



[Grays e-Commerce Group Limited ACN 125 736 914]
 130 Macarthur Road, Hamilton QLD 4007, Ph: [+61 7 3015 9250]; Fax: [+61 7 3015 9251]

BIDDERS REGISTRATION

COMPANY		BIDDER NO:	
NAME			
ADDRESS			
	TOWN/CITY	STATE	POSTCODE
PHONE:	WORK/HOME	MOBILE	
EMAIL ADDRESS			
DRIVERS LICENCE NUMBER		STATE OF ISSUE	EXPIRY DATE
By signing below I agree to the Terms and Conditions of this Auction.			
SIGNATURE		DATE	

- A Buyers Premium of _____% will be added to the purchase price of each lot sold.
- Lots may be GST inclusive or exclusive – refer to auction lot details.
- The Auctioneer has the discretion to withdraw and/or reoffer a lot for sale at any time

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Please read these terms and conditions carefully. Note that if you are the winning bidder at an auction, amounts are payable in addition to the bid price (e.g. buyers premium, GST, credit card surcharges). Please consider the total price payable before bidding. Please also inspect items before bidding – lots are sold on an 'as is, where is' basis.

1. General

These Terms and Conditions apply to the Company's Auctions. Capitalised terms are defined in clause 15.1. The Company may amend these Terms and Conditions from time to time by making available an updated version of these Terms and Conditions at the Auction.

2. Auction process

2.1 The Auctioneer regulates the Auction

- (a) Subject to any reserve price under clause 2.2 and any right the Vendor has to bid, the highest Bidder shall be the Purchaser and in the event of any dispute arising in relation to this, the Auctioneer shall be the sole arbitrator and his decision shall be final.
- (b) Advances in the bidding shall be regulated by the Auctioneer. No Bidder may retract their bid once it has been taken.
- (c) The Auctioneer has the discretion to withdraw and/or reoffer a lot for sale at any time.
- (d) Without limiting clause 2.1(c), the Auctioneer may at any time withdraw and/or reoffer an item for sale at any time if the item:
 - (i) becomes unavailable due to damage;
 - (ii) has uncertain ownership, or is withdrawn by the manufacturer, distributor or Vendor;
 - (iii) is no longer in stock;
 - (iv) has been erroneously listed twice; or
 - (v) is incorrectly described.
- (e) The Auctioneer may refuse to accept any bid which, in his reasonable opinion, is not in the best interests of the Vendor, and may exclude any person or persons whatsoever from the Auction at any time for any reason whatsoever, and particularly if he suspects they are engaging in collusive bidding practices.
- (f) The Purchaser shall be deemed to be the principal unless, prior to the sale, they had given to the Auctioneer a copy of a written authority to bid for or on behalf of another person.

2.2 Reserve price

The Vendor may nominate a minimum reserve sell price on an item. If the reserve price has not been met at the end of the Auction, the highest Bidder below the reserve price may be accepted by the Auctioneer.

2.3 Absentee bids

The Auctioneer may accept Absentee Bids. Any Absentee Bid submitted to the Auctioneer by a Bidder is a binding offer to purchase a lot at that price. Absentee Bids must be submitted on the Company's prescribed form and received by the Auctioneer by 9:00am on the day of sale.

2.4 Vendor may withdraw lot

The Bidder acknowledges and agrees that the Vendor has the right to withdraw a lot from sale at any time before the Auctioneer accepts a bid for the lot at the Auction.

2.5 Conclusion of Auction

- (a) On the fall of the hammer, the Purchaser shall confirm their name and (if required) immediately pay twenty-five cents in the dollar in part payment of the purchase price, such payment to be applied to the lot so purchased or to the entire invoice of purchases by the Purchaser. The Purchaser shall complete the Company's 'Buyer's Bid Card'. In default of these conditions, the lot or lots so purchased may, at the Auctioneer's discretion, be immediately put up again and resold.
- (b) The Purchaser agrees that the Company may create an online account with the Company for the Purchaser and the Purchaser acknowledges that the Purchaser's personal information will be treated by the Company in accordance with the Company's Privacy Policy on the Site.

