



Premium Wool (WA) Pty Ltd T/A Awn

ABN 61 101 646 539

17 Cocos Drive Bibra Lake WA 6163

P (08) 6173 8200 F (08) 6173 8299 E [lotting.wa@awn.net](mailto:lotting.wa@awn.net)

## TERMS & CONDITIONS OF SALE OF WOOL

**EFFECTIVE FROM: 06 AUGUST 2020**

### **DEFINITIONS**

**Broker:** The Broker is the agent acting for the Vendor selling wool.

The Broker also acts as the storage and handling agent for both the Vendor and the Buyer in relation to their respective interests.

In these Terms and Conditions, "the Broker", means Premium Wool (WA) Pty Ltd T/A Awn – ACN 101 646 539 of PO Box 266, Guildford NSW 2161.

**Buyer:** The Buyer is any person who the Broker accepts a bid from for the purchase of a Vendor's wool.

**Vendor:** The Vendor is the owner of the wool offered for sale.

**Words importing the masculine gender only shall include the feminine gender and vice versa.**

### 1. **PREAMBLE**

#### **The Australian Wool Exchange Limited (AWEX) Rules**

The provisions of:

- (a) the AWEX Wool Trading Rules and
- (b) the AWEX Rules for electronic data communication and information transfer, in force from time to time, will apply.
- (c) If there is any inconsistency between AWEX Rules and these Terms & Conditions, these Terms & Conditions will prevail.

### 2. **ACCEPTANCE OF THE TERMS AND CONDITIONS OF SALE**

A bid by a Buyer will constitute acceptance of these Terms and Conditions of Sale.

### 3. **LOT DESCRIPTION**

- (a) AWEX industry description codes, if included in sale catalogues, are provided as an aid to the efficient marketing of wool clips and are not intended to replace physical inspection of display samples.
- (b) Premium Wool (WA) Pty Ltd T/A Awn shall incur no liability for any catalogue misdescription.



#### 4. **BIDDING**

- (a) The Vendor reserves to himself the right of one bid and of refusing any bid without giving any reason for it and subject to this reservation the highest bidder shall be the Buyer.
- (b) Bidding shall advance by a minimum of 1 cent per kg.
- (c) All bidding will be on a GST exclusive basis.
- (d) GST will be added to the sale price after the fall of the hammer (except where indicated to the contrary).
- (e) The auctioneer shall announce the lot number before bidding commences on a lot. Audible bids of not less than one (1) cent shall be accepted. When bidding has ceased, the auctioneer shall, before the fall of the hammer, announce the price and the Buyer, or the highest bidder in the case of the lot being passed in.
- (f)
  - (i) In the event of a Buyer requesting that a lot which he has bought in error be re-submitted in the Sale Room, and provided that no more than 10 of the succeeding lots have been dealt with, the Buyer shall be released of his purchase and the lot shall be immediately reoffered. Should the Buyer still be interested in the lot he shall state his top price and under no circumstances will he be permitted to re-enter the bidding if the price is exceeded, nor will he be entitled to receive the whole or part of the lot by transfer from the ultimate Buyer.
  - (ii) Further, any other Buyer in the Sale Room may claim the lot at the price stated by the first Buyer when the lot is re-submitted in which case the first Buyer shall have no further interest in the lot.
  - (iii) The Auctioneer may refuse to accept any bid and shall not be bound to give any reason for such refusal.
  - (iv) The Auctioneer shall be the sole judge of who is the highest bidder
- (f) The Auctioneer may request a sold lot to be passed-in or a passed-in lot sold, provided that not more than ten (10) of the succeeding lots in the catalogue have been dealt with.
- (h)
  - (i) No Buyer shall be allowed to claim a lot in the Sale Room at the reserve price declared by auctioneer unless the last bidder has refused to advance.
  - (ii) In the event a lot is passed in, the highest bidder may negotiate with the Broker on a lot or declare to the Broker his willingness to forego his option any time after the sale or by close of business (5.00pm) on the day of sale.
  - (iii) During the option period no other Buyer shall be allowed to claim the lot on the Reserve Price declared by the Broker.
  - (iv) In the event the highest bidder declares to the Broker no further interest to a passed in lot prior to close of business (5.00 pm) on the sale day, other Buyers shall immediately be allowed to bid on the Reserve Price declared by the Broker.

#### 5. **BUYER DEPOSIT**

The Buyer shall (if required by the Broker) at any time during or after the sale deposit with the Broker 25 per cent of the Broker's estimated value of his purchase and sign these Terms and Conditions of Sale.

The Broker shall not in any case be responsible for any loss or damage occasioned through such deposit not having been required.



