

FULL TERMS OF USE
FCS Auction Services Pty Ltd

PART A. TERMS

1. Terms and Acceptance

- 1.1. The Websites www.fcsauctions.com.au and <https://fcs.bidsonline.com.au> are owned and operated by FCS Auction Services Pty Ltd hereinafter referred to as 'FCS auctions'
- 1.2. These Terms set out the legal terms and conditions that apply to the access and use of this Website to the extent described in clause 3.
- 1.3. By accessing and using this Website, you agree to these Terms.
- 1.4. If you do not agree to all of these Terms, you must not access or use this Website.
- 1.5. FCS auctions reserves the right, in its absolute discretion, to change these Terms at any time.
- 1.6. You understand and agree that by using this Website, no legal partnership or agency relationship is created between you and FCS auctions other than as expressly provided for in these Terms.

2. Privacy

- 2.1. FCS auctions maintains a privacy policy relating to information that you provide through this Website and FCS auctions will take all reasonable steps to prevent any data being inappropriately released or misused. Please view FCS auctions' Privacy Policy for further information which can be accessed from this Website.
- 2.2. By proceeding to use this Website you are deemed to have read and accepted FCS auctions' Privacy Policy.

3. What FCS auctions Offers and FCS auctions' Role

- 3.1. This Website allows Bidders to access and participate in an online Auction using the Portal in accordance with these Terms.
- 3.2. You acknowledge:
 - 3.2.1. FCS auctions only provides a platform for the purposes described in clause 3.1 and FCS auctions is not party to any contract for the sale of Assets between Seller and Successful Bidders;
 - 3.2.2. Auctions are conducted by the Agent;
 - 3.2.3. FCS auctions makes the Portal available for Bidders to place online bids in respect of Auctions conducted by the Agent; and
 - 3.2.4. Farm Clearing Sales Pty Ltd does not provide any of the services described in clause 3.1.
- 3.3. Auctions are advertised on this Website through the FCS auctions website.

4. Registration

- 4.1. You may be required to become a registered user of this Website to use certain functions on this Website. Such registration process may be by way of a formal or informal process as notified on this Website or by FCS auctions from time to time.
- 4.2. To register as a user you must (i) complete any relevant registration application; (ii) be at least eighteen (18) years of age; and (iii) provide any other required information. FCS auctions may share such details with Bidsonline and the Agent for the purposes of hosting an Auction.
- 4.3. You must provide true and accurate information when registering to use this Website.
- 4.4. Photo identification may be required to complete the registration process.
- 4.5. Your access may be suspended or terminated for any reason including due to non-compliance with these terms or if there is any suspicion you have engaged in fraudulent or criminal activity in connection with your use of this Website.
- 4.6. You must not use your account to bid on behalf of other people.

PART B. AUCTIONS

5. Portal

- 5.1. Auctions that are advertised on this Website are hosted online using the Portal and may be either:

5.1.1. manual, being that an auctioneer confirms bids received through the Portal; and/or

5.1.2. automatic, being that there is no auctioneer.

- 5.2. From time to time, Auctions may be conducted by the Agent online and on site at an Auction Site in which the public will be invited to attend the Auction Site to place bids in person whilst at the same time the Auction is also being hosted by FCS auctions on the Portal.
- 5.3. The Portal is owned and operated by Bidsonline and is made available for access from this Website.
- 5.4. FCS auctions is not related or affiliated with Bidsonline and the Portal is made available to assist Agents in conducting online Auctions.
- 5.5. You may need to register as a user of Bidsonline in order to access the Portal so as to attend and participate in the Auction.
- 5.6. You should review Bidsonline's terms of use of the Portal before using the Portal and only use the Portal if you accept such terms of use.
- 5.7. You acknowledge that you access and use the Portal at your own risk.
- 5.8. FCS auctions may retain or procure Bidsonline to retain details of all bids submitted in an Auction and may disclose such details to the Agent and/or Bidsonline.
- 5.9. You acknowledge that Auctions conducted online require suitable internet connectivity and relevant operating systems and hardware and there is a risk that internet connectivity could slow down or be subject to an outage outside of the control of FCS auctions and Bidsonline and that at these times it may not be possible to bid over the internet at an Auction.
- 5.10. You release FCS auctions from any Liability arising from or caused by any errors or faults with the Portal or the Portal being unavailable for any reason.