3. Payment, risk and title

- (a) On the fall of the hammer, each lot shall be at the PURCHASER'S RISK AND EXPENSE and shall be paid for within 48 hours (or within the time-frame agreed in writing with the Company prior to the Auction). Payment may be made by:
 - (i) credit card;
 - (ii) subject to clause 3(c), cash; or
 - (iii) if the amount to be paid is more than \$5,000, direct deposit to the Company's nominated bank account within 2 working days of the Auction.
- (b) A surcharge of 2% applies to all payments made by American Express and Diners Club, and a surcharge of 1% applies to payments made by MasterCard and Visa.
- (c) The Company may refuse a cash payment if the Company reasonably suspects that the payment may directly or indirectly involve the proceeds of unlawful conduct.
- (d) In the event of delivery being made to or possession obtained by the Purchaser, his employees, agents or contractors, prior to payment in full of the purchase price plus any applicable additional charges, TITLE AND PROPERTY in the lot shall not pass to the Purchaser.
- (e) The winning Bidder must pay the Company the sale price and, as applicable, GST, any amount owed under clause 4 and any surcharge under clause 3(b).

4. Buyer's premium or flat rate per unit

- (a) The Purchaser agrees that the Company will charge the Purchaser either:
 - (i) a premium, being a percentage of the gross sale price to the Purchaser (exclusive of GST) (**Buyer's Premium**); or
 - (ii) a fixed fee, being a flat rate per unit (**Flat Rate Per Unit**),for services and facilities provided to the Purchaser by the Company.
- (b) The Buyer's Premium or Flat Rate Per Unit is payable in addition to and at the same time as the sale price and will form part of the total price paid by the Purchaser for the purchase of the lot.
- (c) The Company will notify the Purchaser of the percentage amount of the Buyer's Premium or the amount of the Flat Rate Per Unit before the Auction.

5. Goods and services tax

- (a) Prior to the Auction, the Company will advise Bidders, either orally or in writing, whether the sale price of a lot is inclusive of GST (**GST Inclusive**) or exclusive of GST (**GST Exclusive**). The Purchaser acknowledges and agrees that:

- (i) if the sale price is GST Inclusive, the Buyer's Premium will be as a percentage of the sale price (exclusive of GST) and payable by the Purchaser to the Company at the same time as the sale price; and
 - (ii) if the sale price is GST Exclusive, GST will be calculated on and added to the sale price and the Buyer's Premium.
- (b) Where a Flat Rate Per Unit is payable:
- (i) if the sale price is GST Inclusive, the Flat Rate Per Unit will be inclusive of GST; and
 - (ii) if the sale price is GST Exclusive, GST is payable on the Flat Rate Per Unit.

6. Inspection and collection of goods

6.1 Inspection of goods

If a Bidder visits any place where goods are stored to inspect or collect them, the Bidder must comply with:

- (a) any relevant laws regarding occupational health and safety;
- (b) any directions or warnings about the goods or their location; and
- (c) any directions given by the Company or the Company's representatives when inspecting or removing any goods from any location.

6.2 Collection of goods

- (a) The Company may specify particular requirements relating to the removal or collection of goods. The Company will make these particular requirements available to the Purchaser before the Auction, whether on the Site or elsewhere. The Purchaser must comply with any particular requirements relating to the removal or collection of goods specified by the Company.
- (b) No purchases may be removed until after the conclusion of the Auction. All purchases must be paid for and removed within two (2) days of the date of the Auction or as specified at the time of sale.
- (c) If the Purchaser does not remove the goods within 7 days of an Auction, the Company may charge the Purchaser reasonable storage fees.
- (d) If the Purchaser does not remove the goods within 14 days of an Auction, and after notice to the Purchaser:
 - (i) where the item was purchased for \$100 or more, the Company may sell the item on reasonable terms and refund the proceeds of sale to the Purchaser, less Buyer's Premium or Flat Rate Per Unit (as applicable), storage fees and an administration fee of \$40; and
 - (ii) where the item was purchased for less than \$100, the Company may sell or otherwise dispose of the item, without refund to the Purchaser.

