

**AUTHORITY TO BID: ONLINE OR TELEPHONE BIDDER**

Auction date: \_\_\_\_\_

Property Address: \_\_\_\_\_

I/we hereby authorise the selling agent whose details are set out below (or any of his/her employees/staff/representatives) to accept and place bids on my/our behalf for the above property auction via telephone and/or via a technology platform such as an online bidding platform or video conferencing tool (e.g. Zoom) during the auction.

Bids must only be placed as specifically instructed by me/us.

I/we authorise the auctioneer to sign the contract on my/our behalf if I/we am/are the successful bidder(s) at the auction.

I/we acknowledge that any contract executed on my/our behalf by the auctioneer is binding and unconditional and does not offer a cooling off period.

I/We acknowledge receipt of the Prescribed Conditions of Sale by Auction and the NSW Fair Trading Bidders Guide.

I/we further authorise the selling agent to accept offers from me/us via telephone or other technology device/platform on the day of the auction, after the property is passed in. In the instance that agreement is reached post-auction, I/we further authorise the auctioneer to sign the contract on my/our behalf at this point and acknowledge that this contract is also binding and unconditional and does not offer a cooling off period.

**PURCHASER(s):**

NAME OF PURCHASER 1: \_\_\_\_\_

CURRENT ADDRESS: \_\_\_\_\_

SIGNED: \_\_\_\_\_

IDENTIFICATION. ID TYPE: \_\_\_\_\_ ID NUMBER: \_\_\_\_\_

NAME OF PURCHASER 2: \_\_\_\_\_

CURRENT ADDRESS: \_\_\_\_\_

SIGNED: \_\_\_\_\_

IDENTIFICATION. ID TYPE: \_\_\_\_\_ ID NUMBER: \_\_\_\_\_

**SELLING AGENT AS AUHTORISED BIDDER:**

NAME OF SELLING AGENT/AUTHORISED BIDDER: \_\_\_\_\_

CURRENT ADDRESS: \_\_\_\_\_

SIGNED: \_\_\_\_\_

IDENTIFICATION. ID TYPE: \_\_\_\_\_ ID NUMBER: \_\_\_\_\_

# **PRESCRIBED CONDITIONS OF SALE BY AUCTION**

Section 77, Property, Stock & Business Agents Act 2002 (NSW) and clauses 18 and 19, Property, Stock & Business Agents Regulation 2003 (NSW).

**Clause 18 (1) – The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:**

- (a) The principal's reserve price must be given in writing to the auctioneer before the auction commences.
- (b) A bid for the seller cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the seller.
- (c) The highest bidder is the purchaser, subject to any reserve price.
- (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
- (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the seller.
- (f) A bidder is taken to be a principal unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.
- (g) A bid cannot be made or accepted after the fall of the hammer.
- (h) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.

**Clause 18 (2) – The following conditions, in addition to those prescribed by subclause (1), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:**

- (a) All bidders must be registered in the Bidders Record and display an identifying number when making a bid.
- (b) Subject to subclause (2A), the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land and no other vendor bid may be made by the auctioneer or any other person.
- (c) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce "vendor bid".

**Clause 18 (2A) – The following conditions, in addition to those prescribed by subclauses (1) and (2), are prescribed as applicable to and in respect of the sale by auction of co-owned residential property or rural land or the sale of such land by a seller as executor or administrator:**

- (a) More than one vendor bid may be made to purchase the interest of a co-owner.
- (b) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity.
- (c) Before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller.
- (d) Before the commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator.

**Clause 18 (3) – The following condition, in addition to those prescribed by subclause (1), is prescribed as applicable to and in respect of the sale by auction of livestock:**

The purchaser of livestock must pay the stock and station agent who conducted the auction (or under whose immediate and direct supervision the auction was conducted) or the vendor the full amount of the purchase price:

- (a) if that amount can reasonably be determined immediately after the fall of the hammer – before the close of the next business day following the auction, or
- (b) if that amount cannot reasonably be determined immediately after the fall of the hammer – before the close of the next business day following determination of that amount, unless some other time for payment is specified in a written agreement between the purchaser and the agent or the purchaser and the vendor made before the fall of the hammer.

# WARNINGS

## **Section 78(3), Property, Stock and Business Agents Act 2002 (NSW) and clause 20(1), Property, Stock and Business Agents Regulation 2003 (NSW):**

### PENALTY FOR COLLUSIVE PRACTICES

It is an offence against the Property, Stock and Business Agents Act 2002 (NSW) for a person to do any of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do any of the following:

- (a) to abstain from bidding, or
- (b) to bid to a limited extent only, or
- (c) to do any other act or thing that might prevent free and open competition. Severe penalties may be imposed on persons convicted of collusive practices.

## **Section 83(2), Property, Stock and Business Agents Act 2002 (NSW) and clause 20(2), Property, Stock and Business Agents Regulation 2003 (NSW):**

### SUCCESSFUL BIDDERS

The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer:

- (a) the bidder's name, or
- (b) the name of the person on whose behalf the successful bid was made.

## **Section 66(4), Property, Stock and Business Agents Act 2002 (NSW) and clause 20(2A), Property, Stock and Business Agents Regulation 2003 (NSW):**

### PENALTY FOR DUMMY BIDDING

It is an offence against the Property, Stock and Business Agents Act 2002 (NSW) for a person to do any of the following:

- (a) make a bid as the seller,
- (b) make a bid on behalf of the seller (unless the person is the auctioneer),
- (c) procure another person to make a bid on behalf of the seller.