6. **Terms of Auctions**

- 6.1. The sale contract for the sale of the Assets through an Auction hosted on the Portal is made directly between the Seller and the Bidder and FCS auctions is released from any Liability in respect of such sale of Assets.
- 6.2. If the Agent does not impose their own terms of sale, (i) clause 8 sets out relevant terms of sale which will apply to the Successful Bidder and the Seller; (ii) the Successful Bidder accepts such terms of sale; (iii) FCS auctions will use reasonable endeavours to impose such terms of sale on the Seller; and (iv) FCS auctions may, but is not obliged to, enforce such terms against the Successful Bidder on behalf of a Seller or otherwise assign such rights of enforcement to the Seller.
- 6.3. If an Agent imposes their own terms of sale before the commencement of an Auction, such terms will apply to the contract for sale of the Assets and you should review such terms before participating in the Auction.
- 6.4. Where a Seller breaches their obligations in the conduct of the Auction and/or sale of Assets which the Successful Bidder has purchased, FCS auctions may (without obligation and at FCS auctions' cost) nominate to assume conduct of any investigation and claim against the Seller and you will provide FCS auctions (at your cost) with all reasonable assistance for such purposes. In such circumstances, FCS auctions may use your name to enforce such investigations and claims. FCS auctions will keep you fully informed of the status of such investigations and claims.
- 6.5. If FCS auctions does not nominate to assume conduct of any investigation and claim against a Seller, you will be solely responsible for pursuing any claims against the Seller at your own cost in all respects and FCS auctions is not under any obligation to provide you with any assistance.

7. **Auctions - General**

- 7.1. Bidders acknowledge that the Agent and FCS auctions are not responsible for bids that are not processed or which are delayed for any reason.
- 7.2. The auctioneer has total discretion in choosing to accept a bid from the internet or from the Auction Site (if applicable) and may, without giving any reason, refuse to accept the bidding of any person or persons.
- 7.3. The sale of an Asset by way of Auction may be subject to a reserve price specified to the Agent by the Seller. If the reserve price is not met, the Asset may not be sold at the Auction and bidders may be contacted directly after the Auction by the relevant auctioneer or Agent to discuss a direct sale of the Asset.
- 7.4. Bidders acknowledge that it is their responsibility to conduct a search of the Personal Property Securities Register to ensure that there is no undisclosed Encumbrance over the Assets.

- 7.5. If after the sale of the Assets at Auction but before the delivery of the Asset, the Agent becomes aware that the Seller does not have good title to the Asset sold, it has the discretion to cancel the sale of that Asset and refund to the Successful Bidder any moneys paid. The Successful Bidder releases FCS auctions and the Agent from any claims, loss, cost or expenses in such circumstances.
- 7.6. FCS auctions reserves its rights to refuse any person admission to or eject them from the Portal.
- 7.7. The Agent reserves its rights to:
 - 7.7.1. remove any Assets advertised as part of an Auction before or during an Auction commences for any reason and without explanation;
 - 7.7.2. refuse any person admission to or eject them from the Auction Site or the Portal;
 - 7.7.3. not disclose the existence and/or value of any reserve price applicable to any Assets, if any; and
 - 7.7.4. offer and sell an Asset that is not sold at an Auction thereafter by direct sale.
- 7.8. Auctions may be closed, suspended, rescheduled or cancelled at any time and for any reason including where (i) there is any suspicion of fraudulent or malicious bidding, (ii) there are any processing or system errors; or (iii) there are any technical errors with the Portal.
- 7.9. You acknowledge FCS auctions does not recommend, endorse or promote any Seller, Agent, Bidder or advertisements on this Website or the Portal.