7. Consumer guarantees, warranties and returns

7.1 Consumer guarantees and warranties

- (a) Nothing in these Terms and Conditions affects, restricts or excludes any rights a Purchaser has under the Australian Consumer Law. The Purchaser acknowledges that there are a number of consumer guarantees in the Australian Consumer Law which do not apply to the sale of goods by auction that is conducted by an agent.
- (b) The Company is usually the agent of the Vendor and conducts the Auction. No condition or warranty either express or implied is given by the Company with any lot offered, when the Company is the agent of the Vendor, as all lots are open for inspection prior to the commencement of the sale. The Purchaser acknowledges that the lots are sold with all faults, if any and voluntarily accepts the risks associated with the purchase and use of any lot purchased. Bidders should inspect lots before bidding. Lots are not sold by description. No sale shall be invalidated and no compensation shall be paid in respect of any fault or error of description of any lots sold.
- (c) In the rare circumstances where the Company is not the agent of the Vendor and sells goods at an Auction on its own behalf, a Purchaser who is a consumer under the Australian Consumer Law has certain statutory rights, including that the consumer may be entitled to a replacement or refund for a major failure of goods and compensation for any other reasonably foreseeable loss or damage.
- (d) If an item is described at the Auction as being faulty or in a damaged or used condition, the Purchaser acknowledges that condition when choosing to purchase that item. To the extent permitted under the Australian Consumer Law, the Company accepts no liability for the condition of such an item.
- (e) Subject to any rights a Purchaser has under any law, if an item is sold with an accompanying manufacturer's warranty, the Company cannot and does not take any responsibility for the content, fulfilment or enforcement of that manufacturer's warranty. The Purchaser has the responsibility to contact the relevant manufacturer in relation to the warranty.

7.2 Returns

Subject to any rights a Purchaser has under the Australian Consumer Law, where the Company is the agent of the Vendor, goods bought at an Auction may not be returned to the Company for any reason, including if the Purchaser:

- (f) has a change of mind; or
- (g) had, or did not have, the opportunity to inspect the goods before bidding.

8. Limitation of liability and indemnities

- (a) Any person attending the Auction site before, during and after the Auction does so at their own risk and should take care. It may be an industrial site. To the extent permitted by law, the Company is released and discharged from liability for any injury, damage or loss sustained by any person attending the Auction site.
- (b) Subject to this clause 8, the Purchaser accepts all risks and responsibility for losses, damages, personal injury and other consequences resulting directly or indirectly from the purchase of any lot. The Purchaser agrees to indemnify the Company against all expenses, losses, damages and costs that the Company may incur, directly out of or in connection with:
 - (i) any personal injury caused to any person as a result of the use of any lot purchased by the Purchaser at the Auction;
 - (ii) any damage caused as a result of the use of any lot purchased at an Auction; and
 - (iii) any negligence, breach of duty, breach of these Terms and Conditions or breach of statute by the Purchaser in connection with the Auction.
- (c) The Purchaser is not liable for loss or damage to the extent that such loss or damage is caused by the Company's negligence, wilful misconduct, or breach of these Terms and Conditions.
- (d) The Company does not exclude any liability which cannot be excluded by law. To the fullest extent permissible by law, the Company expressly limits its liability for breach of any consumer guarantee in respect of the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, at the Company's option:
 - (i) in the case of goods supplied, to: the replacement or repair of the goods; the supply of equivalent goods; or a refund; and
 - (ii) in the case of services supplied, to: supply of the services again; payment of the costs of having the services supplied again; or making a full refund.
- (e) To the extent permitted by law, the Purchaser agrees to waive any claim against the Company which arises out of the Auction, except to the extent that any such claim arises from the Company's fraud, negligence or wilful misconduct. The Purchaser further agrees to indemnify and hold the Company harmless from any claim or demand, including legal fees on a full indemnity basis, made by any third party arising out of a breach of these Terms and Conditions by the Purchaser.

- (f) The Auctioneer regulates the bidding at the Auction. A Bidder has no cause of action against the Company or the Auctioneer if the Auctioneer exercises his or her discretion to reopen bidding on an item or refuses to exercise his or her discretion to do so.
- (g) In certain circumstances, an item for sale may include reference to the manufacturer's Recommended Retail Price (**RRP**) or original retail price (**ORP**). Usually if a RRP or ORP is mentioned with an item, the RRP or ORP has been supplied by the Vendor of the item. The Company accepts no responsibility for the accuracy of any RRP or ORP included on any item listed for Auction. The Purchaser must satisfy themselves as to the value of the item being sold.