Any bid made with the dominant purpose of benefiting the seller constitutes a bid made on behalf of the seller. A bid may be found to be a bid made on behalf of the seller even though the seller did not:

- I. request the bid, or
- II. have any knowledge of the bid.

Severe penalties may be imposed on persons convicted of dummy bidding.

### OCCUPATIONAL HEALTH AND SAFETY

All persons attending the sale are advised by the seller that the sale may involve a risk of physical harm and/or loss. Livestock, machinery, plant and equipment may be offered for sale and each such item has its own inherent risks that persons attending the sale need to appraise themselves of. All persons attending the sale do so at their own risk. All purchasers of items sold are advised that they must ensure, before each such item is removed from the sale, that it is safe and without risks to health when properly used. The seller does not accept any responsibility for any harm, loss or damage whatsoever and that you enter or attend the sale at your own risk. The seller's agent is instructed by the seller to conduct the sale in the manner directed by the seller with items placed out and submitted for sale as directed by the seller. The seller's agent has no control over any items offered for sale and accepts no responsibility for any harm, loss or damage whatsoever and that you enter or attend the sale at your own risk.

# Bidders guide

## Residential and rural property auctions

You will not be able to bid at an auction of residential and rural property in NSW unless you give the selling agent your name and address and show proof of your identity. Your details will be recorded by the agent in the Bidders Record and at the auction you will be given a bidder's number. Registering for an auction does not mean you must bid. Registering simply gives you the right to bid.

### Who needs to register?

If you are bidding to buy the property jointly with another person, for example, a spouse or partner, only one of you needs to register.

You need to register if you are bidding for another person or a company, and you need to show the agent a letter of authority from them, authorising you to bid on their behalf. This also applies if you are bidding on behalf of someone on the telephone.

If you are bidding for another person the letter of authority must include the person's name, address and the number on their proof of identity (eg. driver's licence).

If you are bidding for a company the letter of authority must be on the company letterhead and the ABN will be recorded in the Bidders Record as the company's proof of identity.

### Proof of identity

To register, you must present a card or document issued by government or a financial institution, that shows your name and address, for example:

- driver's licence or learner's permit
- vehicle registration paper
- council rates notice.

If you do not have this kind of proof of identity, you can use two documents that together show your name and address.

One must show your name and be issued by a government or financial institution, for example:

- passport
- Medicare card
- ATM/Eftpos card
- credit card or store card
- birth certificate
- citizenship papers.

The other must show your address, for example:

- utilities bill (eg. gas, electricity, telephone)
- real estate rental agreement
- statutory declaration stating your address.

### When to register

You can register with the selling agent at any time prior to the auction, such as when you inspect the property, or on the day itself.

If you pre-register, you will still need to show the agent your proof of identity on auction day. The agent will then give you your bidder's number.

### What happens at registration

The agent will write your name, address and the number of your proof of identity in the Bidders Record and, if you are bidding for someone else or a company, their name, address and proof of identity details. The agent will then give you your bidder's number, which must be displayed when you bid.

### What if I arrive at the auction late?

If you arrive after the auction has started and wish to bid, you will need to quickly find the agent and register or present your proof of identity, if you have pre-registered.

If you need to make a bid immediately, hold up your hand to let the auctioneer know you are going to make a bid after you have registered.

As soon as you have a bidder's number, the auctioneer can accept your bids. Return your bidder's number to the agent after the auction.

## Your privacy

The agent is not permitted to show the Bidders Record to anyone, including the property owner. Only an authorised person from NSW Fair Trading is permitted to see the Bidders Record.

The agent must store the Bidders Record securely and cannot use it for any purpose.

## Auction conditions

This auction is being conducted under certain conditions that are set by law.

The auctioneer will have these conditions on display before the auction so that you can read them. The auction conditions include:

- the highest bidder is the purchaser, subject to any reserve price
- the auctioneer is entitled to make one bid only on behalf of the seller
- before the auction, the auctioneer must announce that the auctioneer is permitted to make one bid on behalf of the seller
- the auctioneer must announce immediately before, or in the process of making the bid, that he/she is making a vendor bid
- the auctioneer can refuse a bid that is not in the interests of the seller
- the auctioneer has no authority to accept a late bid, that is, a bid after the fall of the hammer
- if there is a disputed bid, the auctioneer is the sole arbitrator and makes the final decision
- the successful buyer's name must be given to the auctioneer as soon as possible.

## Successful bids

If you are the successful bidder, you must sign the sale contract and pay a deposit on the spot, usually ten per cent of the purchase price. There is no cooling-off period when you buy at auction.

After the exchange of contracts, your solicitor or conveyancer will carry out various searches on the property. Your solicitor and the seller's legal representative will then arrange for settlement at which time you must pay the balance of the purchase price.

## Dummy bidding and collusion

It is illegal to make dummy bids at an auction.

The seller of the property is entitled to have one bid made on their behalf by the auctioneer. When the seller's bid is made the auctioneer must announce it as a vendor bid.

If you make dummy bids for the seller, you may be prosecuted and fined up to \$55,000. The property seller who asked you to bid can also be fined up to \$55,000, as can the agent and the auctioneer if they were involved in the arrangement.

It is an offence to collude with someone to interfere with free and open competition at the auction. This offence carries a maximum fine of \$55,000.

## Co-owners and executors

A co-owner, executor or administrator or someone bidding on their behalf, may make more than one bid to purchase the property as long as:

- this is outlined in the auction conditions
- the auctioneer has announced this before the start of bidding at the auction
- the auctioneer announces before the start of the auction, the bidder registration number of any co-owner, executor, administrator, or someone bidding on their behalf.