

The New Zealand Stock & Station Agent's Association

Conditions of Sale



These Conditions of Sale constitute the notice of terms of the NZSSA's and Auctioneer's services for selling or attempting to sell Stock at auction. They:

- must be made readily available to view by all participants and potential participants in the auction,
- bind the NZSSA, the Vendor and the Purchaser in all transactions entered into at this Saleyard whether by auction, private contract or otherwise, and
- are binding even if not read aloud at any stage or if not referred to at any time when business is being transacted.

Other specific Vendor or NZSSA terms may apply to the sale of the Stock between the Vendor and Purchaser directly (such as a sale note), and/or for the operation of NZSSA customer accounts or the extension of credit for the purchase of Stock. If there is any inconsistency between those separate contracts and these Conditions of Sale in relation to the NZSSA or Auctioneer, the NZSSA or Auctioneer will determine which terms prevail.

Version: October 2014

1. Definitions

In these Conditions of Sale unless the context otherwise requires:

"Auctioneer" means the NZSSA company, firm or person, whose license to sell by auction is held by the person conducting the sale as Auctioneer.

"Saleyards" means the place where the NZSSA sells or attempts to sell Stock by auction or otherwise

"NZSSA" means the Stock & Station Agent conducting the sale

"Stock" means and includes both live and dead livestock and chattels.

"Purchase Price" means either:

- a. Where the Auctioneer has announced the conditions of sale include GST for the relevant lot or group of lots, the price which was bid by the successful Purchaser or;
- b. Where the Auctioneer has announced the conditions of sale exclude GST for the relevant lot or groups of lots, or where the Auctioneer has made no such announcement, the price which is bid by the successful Purchaser plus GST.

"Purchaser" means the successful bidder for the relevant lot or groups of lots of Stock at the auction.

"Vendor" means the owner of the Stock that is the subject of the relevant lot or group of lots sold by auction by the Auctioneer.

"Vendor Bid" has the meaning set out in clause 4.

2. Dispute

If any dispute arises over a successful bid the Stock will be auctioned again and resold or otherwise settled at the sole discretion of the Auctioneer and their decision is binding on all parties.

3. Auction processes

For each lot:

- a. the Stock are being sold in trade as a supplier;
- b. the sale is subject to a reserve price; and
- c. Vendor Bids are permitted.

If different terms apply to different lots, the Auctioneer before starting the auction of each lot, will identify which terms apply.

An auction for a lot starts when the Auctioneer invites the first bid from potential participants and ends when the Auctioneer makes it clear that bidding is closed. The Auctioneer may refuse to accept any bids. No person may make an advance in bidding by an amount less than an amount from time to time nominated or directed by the Auctioneer. Any bid may be withdrawn before the end of the auction for that lot upon notification to and confirmation from the Auctioneer.

4. Vendors Bid

The Vendor or its agent or the Auctioneer on its behalf (but only one of them) is permitted to make bids less than the reserve price ("Vendor Bids"). The Auctioneer will clearly identify each Vendor Bid as it is received throughout the auction of that lot.

5. Right of Refusal

The last and highest unsuccessful bidder (excluding Vendor Bids) has the right of refusal at the reserve price of a passed-in lot and such right must be exercised before the next lot is offered for sale by the Auctioneer.

6. Binding the Purchaser

Every person bidding is deemed to authorise the Auctioneer to sign the sale note on their behalf as Purchaser, and the signing by the Auctioneer is as binding on the Vendor and Purchaser as if the signing was by the Purchaser itself. Every person bidding is deemed to be bidding as a principal and the person who is the Purchaser is and remains responsible for the payment of the Purchase Price notwithstanding any subsequent disclosure of agency or any acceptance or acknowledgement of that agency by the Auctioneer.

7. No Guarantee, Warranty or Condition

No guarantee, warranty or condition is given by the NZSSA, the Vendor, or the Auctioneer for any Stock sold as to sex, age, condition, description, title or otherwise howsoever, nor is any guarantee, warranty or condition implied from any affirmation or statement made at the time of the sale, or from any of the circumstances of the sale. Every person bidding agrees that they have not relied on any representations made by the NZSSA, the Vendor, or the Auctioneer in bidding; that if they are in trade that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are contracted out of; and that the Sale of Goods Act 1908 is specifically contracted out of to the maximum extent possible. That the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act; and that this clause is fair and reasonable. Clause 7 does not apply if clause 22 applies.

The Vendor warrants that all Stock offered for sale at auction is free of any security interests, liens, charges or other encumbrances. The Vendor must, within 3 working days of a request by the Purchaser or Auctioneer, provide written confirmation of the release of any security interest registered on the Personal Property Securities Register that applies to the Stock.