9. Purchaser's obligations

9.1 Fraud

The Purchaser must not use a false name or buy goods or make bids with an invalid or stolen credit card. The Company may refer any fraudulent activity to the relevant law enforcement authorities.

9.2 Breach of Terms and Conditions

- (a) If the Purchaser:
 - (i) fails to comply with a material term of these Terms and Conditions; or
 - (ii) refuses to pay or otherwise fails to the purchase of an item (for example, if a credit card payment is declined due to insufficient funds),the Company may, in its discretion and acting reasonably:
 - (A) bring court action against the Purchaser for any outstanding amounts owed to the Company, including any Buyers Premium or Flat Rate Per Unit and all reasonable costs incurred by the Company as a result; and/or
 - (B) resell or attempt to resell the lot in any manner and upon such terms and conditions as the Company considers reasonable. In some circumstances, the Company may make a claim against the Purchaser for the losses incurred if the resale price is less than the amount owed by the Purchaser to the Company.
- (b) The Purchaser is liable for losses suffered and expenses incurred by the Vendor or the Company resulting from any resale, or attempted resale, under clause 9.2(a).
- (c) In addition to the rights of the Company under clause (a), if the Purchaser refuses to pay or otherwise fails to complete the purchase of an item, the Company may, in its discretion and acting reasonably, charge the Purchaser (whichever is the greater):
 - (i) a cancellation fee of \$250; or
 - (ii) up to 30% of the purchase price, plus Buyers Premium or Flat Rate Per Unit (as applicable),to cover the actual and reasonable costs incurred by the Company because of the Purchaser's failure to complete the purchase; and these costs may include but are not limited to the cost of resale of the item, any lost commission and Buyers Premium (if any), administration costs, restocking costs and any other reasonable costs. Where payment has been made by credit card, the Purchaser authorises the Company to deduct from the Purchaser's credit card, any amount owing to the Company under this subclause 9.2(c). The Purchaser will be provided with reasonable details of the charge.
- (d) No employee, servant or agent of the Company is authorised to waive, add to or vary these Terms and Conditions without the written authority of the Company's Secretary or General Manager.
- (e) If the Purchaser is liable to the Company under this clause 9.2, and the Purchaser has paid moneys to the Company towards any lot, the Company may apply those moneys to the amount owed under this clause 9.2.

10. Proceedings against Vendor

The Purchaser acknowledges that the Company is usually acting as the authorised agent of the Vendor and any rights of action the Purchaser may have in respect of the lots purchased by the Purchaser generally lie against the Vendor, not the Company. In the event that the Purchaser wishes to take proceedings in respect of the said lots and the Vendor has not been named by the Company in its dealings with the Purchaser to date, the Purchaser agrees to request the name of the Vendor from the Company and, provided the Company provides the relevant details, the Purchaser agrees to proceed against the Vendor first, not the Company.

11. Terms and conditions for specific goods

11.1 Additional terms and conditions

The Auctioneer or the Company may before the commencement of an Auction state that additional terms and conditions apply to that particular lot or Auction. Any such terms and conditions will be deemed to be incorporated into and form part of these Terms and Conditions.

11.2 Computer equipment

The Purchaser acknowledges that any computer equipment which is sold at Auction may include software (**Software**) which is under licence (**Licence**) from the software owner to the Vendor and that the terms and conditions of the Licence may restrict the use and transfer of the Software. The Purchaser:

- (a) warrants that it has had an opportunity to make inquiries about the Licence; and
- (b) undertakes to be bound by the Licence terms and conditions (where applicable).

11.3 Motor vehicles

- (a) Any motor vehicle offered at Auction is offered in accordance with the 'Motor Vehicle Terms & Conditions' available on the Site and available for inspection at the Auction (**Motor Vehicle Terms & Conditions**).
- (b) In the event of any inconsistency between the Motor Vehicle Terms & Conditions and these Terms and Conditions, these Terms and Conditions will prevail. No motor vehicle sold at Live Auction is eligible for the Company's extended warranty offering. The Purchaser acknowledges that any inspection report (including pink slip, blue slip, NRMA, RACV, RACQ report or similar) offered with any motor vehicle has been supplied by the Vendor and not the Company. The Purchaser acknowledges that the Company cannot and does not warrant or guarantee the correctness or accuracy of anything contained in or implied by any such report.

