

ARGUS Auctioneers and Valuers PTY LTD – WEBSITE TERMS OF USE

1. General

- (a) This website is operated by Argus Auctioneers and Valuers Pty Ltd ACN 683 296 755 as trustee for the Argus Auctions Unit Trust ABN 40 381 516 210, trading as ARGUS Auctions (**we, our** or **us**). It is available at: www.ArgusAuctions.com.au and may be available through other addresses or channels.
- (b) These terms constitute our terms of use. By accessing and/or using our website (**Site**), you agree to these terms of use and our Privacy Policy (available on our Site) (**Terms**). Please read these Terms carefully and immediately cease using our Site if you do not agree to them.
- (c) Any new features or tools which are added to the current Site shall also be subject to these Terms. You can review the most current version of our Terms at any time [here](#). We reserve the right to update, change or replace any part of these Terms by posting updates and/or changes to our Site. Your continued use of or access to the Site following the posting of any changes constitutes acceptance of those changes.
- (d) We do not undertake to keep our Site up-to-date and we are not liable if any information, materials or content featured on our Site is inaccurate or out-of-date.
- (e) All participants in auctions operated by us and all users of our Site acknowledge and agree that in auctioning an item, we act as each respective vendor's agent only. We are not a direct party to any contact of sale and purchase in respect of an item sold at auction and we are not liable for any fault, short coming, misdescription or failure in respect of any equipment, machine, vehicle or other asset sold at auction. To the fullest extent permitted by law, all users of our Site agree that we are not liable for any fault, short coming, misdescription or failure in respect of any equipment, machine, vehicle or other asset sold at auction and all users of our Site agree to release us from any liability arising in connection with such matters.

2. Link to third parties

- (a) Our Site may contain links to other websites (**Linked Sites**). The Linked Sites are not under our control and we are not responsible for the content of any Linked Sites, including without limitation, any link contained in a Linked Site or any changes or updates to a Linked Site.
- (b) We are not responsible for any form of transmission received from any Linked Site.

- (c) We provide links to Linked Sites only as a convenience to you and the inclusion of any link does not imply endorsement by us of the site or any association with its operators.
- (d) We may occasionally promote affiliate programs and products. We may receive commission on these programs or products.

3. No unlawful or prohibited use

- (a) As a condition of your use of our Site, you warrant to us that you will not use the Site for any purpose that is unlawful or prohibited by these Terms.
- (b) You may not use the Site in any manner which could damage, disable, overburden or impair the Site or interfere with any other party's use and enjoyment of the Site. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Site.
- (c) You must not do or attempt to do anything that is unlawful, which we would consider inappropriate or which might bring us or our Site into disrepute, including (without limitation):
 - i. anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
 - ii. using our Site to defame, harass, threaten, menace or offend any person;
 - iii. interfering with any user using our Site;
 - iv. tampering with or modifying our Site, knowingly transmitting viruses or other disabling features, or damaging or interfering with our Site, including (without limitation) using trojan horses, viruses or piracy or programming routines that may damage or interfere with our Site;
 - v. using our Site to send unsolicited email messages; or
 - vi. facilitating or assisting a third party to do any of the above acts.
- (d) Our Site is intended solely for use by persons who are 18 years of age or older. By agreeing to these Terms, you warrant to us that you are at least 18 years of age.
- (e) You are prohibited from using our Site, including any content or materials featured on our Site, in any way that competes with our business.
- (f) A breach or violation of any of the provisions of these Terms will result in an immediate termination of your right of access to our Site.

4. Intellectual Property rights

Unless otherwise indicated, we own or licence the copyright and all other proprietary rights, title and interest (including intellectual property rights) in all materials used on our Site (**Content**). Your use of our Site and your use of and access to any Content does not grant or transfer to you any rights, title or interest in relation to our Site or the Content. You must not:

- (a) copy or use, in whole or in part, any Content;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any Content to any third party; or
- (c) breach any intellectual property rights connected with our Site or the Content, including (without limitation) altering or modifying any of the Content, causing any of the Content to be framed or embedded in another website or platform, or creating derivative works from the Content.

5. User Content

- (a) You may be permitted to post, upload, publish, submit or transmit relevant information and content (**User Content**) on our Site. By making available any User Content on or through our Site, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to use the User Content, with the right to use, view, copy, adapt, modify, distribute, license, sell, transfer, communicate, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such User Content on, through or by means of our Site.
- (b) No compensation will be paid with respect to the use of your User Content in accordance with these Terms. We are under no obligation to post or use any User Content you may provide.
- (c) You agree that you are solely responsible for all User Content that you make available on or through our Site. You represent and warrant that:

- i. you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these Terms); and
 - ii. neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Site will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- (d) We do not endorse or approve, and are not responsible for, any User Content. We may, at any time (at our sole discretion), remove any User Content.