8. Error or Misdescription

If any error or misdescription is made as to title, age, number, sex, condition or in any other particulars of any Stock offered for sale, it does not annul the sale, but such compensation is allowed to the Purchaser by the Vendor as the Auctioneer in its sole discretion determines. The Auctioneer is to be considered merely the agent of the Vendor and in all disputes arising from any defect of title, wrong description, warranty or otherwise, the Purchaser and the Vendor must adjust the matter between themselves if they are unwilling to accept the decision of the Auctioneer, and no lot is to be returned to the Auctioneer. The liability for compensation is limited to a figure no greater than the Purchase Price. Clause 8 does not apply if clause 22 applies.

9. Personal Information

The NZSSA and Auctioneer will only use the Vendor and Purchaser's personal information for purposes relating to the sale of Stock. The Vendor and Purchaser authorise the NZSSA and Auctioneer to release their personal information to third parties for these purposes. The Vendor and Purchaser can inspect and correct their personal information held by the NZSSA and Auctioneer. The name, description, and address of the Vendor, as given by the Vendor, will be given to a bidder or Purchaser if required, in order to facilitate the auction services and sale of Stock. In case of any dispute the remedy of the Purchaser is against the Vendor only, and in no case or under any circumstances against the NZSSA or Auctioneer.

10. Payment in Cash

Conditions are cash on the fall of the hammer unless the Auctioneer prior to the putting up of any lot otherwise specifies. Ownership in the Stock purchased does not pass to the Purchaser until payment of the Purchase Price (including interest under Clause 12) is made in full by the Purchaser.

Each lot in all cases will, immediately on the fall of the hammer, be at the risk of the Purchaser, who must remove the Stock from the place of the auction within the time specified by the Auctioneer.

If either Vendor or Purchaser or both are absent at time of delivery, the Auctioneer is deemed to have been authorised to tally the Stock sold, and their figures are to be accepted as final by all parties.

Should Stock be removed by the Purchaser without authority, the Purchaser is liable for the numbers of Stock as entered in the Auctioneer's book.

No Purchaser is entitled to withhold payment for pedigree Stock pending execution and delivery by the Vendor of the ownership registration documents and the remedy of the Purchaser on failure to receive such documents lies against the Vendor alone and not the NZSSA or Auctioneer.

All Stock which is sold under paragraph (b) of the definition of "Purchase Price" is subject to GST.

11. Stock Delivery and NZSSA Accounts

Except as provided in this paragraph, no Stock will be delivered to anyone except for cash.

Where a Purchaser satisfies the Auctioneer that it has made some suitable arrangement for payment of all or part of the Purchase Price either with the Auctioneer who in respect of the making of such arrangement acts not in their capacity as agent of the Vendor, but as the Purchaser's Stock & Station Agent, or with another Stock & Station Agent, the Auctioneer may deliver any Stock to the Purchaser without payment in full for such Stock and the Purchaser is deemed to have requested and authorised the Auctioneer for, or on account of the Purchaser, to pay the Purchase money in full to the Vendor or credit the Vendor, and to debit the Purchaser's account with the Auctioneer or the Purchaser's Stock & Station Agent as the case may be with the Purchase Price as has not been paid by the Purchaser. However it is not obligatory on the Auctioneer to do so, and if the Auctioneer does so, the Auctioneer may, if the Auctioneer thinks fit, deduct the Auctioneer's selling commission and charges when paying the Purchase Price to the Vendor. Further, in such case, the Purchaser will not be released from any liability and the Vendor's rights under the contract of sale are deemed to be transferred to the Auctioneer.

12. Purchasers Debt

Subject to any special arrangements that may be made in respect of any lot between the Vendor and the Purchaser, the Auctioneer (in addition to all other rights and remedies of the Auctioneer express or implied, and notwithstanding that the sale note may have been signed by the Auctioneer on behalf of the Purchaser) is entitled to recover from the Purchaser as a debt due on demand due by the Purchaser to the Auctioneer the full amount of the unpaid Purchase Price together with interest calculated from the date of sale plus GST, until payment in full is made by the Purchaser. Such interest accrues from day to day at such rate for the time being charged by the Auctioneer on overdue accounts and any such interest money remaining unpaid on the dates observed by the Auctioneer for the capitalisation of interest will itself carry interest in like manner as the unpaid Purchase Price and is deemed part of the unpaid Purchase Price. The current interest rate and the dates for capitalisation of interest (if any) will be advised to the Purchaser on request.

The rights and remedies of the Auctioneer under these conditions are not affected by reason of the selling commission and charges of the Auctioneer having been deducted by the Auctioneer in any payment made by the Auctioneer to the Vendor, and as between the Purchaser and the Auctioneer. The Purchaser waives all rights of set off, if any, the Purchaser as between the Purchaser and the Vendor may have against the Vendor.

13. Failure to Complete Purchase

Should the Purchaser fail to complete the purchase in any way, it is lawful for the Vendor or the Auctioneer on the Vendor's behalf with notice to cancel the sale, and to enter on the property where the Stock are situated and retake possession of the Stock bought by the Purchaser, or without any notice whatsoever to the Purchaser to resell the Stock bought by the Purchaser, whether privately or by an auction at the Purchaser's risk and expense (including but not limited to all costs associated with the recovery or attempted recovery of outstanding moneys and the enforcement of these sale conditions and solicitor/client costs of the Auctioneer and/or the Vendor), and any loss (including any GST imposed in respect of the sale and resale) on such resale is recoverable by the Vendor or by the Auctioneer from the Purchaser as a debt due upon demand together with interest calculated from the date of sale until payment in full at such rate for the time being charged by the Auctioneer on overdue accounts as at the date of sale such rate of interest to be advised to the Purchaser on request. The Purchaser is not entitled to any surplus on such resale.

14. NZSSA and Auctioneers Liability

The NZSSA and Auctioneer are under no liability for any loss incurred by the Vendor by reason of the failure on the part of the Purchaser to complete the purchase. All statutory and other implied warranties are excluded to the fullest extent that it is lawful to do so. Neither the NZSSA or Auctioneer are liable in any way (including negligence, tort and equity) to the Vendor, Purchaser or to any other person in connection with these Conditions of Sale for any loss whatsoever, including loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages. Each person dealing with the NZSSA and Auctioneer as agent agrees that it will not make or support any claim or proceeding against the NZSSA and Auctioneer. The Vendor and Purchaser indemnify the NZSSA and Auctioneer from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which the NZSSA or Auctioneer incurs under these Conditions of Sale and caused by the Vendor or Purchaser as the case may be.

The NZSSA or Auctioneer may deduct (without prior notice) any money that the Vendor or Purchaser owe to the NZSSA or Auctioneer from money that they owe to the Vendor or Purchaser or hold on their behalf. The Vendor or Purchaser authorise the NZSSA and Auctioneer to apply (without prior notice) any moneys:

- a. held by the NZSSA or Auctioneer on their behalf on any account in or towards payment of any amount owing to the NZSSA or Auctioneer; and
- b. received by the NZSSA or Auctioneer from the Vendor or Purchaser or on their account in payment of any amount owing to the NZSSA or Auctioneer.

The NZSSA and Auctioneer may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from the Vendor or Purchaser in any manner (and in any order and to any amounts owing to the NZSSA or Auctioneer or any vendor) the NZSSA or Auctioneer thinks fit (despite any direction to the contrary and whether before or after any default).

15. Care of Stock

All expenses for feed, drover's fees, cartage and other expenses incurred by the Auctioneer on behalf of the Purchaser or Vendor for the care, maintenance and transit of Stock purchased or sold are at the expense in all things of the Purchaser or Vendor (as the case may be) and may be recovered by the Auctioneer from the Purchaser or Vendor (as the case may be) as a debt due upon demand together with interest calculated from the respective dates on which such expenses were incurred until payment in full at such rate for the time being charged by the Auctioneer on overdue accounts as at the date or respective dates on which such expenses were incurred, such rate of interest to be advised to the Purchaser on request. The Purchaser or Vendor (as the case may be) is also liable for any GST payable in respect of payments due under this clause.

16. Purchasers Agent

The Purchaser agrees with the Auctioneer that any drover or other person to whom delivery of Stock may be given, nominated or appointed by the Purchaser, or by the Auctioneer purporting to act on behalf of the Purchaser, is deemed

to be the agent of the Purchaser, and the Auctioneer is not in any way liable or responsible for any claims for compensation by any drover.

17. Unsold Stock

Any stock not sold is at the risk of the Vendor, and the Auctioneer is not responsible to the Vendor for any loss to the Vendor, in respect of any Stock not sold. The Vendor agrees with the Auctioneer that any drover or other person to whom return of Stock to the Vendor may be given, nominated or appointed by the Vendor or by the Auctioneer purporting to act on behalf of the Vendor if Stock is not sold, is for all purposes deemed to be the agent of the Vendor and the Auctioneer is not in any way liable or responsible for any act or omission of such drover or other person and the Auctioneer will not be responsible for any claims by such drover or other person for compensation for accident arising out of the return of such stock. The provisions of Clause 19 apply in connection with Stock not sold substituting the "Vendor" for the word "Purchaser" throughout Clause 19.