11.4 Plant and equipment

- (a) The Purchaser acknowledges that work, health and safety legislation, Codes of Practice and Australian Standards (**Relevant Legislation**) imposes duties and obligations in respect of the sale or transfer of used plant and equipment for use in the workplace. The Company does not warrant, guarantee or represent that any plant and equipment offered for sale is fit for use in any workplace and/or matters that may affect its future usage. It is the Purchaser's responsibility to ensure plant and equipment is not used in any workplace until all faults (if any) are rectified and brought to a standard necessary to comply with the Relevant Legislation.
- (b) In so far as such information is available, the Purchaser acknowledges that all available records in the possession of the Vendor in respect of the manufacturer's design and safety recommendations have been made available, at the request of the Purchaser, for inspection. Where such information and/or records are not available and the plant and equipment is sold without such information (including any information required to be provided to a Purchaser under the Relevant Legislation), the Company is not liable for any loss, damages, claims to any person for the absence of such information/records.
- (c) The Purchaser warrants that they have undertaken a proper inspection of the plant and equipment, any records referred to in this clause and made all necessary enquiries to determine whether the plant and equipment meets the requirements of the

12. Live Auctions

Bidders acknowledge and agree that:

- (a) the Auction may be live streamed on the Site (a **Live Auction**) in accordance with the terms and conditions set out in the GraysOnline User Agreement available at GraysOnline.com;
- (b) the Auctioneer may accept bids submitted online during the Live Auction from persons who are not physically present at the auction;
- (c) the Auctioneer may accept Absentee Bids either in advance of or during the Live Auction from persons who are not physically present at the Auction;
- (d) in the event that the Auctioneer receives an online bid for a Live Auction around the same time that a bid is made in person from the Auction floor, the Auctioneer may give the bid from the Auction floor priority over the online bid;
- (e) in the event that a lot is reoffered under clause 2.1(c), the Company may also hold the Auction for the reoffered lot by Live Auction; and
- (f) the Company will record the Auction and such recording may include images of the Bidders and such recordings may be stored by the Company for a period of time, in accordance with its Privacy Policy available on the Site. Bidders and other persons attending the Auction consent to being filmed by the Company and to the Company using such footage for the Live Auction.

13. Governing law

These Terms and Conditions are governed by and must be construed in accordance with the laws in force in the state in Australia in which the auction is held. The Company, Bidders, the Purchaser and the Vendor irrevocably submit to the exclusive jurisdiction of the courts of that state.

14. Privacy

The Company's Privacy Policy on the Site applies.

15. Definitions and interpretation

15.1 Definitions

In this document, unless the context otherwise requires:

Absentee Bid means a bid for a lot in an Auction which a Bidder submits to the Auctioneer to execute on the Bidder's behalf during the Auction;

Auction means an auction run by the Company at physical premises;

Auctioneer means the auctioneer at the Auction;

Australian Consumer Law means the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Bidder means a bidder or prospective bidder at an Auction;

Buyer's Premium has the meaning given to it in clause 4(a)(i);

Company means:

- (a) if the auction is held in Queensland, CM Pty Ltd ACN 060 526 516;
- (b) if the auction is held in South Australia, GraysOnline (SA) Pty Ltd ACN 119 696 070;
- (c) if the auction is held in New South Wales, Grays (NSW) Pty Ltd ACN 003 688 284;
- (d) if the auction is held in Victoria, Grays (VIC) Pty Limited ACN 085 287 289; or
- (e) if the auction is held in Western Australia, Gray Eisdell Timms (WA) Pty Ltd ACN 056 957 852.

Flat Rate Per Unit has the meaning given to it in clause 4(a)(ii);

GST means goods and services tax determined in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Live Auction has the meaning given to it in clause 12(a);

Motor Vehicle Terms & Conditions has the meaning given to it in clause 11.3;

Purchaser means the purchaser of a lot at an Auction, as determined by the Auctioneer;

Site means the GraysOnline website (including graysonline.com.au) and mobile apps;

Terms and Conditions means these terms and conditions; and

Vendor means the owner of a lot being sold at Auction.

15.2 Interpretation

In interpreting this document, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) words denoting any gender include all genders;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and
- (g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally.