

Terms and conditions of sale

Interpretation and general

1.1 "Auctioneer" includes the person authorised to conduct a sale and his, her, its or their employees or agents in any way assisting in the auction or the recording of it.

1.2 "Bidder" means any person (whether present or not) and his, her or its agent or employee placing or making bids or leading the auctioneer to believe that person, agent or employee is making bids.

1.3 "Person" includes any company, firm or body whether incorporated or not.

1.4 "Property" means the goods, chattels, land, estates or interests being auctioned.

1.5 "Purchaser" means the person to whom the property is knocked down by the auctioneer in an at that time uncontested auction.

1.6 "Vendor" means the person placing the property with the auctioneer for sale and includes such a person's actual or purported agents or employees.

2 Unless arranged otherwise in writing with the vendor and auctioneer, the terms of sale are:

(a) for all property except real estate; and

(b) cash on the fall of the hammer.

3.1 The auctioneer alone may fix the amount of a bid or permit it to be withdrawn. The auctioneer will resolve any dispute about the bidding, whether at or after the auction. The auctioneer may combine or divide lots.

3.2 A bid authorises the auctioneer to note the auction sheet and, where writing is required, to execute the contract at that bid on behalf of the bidder and authorises the charge of any buyer's premium referred to in cl 5.1.

3.3 If, but only if the auctioneer has stated whether in relation to the auction generally and/or the particular sale, that the auction is subject to a reserve price and/or that the vendor reserves the right to bid, the vendor may personally or through the auctioneer bid as often as desired.

Purchaser's rights and obligations

4 Unless specifically stated otherwise in relation to identified property the vendor warrants only:

(a) That the title in the property sold will pass to the purchaser only upon the purchaser completing payment in full by cash or cleared cheque.

(b) That there are or will be no encumbrances on the property not advised in particulars of sale or by the auctioneer before entering upon the auction.

5.1 Where announced or notified before the auction that there is a buyer's premium and the amount of or the method of calculating it, the purchaser is to pay, upon the fall of the hammer, the amount or rate announced plus GST, if applicable.

5.2 All goods sold shall be removed on the day of the sale or as otherwise provided in the particulars or announced. if not removed the auctioneer may charge a reasonable sum for warehousing them, but will not be liable to the purchaser for them in any respect.

5.3 If the purchaser fails to pay the purchase price or collect the goods as required, the auctioneer may elect to resell the property in any manner without notice to the purchaser who will be liable for any deficiency in price (after allowing all commissions or expenses of resale whether of the auctioneer, vendor or others), the buyer's premium and liquidated damages of one and a half times the standard overdraft interest rate being charged by the auctioneer's bank at the time of sale (as conclusively certified by the apparent manager of the bank) or may sue for the price, liquidated damages as calculated above and solicitor and client costs for pursuing the purchaser, whether or not cancelling the contract.

5.4 In the event of there being any surplus following resale it will belong to the vendor. The purchaser may not recover more than actually paid by the purchaser.

5.5 If provenance of property is warranted, a purchaser may within 14 days of the auction prove to the satisfaction of the auctioneer that the property is a forgery, whereupon the vendor will repay the purchase price or deposit, as the case may be, in full, subject to the return of the property in good condition.

Auctioneer's obligations and liability

6.1 The auctioneer will not be liable to the bidder or purchaser for:

- (a) any statement or warranty made unless specifically including a personal warranty by the auctioneer;
- (b) any warranty of title or freedom from encumbrances;
- (c) any misdescription or errors in condition, state, size, quality or quantity or for any other error whatsoever;
- (d) any vendor bidding without the auctioneer's knowledge; or
- (e) any failure to bid for a bidder.

6.2 The auctioneer will not be liable to the vendor:

- (a) directly or by indemnity for any of the matters referred to in cl 6.1, except where the breach, or other wrong, was deliberate and without authority from or assistance by the vendor; or
- (b) for any failure to collect the price or deposit as the case may be.

6.3 The auctioneer will not guarantee the safety of any goods or documents of provenance, but undertakes to the vendor alone that the auctioneer's premises are reasonably secure (but not measured in relation to the property held) and to hold bailee's insurance.

7.1 All moneys received by the auctioneer will be held in trust for the credit of the vendor, but the auctioneer may deduct fees (whether the liability of the vendor or purchaser), expenses and any moneys necessary to perfect title to the purchaser or to ensure compliance by the vendor of any other warranty or undertaking to the purchaser.

7.2 These conditions, when exhibited in the auction rooms or any place where an auction is being conducted, shall be binding upon the vendor and purchaser, upon the auctioneer announcing that the sale is conducted subject to these conditions so exhibited notwithstanding that the auctioneer may not have read them aloud and any such announcement may be made by the auctioneer at any time during any sale.

7.3 The auctioneer warrants to all persons that the auctioneer is a current financial member of the Auctioneers Association of New Zealand and is the holder of a current Auctioneers Licence pursuant to the Auctioneers Act 1928.

Vendor's warranties and obligations

8.1 The vendor warrants to the auctioneer and the purchaser that and only that:

(a) the vendor has power to pass title to a purchaser upon the fall of the hammer or at the proposed time of settlement, as the case may be, free of encumbrances except as stated in any particulars;

(b) the property is believed to comprise the quality and to be of or in the quality, description, order, standard or condition stated; and

(c) the vendor has no reason to believe that there is any possible claim not stated in any particulars relating to the property, any liability arising from its normal use or resale or any defect of which notice has not been given which would prevent the normal use of the property.

8.2 Where not inconsistent with any specific written instruction, contract or agreement, the vendor agrees to pay the auctioneer commission at the rates normally charged by the auctioneer at the time of sale and GST, all agreed/reasonable catalogue, advertising and other expenses.

8.3 Where the vendor fixes what the auctioneer regards as an unrealistic reserve, the vendor will withdraw property from sale if the auctioneer requires it. The auctioneer will be paid a reasonable sum in recompense for work done and expense incurred to that point. This will also apply where the vendor withdraws the property from the sale.

9.1 The vendor is not entitled to payment by the auction until fourteen days after clearance of funds, title and provenance.

9.2 The vendor acknowledges the auctioneer may bid on behalf of bidders and may charge a purchaser a buyer's premium.

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