18. Sale after Auction

Any stock not sold at the auction may be sold privately before removal from the Saleyards, and these conditions apply to such sales. Notwithstanding that the auction sale may have been concluded, the Auctioneer continues to be agent for the Vendor in such sales, and the signing of the Purchaser's name in the Auction Sale Book on behalf of the Purchaser by the Auctioneer constitutes a binding agreement for sale and purchase between Vendor and Purchaser as if such Stock were sold at auction, and the Auctioneer is entitled to be paid the selling commission and charges of the Auctioneer as if such Stock had been actually sold at the auction, pursuant to these conditions.

19. Purchaser Risk

The Purchaser agrees that notwithstanding any instructions or directions given by it to the Auctioneer as to the method or time of trucking, holding, feeding, watering or otherwise tending any Stock for any period, or as to the route to be followed by any driven or trucked Stock, or the numbers of drovers to be employed, the Stock remains at the Purchaser's risk, and no liability whatsoever attaches to the Auctioneer for any loss or damage occasioned to such Stock. The Auctioneer is at liberty at their discretion if in their opinion it is desirable or imperative in the interests of the Purchaser or for the benefit of any Stock so to do to disregard, vary or modify entirely or partly the directions or instructions of the Purchaser or any of them, and adopt other procedures altogether or in part, in any such event the decision of the Auctioneer is final and binding, and the Auctioneer is not liable to the Purchaser for any damage or loss incurred by the Purchaser consequent on the carrying out, disregard, variation or modification of their instructions or directions.

20. Goods and Services Tax Act 1985

The Auctioneer, and not the Vendor, will issue any tax invoice, credit note or debit note as required under the Goods and Services Act 1985. The Vendor will provide the Auctioneer with the GST registration number of the Vendor together with such other information relating to the GST registration of the Vendor as the Auctioneer may require.

21. Risk at Saleyards

Every person attending the sale or entering the Saleyards does so at their own risk, and the Auctioneer is not liable in any way or responsible for any accident whatsoever to any such person.

22. Consumers

Where the Consumer Guarantees Act 1993 does apply, the Purchaser has the rights and remedies provided under that Act.

23. Personal Property Securities Act 1999

If the Personal Property Securities Act 1999 (the "PPSA") applies to the Stock or the Purchaser's purchase of the Stock, then the Purchaser will promptly execute any document required by the Auctioneer or the Vendor to ensure that charges created under or pursuant to these conditions constitute a perfected security interest (as that term is defined in the PPSA, including but not limited to security documents) and will provide all information that the Auctioneer or the Vendor reasonably requires to complete a Financing Statement and to satisfy the legal requirements of the PPSA. The Purchaser shall not consent to any person filing a Financing Statement (as the term is defined in the PPSA) without the prior consent of the Auctioneer or the Vendor (where the Auctioneer of the Vendor is entitled to file their own Financing Statement) and at any time notify the Auctioneer or the Vendor immediately that the Purchaser becomes aware of any person taking steps to file a Financing Statement against the Stock.

24. National Animal Identification and Tracing (NAIT)

The Vendor and Purchaser confirm that:

- They will comply with their obligations under the NAIT Act, including reporting obligations.
- They will provide the NZSSA with accurate and complete information. The NZSSA is not required to verify that information, and the Vendor and Purchaser indemnify the NZSSA in relation to any claims or losses arising from inaccurate information they provide the NZSSA.
- If they instruct the NZSSA to complete any NAIT functions on their behalf, then by doing so they have authorised the NZSSA to act on their behalf and to allow the NZSSA to access and manage their personal information required for NAIT purposes.
- The Auctioneer reserves the right to charge the Vendor and/or the Purchaser a fee (as applicable) to cover reasonable costs incurred to meet its obligations for the administration of NAIT.

The NZSSA will use reasonable endeavours to read every tag but provides no guarantee that it will be able to do so.

25. Application of Conditions

These Conditions of Sale will apply to all sales conducted by members of the New Zealand Stock & Station Agents' Association.

The Purchaser acknowledges that these conditions apply to the sale of the Stock and prevail despite any indication to the contrary by any person acting or purporting to act on the Auctioneer's behalf. A Purchaser must therefore obtain written confirmation from the Auctioneer of any variation to these express conditions.

26. Notices

All notices or demands required pursuant to these conditions shall be in writing and shall be deemed to have been properly given if delivered in person, mail or sent by facsimile transmission to the recipient at the address the parties furnish to each other. A notice sent by mail shall be deemed to be received by the recipient 45 hours after posting. A notice sent by facsimile (providing the sending facsimile machine produces a printout of time, date and transmission report) shall be deemed to have been received by the recipient immediately upon successful transmission.

27. Enforcement

The Vendor and Purchaser will pay the NZSSA and Auctioneer on demand all costs (including legal costs on a solicitor/client basis) incurred by the NZSSA and Auctioneer in connection with any default by the Vendor or Purchaser or enforcement action taken by the NZSSA or Auctioneer.