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## 6. **PROPERTY AND RISK**

Property and Risk in the goods sold shall pass to the Buyer:

- (a) On Sale Date on the fall of the hammer at Auction, and / or
- (b) On the Date of Confirmation by Wooltrade that a Buyer has purchased a Lot, and / or
- (c) On the Date of Confirmation by a Buyer that a lot has been Purchased Privately by them

## 7. **PAYMENT**

### (a) **Payment Period**

Nine (9) days (or an agreed extension) from and including Thursday of an auction sale series shall be allowed for payment for wool purchases. This period shall be known as the "Payment Period", the expiry day of which shall be known as "Payment Day".

### (b) **Payment Method**

The Buyer shall pay the invoiced amount (including any GST applicable) by cash, bank cheque or cleared electronic transfer or cleared telegraphic transfer before the delivery of the wool, or on or prior to the Payment Day whichever is the earlier.

### (c) **Payment Time**

Expiry time for payment, on any payment day, shall be 4.00pm and payment shall be deemed to have been made on the day the funds are cleared and credited to the Broker's account.

### (d) **Payment Summaries**

- (i) When multi-payments or part payments are made to the Brokers' central payments office, a complete payment summary listing sale numbers, lot numbers and numbers of bales must be advised to that office no later than 2.00pm on the day of payment.
- (ii) Buyers remitting payments by electronic or telegraphic transfer must forward, in advance, full particulars by facsimile or E-Mail to the Broker.

### (e) **Bank Holiday**

If payment is unable to be made to the Broker's account by the Payment Day due to a bank holiday in Sydney, payment may be made on the next working day by 4.00 pm without penalty.

### (f) **Late Payments**

- (i) Interest shall accrue on late payments for wool purchases and all other charges at the rate advised by the Broker.
- (ii) The Broker shall notify any defaulting Buyer, or the original Buyer if the wool has been transferred, of any late payment
- (iii) If:
  - (a) a deposit has been paid for any goods sold; and /or



- (b) the Buyer has not paid for part or all of those goods (Unpaid goods) or any other outstanding charges (including, but not limited to outstanding storage charges); then
  - (c) the Buyer forfeits to the Vendor 10% of the percentage of the deposit equal to the proportion of the Unpaid Goods bears to the goods sold; and
  - (d) the Broker may refuse to release any Unpaid goods held on behalf of the Buyer and retain the Unpaid Goods and resell them by auction or private sale without notice to the Buyer; and
  - (e) the Buyer is liable to the Vendor and Broker for any damage or loss suffered by the Vendor or Broker by reason of any non-payment.
- (g) **Transferred Lots**
- (i) All requests for lots to be transferred must be in writing or emailed to the Broker.
  - (ii) If the transferee of any lot(s) does not pay in full for any such lot on or before the Payment Day, then the original Buyer shall be liable to the Broker for the payment and any associated charges.

## 8. **DELIVERY**

### (a) **Delivery – Broker Responsibility**

Provided funds are cleared and credited to the Broker's account for full payment of goods and outstanding charges the Broker shall provide delivery of wool to the Buyers own transport at store door.

### (b) **Delivery – complete lots**

- (i) Delivery shall be by complete lots only
- (ii) Each complete lot shall be available for collection from the Broker's storage complex within the storage centre.
- (iii) The Buyer shall take the goods away from the Brokers store on or before the payment date unless the Broker agrees to continue to store the wool on behalf of the Buyer in accordance with these conditions of sale and / or the Brokers schedule of Buyers charges.

### (c) **Delivery of wool from Broker's store**

Subject to all parties meeting their commitments and in particular the provisions of Clause 7:

- (i) when delivery of wool is called for, the Broker shall give delivery within two (2) clear working days from the receipt of delivery orders and instructions; and
- (ii) in the case of wool for delivery to the Buyer's own transport, the Broker shall give delivery within two (2) clear working days from the receipt of delivery orders, provided the carrier gives a minimum of 24 hours' notice of intended collection.



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(d) **Mislaid Wool**

- (i) Without in any way negating the provisions of 8(c) above, if wool is not delivered within three (3) clear working days from receipt of delivery instructions due to the wool having been mislaid, the Buyer shall be entitled to cancel the lot and to a cash settlement based on AWEX valuation of the market value of the type of wool that has been mislaid, as at the expiry time of the normal delivery period.
- (ii) A cancellation fee, at an agreed rate per sale lot or part sale lot involved, to cover documentation and other costs, shall also be paid to the Buyer, and interest at an agreed rate shall be added to the number of days between the due date of delivery and when the cash settlement referred to in (i) above is paid.
- (iii) All monies payable in accordance with sub clauses (i) and (ii) above must be paid within fourteen (14) days.
- (iv) If within fourteen (14) days from the due date of delivery the Buyer has not elected to cancel the lot and accept cash settlement, and the wool is found, the Buyer shall take delivery and be refunded interest only for the number of days between the due date of delivery and the date on which the Buyer is advised that the wool has been found.