8. Auction – Terms of Sale

- 8.1. If you bid at any Auction, you are making an offer to Buy the relevant Asset at your bid price. If you are a Successful Bidder, you must purchase the Asset for and the Seller must sell the Asset for the relevant Purchase Price.
- 8.2. The Successful Bidder assumes all risk in relation to an Asset on and from the fall of the hammer in respect of that Asset.
- 8.3. The Successful Bidder must pay to the Seller the Purchase Price by way of the method agreed between the Seller and Successful Bidder without any deduction, withholding or set-off before taking possession of the relevant Asset.
- 8.4. The Successful Bidder is not entitled to possession of the Asset until the Purchase Price has been paid in full.
- 8.5. Unless agreed otherwise, the Successful Bidder must pay the Purchase Price and collect the relevant purchased Asset within seven (7) days of the relevant Auction.
- 8.6. Unless agreed otherwise between the Seller and the Successful Bidder, the Successful Bidder is responsible for the cost of collecting the purchased Assets from the relevant agreed location.
- 8.7. There are no rights to return Assets including if you change your mind or you did not inspect the Assets before bidding.
- 8.8. Title in any Assets do not pass to the Successful Bidder until the Purchase Price is paid in full.
- 8.9. The Successful Bidder is liable for any governmental charges or fees payable which are applicable to the sale and transfer of the Asset.
- 8.10. The Seller warrants the Asset is sold free from any Encumbrances.
- 8.11. To the extent allowed at law, the Successful Bidder acknowledges and agrees:
 - 8.11.1. that the Assets are sold on an 'as is, where is' basis and the Seller gives no warranties or representations to the Successful Bidder;
 - 8.11.2. the Successful Bidder has had an opportunity to inspect the Assets and receive independent advice (including legal advice) before bidding on the Assets; and
 - 8.11.3. there is no warranty given by either the Seller, the Agent or FCS auctions that (i) the Assets are of acceptable quality; (ii) the Assets are fit for any particular purpose; (iii) the Assets match their description in any advertisement or related materials; (iv) the availability of repairs or spare parts for the Assets; and (v) Assets come with any warranties from the relevant manufacturer or such warranties are capable of being enforced.

PART C. GENERAL TERMS

9. Security and Posting Materials

- 9.1. While FCS auctions takes reasonable care to ensure that advertisements and materials published on this Website and the Portal (**Material**) are correct, current and free from errors, FCS auctions does not warrant the accuracy, integrity, reliability or completeness of Materials or any representations made in such Materials. You are responsible for assessing the accuracy of the Materials and rely on them at your own risk. You release FCS auctions from any Liability which you suffer or incur as a result of any Materials not being accurate, complete, current or error free or where any Materials makes a representation that is not true or correct.
- 9.2. You acknowledge FCS auctions does not recommend, endorse or promote any Materials posted on this Website.
- 9.3. If you believe a user of this Website is in violation of these Terms, you must contact FCS auctions immediately.
- 9.4. You are responsible for safeguarding your user identification and passwords related to this Website (if any) and you should never disclose them to any third person.
- 9.5. If applicable, you agree that in applying for a user identification and password for this Website that all information you provide will be true and correct.
- 9.6. If applicable, if you believe the security of your user identification and/or password has been compromised or you suspect unauthorised use of your Website user account, you will immediately notify FCS auctions and FCS auctions will determine the most appropriate resolution which may include suspending or cancelling your user account.
- 9.7. You acknowledge that third parties (whether or not authorised) may monitor your use of this Website (such as internet service providers) and FCS auctions cannot provide any guarantees in relation to privacy or security in such circumstances. To the extent permitted by law, FCS auctions excludes any liability for any loss, cost or expense which may result or be incurred for such breaches or threats of breaches to privacy or security.
- 9.8. You agree not to do anything which could disable, overburden or impair the proper operation or appearance of this Website or the Portal.

10. **Linked Sites**

- 10.1. Linked Sites are provided for your convenience only. Accordingly, FCS auctions does not endorse or approve the content or information contained in any Linked Site. You should carefully review the terms of use of any Linked Site you visit.

11. **Intellectual Property and Restrictions**

- 11.1. You acknowledge nothing in these Terms gives you any rights, title or interest in this Website or the Portal.
- 11.2. You must not modify, publish, communicate to the public, network, rent, lease, loan, transmit, sell, participate in the transfer or sale of, reproduce, create derivative works based on, redistribute, perform, display, or in any way exploit any of this Website or the Portal in whole or in part.
- 11.3. You must not decompile, reverse-engineer, disassemble, attempt to derive the source code of any software or security components of this Website or the Portal, except as permitted by non-excludable law.