6. Content Disclaimer

The Content is not comprehensive and is for general information purposes only. It does not take into account your specific needs, objectives or circumstances, and it is not advice. While we use reasonable attempts to ensure the accuracy and completeness of the Content, we make no representation or warranty in relation to it, to the maximum extent permitted by law.

7. Risk and legal title of auctioned items

- (a) All items deposited with us by a vendor for the purpose of auction or sale remain at the vendor's sole risk. We do not accept any liability for loss or damage to an item stored with us pending auction or sale and as a condition to using our Site, all vendors agree to release us and hold us harmless in respect of any such loss or damage caused to or suffered by an item while in our possession.
- (b) Legal title will not pass to a buyer until the purchased item has been paid for in full **however** a purchased item is at the sole risk of the buyer from the fall of the hammer or closure of the relevant auction.
- (c) Any items packaged and sent by us to a buyer are sent at the buyer's own risk and we accept no liability for loss or damage to an item suffered while in transit.

8. Reserve Prices

Items listed for sale may be subject to a reserve price. Reserve prices are not disclosed prior to an auction closing, however, if an item has no reserve/surpassed reserve/vendor has instructed to sell at the current bid price and remove the reserve, then we may update the items description to notify bidders it is now "on the market/reserve off/no reserve/unreserved".

9. Bidding and Auction Protocol

- (a) Each auction and/or auction item/s will have a set finish time and minimum bid price. These times and prices will be specified on the website. A bid placed leading up to the close of an item will add an additional window of time, giving the underbidder an opportunity to counterbid.
- (b) If a reserve price is set on an item and no successful bids are placed above the reserve prior to that item closing, then the bidding on that item will close with no sale. This may be indicated by us/on the website/in promotional material as, passed in/referred/referred to vendor/unsold. When an item is passed in, the highest bidder will have first right to negotiate. An Argus member will contact only the top bidder to negotiate a sale price post auction. If the highest bidder indicates no sale will be made with them, Argus can then negotiate with under bidders or other interested parties. If the highest bidder is uncontactable by phone and email after 24 hours of the scheduled auction time, Argus reserves the right to pursue under bidders or other interested parties in an attempt to achieve a sale.
- (c) Any person placing a bid in one of our auctions agrees to, will be bound by and consents to these Terms. By placing a bid, all bidders acknowledge and agree that after bidding and being advised by us that a bid has been accepted and/or is the winning bid, a legally binding contract will exist for the sale and purchase of the relevant item and the bidder will be bound to proceed with the relevant purchase in accordance with the terms of their bid.
- (d) Where an item is sold by auction for an amount of \$20,000 or more, we reserve the right to require the successful bidder to make immediate payment of a deposit equal in value to ten per cent (10%) of the purchase price. Should the successful bidder fail to make payment of the deposit as required within 24 hours of the scheduled auction time, the bidder will forfeit all right, title and interest to the relevant item and clauses 14(f) and (g) below will apply.
- (e) Once bidders are notified their bid is successful, buyers will have 48 hours to finalise payment of the purchase price in accordance with clause 14(e) below and to collect and take possession of the relevant purchased item. If a buyer does not collect their purchased item within the period specified on that auction, the buyer will be charged storage fees for the item at our discretion. All such storage fees incurred must be paid by the buyer before the buyer will be able to collect and take possession of their purchased item.

10. Online Bidding Software

The online bidding software is provided for use without any warranty as to its capacity. All reasonable methods have been used to maintain interruption free and secure use, however, we offer no guarantee for the third-party software we use.

If any system, technology or human errors occur prior to, during or after an auction, we may within reason and to our sole discretion:

- (a) Withdraw the sale/item/s from the website
- (b) Extend the auction time
- (c) Cancel or close the auction and retract any contracts of sale/winning lots; and
- (d) Restart/postpone the auction.

11. Descriptions and vehicles sold at auction

- (a) Descriptions and photos are to be used as a guide only. We will make all efforts to ensure descriptions and photos are correct in detail and all issues/faults/damage disclosed to us or found by us will be listed in the descriptions. The buyer will be entitled to inspect the items prior to auction to ensure they are confident on exactly what they are bidding on. If an inspection was not offered on an item and the description was unreasonably incorrect, then the buyer will be entitled to either a full or partial refund in accordance with the terms of the Australian Consumer Law.
- (b) All users of our Site and participants in auctions conducted via our Site acknowledge and agree that all vehicles sold via auction are sold unregistered, on an as is where is basis and, as far as is legally permitted, are sold with no statutory warranty or cooling off period.