9. **CHARGES**

- (a) The Broker shall determine charges to be paid by the Buyer to meet costs associated with the post sale warehousing of wool.
- (b) All charges will attract GST
- (c) The Broker shall charge the Buyer for wool held in store beyond the Tuesday following the week of sale and;
  - (i) daily rates to apply will be determined by the Broker.
  - (ii) these charges will apply up to the day prior to delivery, provided the delivery has been effected as requested;
  - (iii) if delivery is not effected as requested, the Buyer will not be liable for any charges beyond the requested delivery date.
  - (iv) storage charges become due and payable within 14 days of receipt of the monthly account by the Buyer.
- (d) The Buyer shall pay the Broker fees for any other service(s) carried out by the Broker at the request of the Buyer, including, for example, countermarking, cartage to main centre dump etc.
- (e) If a transferee fails to pay charges incurred, the original Buyer will be responsible for paying to the Broker all charges due.
- (f) If the Buyer offers wool for re sale, the pre-sale charges to apply will be those agreed between the Buyer and the Broker.
- (g) Details of any changes to the Broker's charges shall be advised to the Buyer by the Broker giving the Buyer seven (7) days from the date of advice to adjust to the revised level of charges.



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## 10. **FORCE MAJEURE**

- (a) No party is liable for any failure to perform or delay in performing its obligations under these Terms and Conditions of Sale if that failure or delay is due to anything beyond the party's reasonable control (including, but not limited to: fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, labour dispute, labour shortage and failure or delay in transport) and the other party's obligations are suspended until the first party resumes performance.
- (b) Notwithstanding the above, if Force Majeure prevents shipping, the Buyer shall remain liable for storage charges for the period of the Force Majeure.

## 11. **RESOLUTION OF DISPUTES**

Any dispute arising in connection with this Agreement ("Dispute") apart from a dispute arising under Clause 14 must be resolved as follows:

- (a) The parties must first refer the Dispute to mediation by a mediator agreed by the parties preferably a person nominated by AWEX or a person familiar with the wool industry, or failing agreement, appointed by the President of the Law Society of New South Wales on the terms of the standard mediation agreement approved by the Law Society of New South Wales.
- (b) If the Dispute is not resolved within 21 days of the commencement of the reference to mediation under clause 11(a) or such extended period as agreed between the parties either party may then, but not earlier, submit the Dispute to arbitration in accordance with the rules of Institution of Arbitrators Australia.
- (c) The arbitration must be conducted by a single arbitrator appointed by the parties, or if they fail to make an appointment, appointed by the President of the Law Society of New South Wales.
- (d) The arbitrator appointed by the President of the Law Society of New South Wales may not be the same person as any mediator appointed under clause 11(a).
- (e) Each party must continue to abide by this Agreement despite the existence of a Dispute or any proceedings under this clause.

## 12. **BUYER RECEIPT OF WOOL PURCHASED**

Delivery of goods by the Broker from Store to a carrier purporting to receive them on behalf of the Buyer under a delivery order of apparent validity (and the determination of the apparent validity of a delivery order shall be at the sole discretion of the Broker) shall constitute valid delivery to the Buyer and as from that moment the full possession, custody and control of the goods and all responsibility for them shall be in the Buyer or his transferee.

## 13. **BROKER INSURANCE**

The Broker shall insure and keep insured the wool against all loss or damage until the fall of the hammer. Where the Broker acts as a bailee after the fall of the hammer, the Broker will maintain insurance as bailee.



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#### **14. REPRESENTATIVENESS OF THE SAMPLE – BULK INSPECTION**

(a) **Sample and bulk inspection**

Display samples shall be available in the sample boxes until 12 noon on the working day following the day of sale.

The Broker shall give every reasonable facility to the Buyer to examine the bulk bales until 12 noon on the working day following the day of sale.

With sale by sample wool the bale shall be opened in the presence of a representative of the Buyer, the Australian Wool Testing Authority Ltd and the Broker. If the Buyer and the Broker cannot reach agreement that the sample or the display bale is representative of the bulk, the matter shall be referred to AWEX.

(b) **Dispute resolution**

Where a dispute arises before or after delivery and the Buyer and the Broker are unable to come to an agreement, in the first instance the matter shall be arbitrated by the AWEX Auditing staff, but after that upon the request of any party of the dispute the appeal may be lodged with the AWEX Appeals Committee.

#### **15. VENDOR ACCOUNT SALE**

The Broker shall not be required to account to the Vendor for the sale price of the goods sold until the expiry of the Payment Period or any extension of it or the Broker has received payment for the goods in full, whichever is the later date.

#### **16. VENDOR AGENT**

The Vendor appoints the Broker as his agent for the purpose of selling the goods on the terms of these Terms and Conditions of Sale