12. **Termination**

- 12.1. FCS auctions may terminate or suspend your right to use and interact with this Website or the Portal at any time in FCS auctions absolute discretion, and FCS auctions reserves the right to deny your reapplication at any time in FCS auctions absolute discretion.
- 12.2. You may terminate your participation with this Website and the Portal at any time for any reason. If you terminate your participation under this clause, you understand and accept that the information you have provided (including any personal information) may still be available to FCS auctions, an Agent, a Seller, a Bidder or Bidsonline (as applicable).
- 12.3. Upon any termination or suspension of your rights to use and interact with this Website or the Portal, all rights and licenses granted to you by FCS auctions will cease immediately, including your right to use and access this Website and the Portal.

13. **Liability**

- 13.1. To the extent permitted by law:
 - 13.1.1. FCS auctions disclaims and excludes all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity,

trade custom or usage (including all implied warranties of merchantability, fitness for purpose or lack of workmanlike effort) in relation to your use of this Website or the Portal and the supplies FCS auctions provides under these Terms;

- 13.1.2. FCS auctions has no liability to you for any Liabilities suffered or incurred as a result of or arising from any defect in or failure of or unsuitability for any purpose of supplies made by FCS auctions in accordance with these Terms;
 - 13.1.3. FCS auctions has no liability to you for any Liabilities suffered or incurred as a result of any sale of purchase of Assets; and
 - 13.1.4. you waive, release and discharge FCS auctions from any Claims you may have against FCS auctions in respect of matters described in this clause 13.1.
- 13.2. FCS auctions has no Liability to you for (i) any loss of profit or reputation, economic loss, consequential, contingent, special or indirect damages (including resulting from the loss of business, revenue or profit) incurred by you in respect of or in connection with these Terms or your use of this Website; or (ii) any errors or faults with the Portal or the Portal being unavailable for any reason.
 - 13.3. FCS auctions' Liability for a breach of a condition or warranty of supply (including a condition or warranty implied by any law including by the *Competition and Consumer Act 2010* (Cth)) is limited to the supplying of the services again or the payment of the cost of having the services supplied again.
 - 13.4. This clause 13.4 applies in respect of any supply made by FCS auctions to you where you are a "consumer" within the meaning of section 3(1) of the *Australian Consumer Law* (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth)). FCS auctions' services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled (i) to cancel your service contract with FCS auctions; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
 - 13.5. FCS auctions' aggregate Liability to you for Claims not covered by clauses 13.2, 13.3 and 13.4 will be limited to a maximum amount equal to \$1.00.
 - 13.6. You acknowledge (i) FCS auctions has no liability to you in respect of the services described in clause 3.1 and you indemnify and release FCS auctions from any Liability which you suffer or incur as a result of the services described in clause 3.1; and (ii) FCS auctions holds on trust and may enforce the indemnity and release described in this clause 13.6 on behalf of FCS auctions.
 - 13.7. You release FCS auctions from any Liability arising from or caused by any errors or faults with the Portal or the Portal being unavailable for any reason.

14. Indemnity

- 14.1. You indemnify FCS auctions against any Liability (including legal fees on an indemnity basis) which FCS auctions may suffer or incur arising out of or in connection with (i) any breach by you of these Terms; (ii) any tort (including negligence) or wrongful act or omission by a Seller or Agent; (iii) any claims made by a Seller or Agent or other third party in respect of or related to the conduct or outcome of an Auction; (iv) conduct of, performance of or breaches of any obligations of FCS auctions' obligations under these Terms; and (v) conduct of, performance of or breaches of any obligations of FCS auctions or Bidsonline or auctioneers involved in an Auction including any auctioneer supplied by FCS auctions.

15. GST

- 15.1. If a party (**supplier**) is required to pay GST in respect of a supply made under, or pursuant to, or by reason of a breach of, these Terms, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) in receipt of a valid tax invoice from the supplier for the supply, pay to the supplier an amount equal to such GST at the same time as paying other amounts due under the tax invoice relevant to the supply.

16. General

- 16.1. FCS auctions does not guarantee this Website will be available for use at all times and that such use will be uninterrupted, error free or free of any viruses.
- 16.2. FCS auctions does not guarantee that any email you send FCS auctions will be received by FCS auctions or that it will be free from third party interception. Where you have registered to receive email updates from FCS auctions, all emails (plus attachments to the same) that FCS auctions sends to you are governed by these Terms unless specified otherwise.

- 16.3. These Terms will be governed by and construed in accordance with the laws of South Australia, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of South Australia, Australia.
- 16.4. No delay or failure to take action under these Terms will constitute a waiver unless expressly waived in writing, signed by FCS auctions' duly authorized representative, and no single waiver will constitute a continuing or subsequent waiver.
- 16.5. FCS auctions may subcontract or outsource the performance of any part of these Terms in FCS auctions' absolute discretion.
- 16.6. If any provision is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable.
- 16.7. These Terms constitute the entire agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings regarding such subject matter.
- 16.8. In the event that any term or condition of these Terms is illegal, void or unenforceable, then such term or condition shall be deemed severed from these Terms to the extent only of that illegality, voidability or unenforceability. All remaining provisions will be enforceable.
- 16.9. FCS auctions may at any time assign FCS auctions' rights and interests or novate FCS auctions' rights and obligations (in whole or in part) in connection with these Terms. You may not assign any of your rights or obligations under these Terms without FCS auctions' prior written consent.

17. Meanings

17.1. In these Terms:

- 17.1.1. **Agent** means the listing agent that is conducted an Auction advertised on this Website.
- 17.1.2. **Assets** means personal property offered or requested for sale through this Website including by way of Auction.
- 17.1.3. **Auction** means an auction for the sale of Assets conducted by the Agent.
- 17.1.4. **Auction Site** means the location where the Auction will be conducted in which bidders may attend to place bids in person.
- 17.1.5. **Bidder** means any person that bids or is a potential bidder at an Auction hosted on the Portal to buy Assets.
- 17.1.6. **Claim** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising, whether in contract, tort (including negligence) or otherwise and whether present, unascertained, immediate, future or contingent.
- 17.1.7. **Encumbrance** means any encumbrance or security interest and includes any legal or equitable mortgage, charge (fixed or floating), pledge, lien, title retention or conditional sale agreement, hire or hire purchase agreement, option or restriction about transfer, use or possession.
- 17.1.8. **Farm Clearing Sales Pty Ltd** means Farm Clearing Sales Pty Ltd (ACN 136 441 971).
- 17.1.9. **FCS auctions** means FCS Auction Services Pty Ltd (ACN 641 497 547).
- 17.1.10. **Bidsonline** means Bidsonline Pty Ltd (ACN 104 989 415).
- 17.1.11. **Liability** means Claims, losses, liabilities, costs or expenses of any kind however arising, including penalties, fines, interest and legal fees on an indemnity basis and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
- 17.1.12. **Linked Site** means any third party website linked to this Website by FCS auctions or users of this Website.
- 17.1.13. **Materials** is defined in clause 9.1.
- 17.1.14. **Portal** means the portal/website operated by Bidsonline but made available through this Website by FCS auctions for the conduct of online Auctions.
- 17.1.15. **Purchase Price** means the relevant price for the sale of the Assets.
- 17.1.16. **Privacy Policy** means FCS auctions' privacy policy available on this Website (as updated from time to time).
- 17.1.17. **Seller** means the owner of the Assets made available for sale by Auction using the Portal.

- 17.1.18. **Successful Bidder** means, in respect of a particular Asset at an Auction, the Bidder with the highest bid for the Asset at the end of the Auction for that Asset and which is declared by the relevant auctioneer to be the successful bidder.
- 17.1.19. **Terms** means these terms of use.
- 17.1.20. **Website** means this website being www.farmclearingsales.com.au.
- 17.1.21. **you** and **your** means the person that accesses and/or uses this Website for the purposes described in clause 3.1.

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