12. Discontinuance

We may, at any time and without notice to you, discontinue our Site, in whole or in part. We may also exclude any person from using our Site, at any time and at our sole discretion. We are not responsible for any Liability you may suffer arising from or in connection with any such discontinuance or exclusion.

13. Payment providers

- (a) In accepting payments, we will use any payment providers, merchants or gateways as we consider appropriate in our sole and absolute discretion. The terms and conditions of the relevant provider will apply to transactions taking place via our Site

and by accepting these Terms, you agree to abide by the terms and conditions of such providers in all respects.

- (b) If you have any queries regarding the terms and conditions of the payment provider, then please contact the payment provider directly.
- (c) If by your act or omission you cause us to breach the terms and conditions of any payment provider, and we suffer any loss or become the subject of any claim as a result, you agree to indemnify us and keep us indemnified against any such loss or claim which arises in connection with your relevant conduct. Please be aware that this may mean you are obligated to compensate us for our legal fees and other costs incurred by us as a result of your conduct.
- (d) We recommend that you review the privacy policies of our payment providers before proceeding with a transaction via our Site. Where you proceed with a transaction via our Site, you are providing your consent to our payment providers accessing and using your personal information in the manner outlined in their privacy policy. If you have any queries regarding the privacy policy of a payment provider, please contact the payment provider directly.

14. Payments

- (a) All reference to monetary amounts is to Australian Dollars.
- (b) Prices listed on our Site are subject to change at our sole discretion and without notice.
- (c) By purchasing any item from our Site you agree to:
 - i. pay using direct bank transfer (or other form of payment as we may allow);
 - ii. provide us with current and complete information including your full legal name, email address, credit card details and billing information as required; and
 - iii. pay all costs, fees, premiums, charges, shipping costs, applicable taxes (including Goods and Services Tax (GST)) and other charges as may be incurred in respect of the purchase.
- (d) If we discover or believe that any information provided by you is inaccurate or incomplete, we reserve the right to:
 - i. report such conduct to the police; and/or
 - ii. refuse to process your purchase; and/or

- iii. put on hold or terminate your access to our Site, at our sole discretion.
- (e) The buyer with the winning bid (**Successful Buyer**) in respect of an item must attend to payment of the purchase price (or balance purchase price (as the case may be)) for the relevant item within 48 hours of the Successful Buyer being notified that theirs was the highest accepted bid for the relevant item.
- (f) If the Successful Buyer fails to attend to payment of the purchase price (or balance purchase price (as the case may be)) for the relevant item within the timeframe specified above, the Successful Buyer will forfeit all right, title and claim to the item to us and we may resell, relist or dispose of the relevant item at our sole discretion. Should we elect to resell or relist the relevant item and the purchase price achieved for the item is less than what the Successful Buyer had originally agreed to pay, the Successful Buyer is liable to us for the difference in prices and must account to us for the difference on demand. Should we be unable to resell the relevant item within a reasonable period for whatever reason, the Successful Buyer will remain liable to us for the originally agreed purchase price (as reflected by the Successful Buyer's winning bid).
- (g) Wherever we are required to relist or resell an item due to a Successful Buyer's failure to account for the purchase price (or balance purchase price), the Successful Buyer will be liable for any and all reasonable costs incurred by us in pursuing the Successful Buyer for payment and/or reselling or relisting the item. The Successful Buyer must account to us for all such costs on demand.

15. User accounts and passwords

- (a) You agree to provide accurate and truthful details about yourself for the purposes of using our Site, creating any account or membership profile with us. We reserve the right to suspend or terminate your account with us and/or terminate or restrict your right of access to our Site if we discover you have, at any time, provided inaccurate, incomplete or misleading information.
- (b) To purchase an item via our Site or use certain other features of our Site, you may be required to create an account with us, and to provide a valid email address and set a password (**Logins**) for your account. Where you create an account or Logins, you are solely responsible for:
 - i. maintaining the strict confidentiality of your Logins;
 - ii. exercising caution when accessing your account from a public or shared device;
 - iii. ensuring that no-one besides you uses your Logins to access our Site;

- iv. informing us as soon as possible of any need to deactivate your account due to a potential or actual security breach.
- (c) By accepting these Terms you acknowledge and agree that:
 - i. you are solely liable for any loss or damage suffered by you or any other person as a result of your failure to comply with clause (b) above; and
 - ii. we are not liable for any loss or damage suffered by you or anyone else which arises in connection with the theft of your Logins or any theft or misuse of your personal information as a result of the theft of your Logins or the disclosure or sharing of your Logins by you with any other person.

16. Refunds and returns

We offer refunds and returns in accordance with the Australia Consumer Law.

17. Liability Disclaimer

- (a) By accepting these Terms, you acknowledge that our Site may use third party platform providers and you acknowledge that this may not be a secure connection.
- (b) The information, software, products and services included in or available through our Site may include inaccuracies or typographical errors. Changes are periodically made to these Terms and our Site. We may make improvements and/or changes to our Site at any time.
- (c) Subject to clause 11 above and unless otherwise stated to the contrary within these Terms, we make no representations about the suitability, reliability, availability or timeliness and accuracy of the images, information, software, products, services and related graphics contained on our Site for any purpose. To the maximum extent permitted by law all such information, software, products, services and related graphics are provided “as is” without warranty or conditions of any kind. To the maximum extent permitted by law, we disclaim all warranties and conditions with regard to this information, software, products, services and related graphics including all implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement.
- (d) Nothing in these Terms limits, excludes or modifies or purports to limit, exclude or modify the statutory consumer guarantees as provided under the Australian Consumer Law, as well as any other implied warranties under the Australian Securities And Investments Commission Act 2001 (Cth) or similar consumer protection laws in the States and Territories of Australia (**Non-Excludable**

Guarantees). Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, we (including our officers, employees and agents) exclude all liability (including (but not limited to) negligence), for loss of use, data or profits arising out of or in any way connected with:

- i. the use or performance of our Site
- ii. the delay or inability to use our Site or related services
- iii. the provision of or failure to provide services; or
- iv. any information, software, products, services and related graphics obtained through the Site, or otherwise arising out of the use of the Site,

whether based on contract, tort, negligence, strict liability or otherwise, even if we have been advised of the possibility of damages.

- (e) You read, use and act on our Site and the Content at your own risk.

18. Limitation of liability

Nothing in these Terms limits, excludes or modifies or purports to limit, exclude or modify the statutory consumer guarantees as provided under the Australian Consumer Law, as well as any other implied warranties under the Australian Securities And Investments Commission Act 2001 (Cth) or similar consumer protection laws in the States and Territories of Australia (**Non-Excludable Guarantees**). Except for any liability that cannot by law be excluded, including the Non-Excludable Guarantees, we (including our officers, employees and agents) exclude all liability (including (but not limited to) negligence), for any loss, damage or expense, howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent (**Liability**) suffered by you or any third party, arising from or in connection with your use of our Site and/or the Content and/or any inaccessibility of, interruption to or outage of our Site and/or any loss or corruption of data and/or the fact that the Content is incorrect, incomplete or out-of-date.

19. Indemnity

To the maximum extent permitted by law, you must indemnify us against any Liability suffered or incurred by us arising from or in connection with your use of our Site or any breach of these Terms or any applicable laws by you. This indemnity is a continuing obligation, independent from the other obligations under these Terms, and continues after these Terms end. It is not necessary for us to suffer or incur any Liability before enforcing a right of indemnity under these Terms.

20. Termination

These Terms are effective until terminated by us, which we may do at any time and without notice to you. In the event of termination, all restrictions imposed on you by these Terms and limitations of liability set out in these Terms will survive.

21. Disputes

In the event of any dispute arising from, or in connection with, these Terms (**Dispute**), the party claiming there is a Dispute must give written notice to the other party setting out the details of the Dispute and proposing a resolution. Within 7 days after receiving the notice, the parties must, by their senior executives or senior managers (who have the authority to reach a resolution on behalf of the party), meet at least once to attempt to resolve the Dispute or agree on the method of resolving the Dispute by other means, in good faith. All aspects of every such conference, except the fact of the occurrence of the conference, will be privileged. If the parties do not resolve the Dispute, or (if the Dispute is not resolved) agree on an alternate method to resolve the Dispute, within 21 days after receipt of the notice, the Dispute may be referred by either party (by notice in writing to the other party) to litigation.

22. Severance

If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision must be read down as necessary to allow it to be valid or enforceable. If it is not possible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

23. Jurisdiction

Your use of our Site and these Terms are governed by the laws of Queensland, Australia. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in Queensland, Australia and any courts entitled to hear appeals from those courts and waive any right to object to proceedings being brought in those courts.

Our Site may be accessed throughout Australia and overseas. We make no representation that our Site complies with the laws (including intellectual property laws) of any country outside Australia. If you access our Site from outside Australia, you do so at your own risk and are responsible for complying with the laws of the jurisdiction where you access our Site.

For any questions and notices, please contact us at:

Argus Auctioneers and Valuers Pty Ltd ACN 683 296 755 as trustee for the Argus Auctions Unit Trust ABN 40 381 516 210, trading as ARGUS Auctions Email: info@argusauctions.com.au

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