance with the Assessment or the actual results of the slaughter when it occurs, whichever is more favourable to the Vendor.
- 2.3 If the Buyer fails to meet the time for slaughter as provided for in section 1.2(b) above and the failure is not due to a Force Majeure Event, the Buyer 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 to the Vendor.
- 2.4 Where the Buyer is unable to get the results of residue tests back in time to meet the requirements of section 1.2(b) above, the time for slaughter will be extended by an additional 24 hours, subject to the Buyer notifying the Vendor or the Selling Agent by telephone and in writing as soon as reasonably practicable after this becomes apparent.

### 3. Carcase condemnation

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- 3.1 Where a carcase is partially condemned:
- (a) if the Buyer notifies the Vendor within 48 hours of slaughter, or such longer period as may be agreed between the Buyer and Vendor, the Buyer will be entitled to a refund for the condemned part (if payment has already been made) or will not be liable to pay for the condemned part (if payment has not already been made), except as provided for in section 3.1(c) below;
  - (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 carcase will be the average of the remainder of the Lot;
  - (c) where the carcase is partially condemned as a result of any act, error, omission, fault or negligence occurring in or in connection with the slaughter process, the Buyer will not be entitled to any price adjustment or price refund.
- 3.2 Where a carcase is totally condemned in accordance with Law including condemnation by reason of actinobacillosis, actinomycosis, anthrax, arthritis, buckshot, cancer, icterus, illegal residues, lymphadenitis, multiple abscesses, peritonitis, pyaemia, red water, tick fever or uraemia:
- (a) if:
    - (i) the Buyer notifies the Vendor within 48 hours of slaughter, or such other period as may be agreed between the Buyer and Vendor; and
    - (ii) the Buyer presents to the Vendor a condemnation certificate specifying the cause of condemnation within 7 days of slaughter, or such other period as may be agreed between the Buyer and Vendor,

the Buyer will be entitled to a refund for the sale price of the affected Livestock (if payment has already been made) or will not be liable to pay for the affected Livestock (if payment has not already been made);
  - (b) the Buyer must pay and bear the costs of slaughter and provide the Vendor with a copy of the condemnation note;
  - (c) except as provided for in section 3.2(d) below, the Vendor will receive no payment from the Buyer for hides and offal but may be entitled to apply for compensation from the appropriate competent authority in the case of a notifiable disease; and
  - (d) where the carcase is totally condemned as a result of any act, error, omission, fault or negligence occurring in or in connection with the slaughter process, the Buyer will not be entitled to any price adjustment or price refund.
- 3.3 Where the sale is on a carcase weight basis and the carcase is retained for further reinspection by inspection authorities and subsequently condemned after the carcase is weighed over the abattoir scales,

the liability for losses will remain with the Vendor and the procedures outlined in sections 3.1 and 3.2 above will apply.

- 3.4 Where any Livestock in the Lot fail to pass ante mortem inspection including by reason of disease, illness, dirt, wetness or fly strike, the Vendor must indemnify the Buyer on demand against costs incurred in preparing the Livestock for subsequent ante mortem inspection unless the reasons are disclosed in the Assessment or the Vendor provides evidence that they were sustained after the time of Delivery.

## 4. Seed damage

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- 4.1 Subject to the timing requirement in section 1.2(f) above, the Buyer is entitled to a refund or price adjustment for seed damage to the carcass exceeding that disclosed in the Assessment.
- 4.2 If the Agent and the Buyer are unable to negotiate a settlement, the dispute is to be resolved in accordance with the process outlined in Parts A and B of this schedule.

## 5. Chemical residues

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- 5.1 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.
- 5.2 The Vendor warrants that the chemical residue does not exceed the amounts disclosed in the Assessment and NVD and subject to section 5.3, the Buyer is entitled to a refund or price adjustment taking into account any amount received by or ought to be received by the Buyer pursuant to section 5.3(d) below.
- 5.3 The Buyer must:
- (a) take a carcass sample within 7 days of slaughter;
  - (b) not slaughter any further animals from the Lot after the issue is discovered, where commercially practicable and must retain any other carcass from the Lot, where commercially practicable;
  - (c) facilitate further testing of the affected carcass(es) at the Vendor's expense, if reasonably requested by the Vendor; and
  - (d) attempt to mitigate its loss by taking reasonable steps to sell the affected carcass(es) for purposes other than human consumption (for example, blood and bone meal), unless otherwise agreed with the Vendor.
- 5.4 If the Buyer is proved by the relevant state authority to be responsible for the chemical residue contamination, the Vendor will not be liable pursuant to section 5.2 above.