

## NEW ZEALAND WOOLBROKERS' ASSOCIATION

### CONDITIONS OF SALE OF WOOL

#### 1. **Definitions and Interpretation**

1.1. In these Conditions the following words have the following meanings:

“**Auctioneer**” means the auctioneer conducting the sale and includes any person acting under, or with the authority of, or as a clerk of, the Auctioneer.

“**Broker**” means the selling broker,

“**Business Day**” means a day other than a Saturday or Sunday on which banks are open for business in New Zealand.

“**Buyer**” means the purchaser of the wool at the auction.

“**Catalogue**” means the catalogue describing wool to be sold at the auction.

“**Certificate**” means the certificate to be signed by the Auctioneer at the conclusion of a sale, the form of which is annexed as Schedule 1.

“**Conditions**” means these Conditions of Sale.

“**Delivery**” means the placing of the wool to the Buyer’s order Free On Truck after settlement.

“**Export Packaging Standards**” means fit for shipment (Standard 1992).

“**Free on Truck**” means all Broker fees paid.

“**GST**” means Goods and Services Tax.

“**Invoice**” means confirming record provided by the Broker to the Buyer of details and price of Lots purchased.

“**Lot**” means a specified number of bales catalogued for sale as one lot.

“**Mediator**” means a person considered suitably qualified with wool trade knowledge by executive of The National Council of New Zealand Wool Interests Incorporated that is appointed by a party to a dispute to facilitate negotiation and resolution of the dispute.

“**Outside Storage**” means the transfer of wool held by the Broker on behalf of the Buyer to a facility other than one owned or operated by the Broker or any of its subsidiary companies.

“**Prompt**” means 11 a.m. on the eleventh day after the last day of the sale or such later date as may be agreed by the interested parties for any particular sale. If the date is not a Business Day, Prompt will be deferred until 11 a.m. on the Business Day next following that date.

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**“Regulations”** means the Regulations to these Conditions of Sale as agreed from time to time by the New Zealand Woolbrokers’ Association and the New Zealand Council of Wool Exporters Incorporated.

**“Storage”** means holding of wool by the Broker at the Buyer’s request and expense for any period commencing on the 19th day after completion of the sale.

**“Store”** means a facility where the wool is stored.

**“Strike Prompt”** has the same meaning ascribed to that term in clause 9.1.

**“Umpire”** means a person considered suitably qualified with wool trade knowledge by The National Council of New Zealand Wool Interests Incorporated who is appointed by the Mediators to make an independent and impartial decision if they fail to agree.

**“Vendor”** means the owner of the wool at the time of the auction.

- 1.2. Words which refer to the singular include the plural and vice versa; and words importing one gender include the other genders.
- 1.3. Headings are used in these Conditions for convenience only and shall not affect the interpretation of these Conditions.
- 1.4. All references to statutes and regulations in these Conditions shall be deemed to be a reference to such statutes and regulations as amended from time to time.

## 2. **Legal Compliance**

- 2.1. The New Zealand Woolbrokers’ Association and the New Zealand Council of Wool Exporters Incorporated may from time to time make regulations to these Conditions.
- 2.2. The Broker and the Buyer will comply with the Fair Trading Act, Commerce Act, Occupational Health and Safety Act, the Auctioneer’s Act and any other relevant legislation, and with the Regulations.
- 2.3. All bids and financial transactions associated with the sale of wool will be advanced or quoted exclusive of GST, and within these Conditions and the Regulations the fulfilment of all legal requirements relating to GST is implied.

## 3. **Conditions Governing Bidding**

- 3.1. Bidding shall be by outcry only, or such other method announced by the Auctioneer and agreed by those in attendance at the auction before bidding commences.
- 3.2. The highest bidder shall be the Buyer and each lot shall be considered sold on the fall of the hammer and the calling by the Auctioneer of the Buyer’s name.
- 3.3. The Vendor reserves the right to make one bid.
- 3.4. The Vendor reserves the right for the Auctioneer to refuse any bid.
- 3.5. All bids will be advanced exclusive of GST.
- 3.6. If any dispute arises among the bidders for any Lot it shall be decided by the Auctioneer, unless one of the bidders in dispute will advance, in which case the Lot shall be put up again with the bidding then confined to the disputing bidders. If a

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dispute cannot be resolved by this method, the dispute shall be resolved by majority view of those in attendance at the auction.

- 3.7. No person shall advance at any bidding less than one cent per kilogram of wool.
- 3.8. The last bidder for any passed Lot will have the first refusal of that Lot until three hours after the completion of the day's selling. Until the expiration of that time no Broker shall trade with any other Buyer for that Lot unless the Broker has first consulted with and obtained the approval of the last bidder.
- 3.9. The Auctioneer is authorised to sign the Certificate in the sale Catalogue on behalf of the Buyer. The signing of the Certificate shall in all cases bind the Vendor and Buyer.
- 3.10. The Broker may, (if he has reasonable cause) at any time prior to, during or after the sale, request a deposit of 25 percent of the Broker's estimated value of wools purchased, or likely to be purchased, by the Buyer.

#### 4. **Settlement, Delivery and Title**

- 4.1. All payments are to be made without set-off or deduction in immediately available cleared funds at or before Prompt as per invoice.
- 4.2. The Buyer shall not be entitled to Delivery until the wool is paid for in full. Property in, and title to, the wool shall be deemed to be transferred to the Buyer when (but not before) the wool has been paid for in full.
- 4.3. Settlement shall be completed at Prompt at which time the wool shall be at the sole risk and expense of the Buyer or any person claiming through the Buyer subject to clause 4.2 hereof.
- 4.4. Each Lot is a separate sale, and the Broker cannot withhold Delivery of that wool upon settlement if there is any serious dispute or amount unpaid to the Vendor, Broker or Auctioneer relating to any other particular Lot.
- 4.5. In the event of the Broker not completing Delivery at Prompt, the Broker shall pay interest (not exceeding the Broker's current bank rate plus 2%) to the Buyer from the expiry of Prompt to the date of Delivery. If the delay in completing Delivery is due to any cause whatsoever over which the Broker has no control, no penalty shall accrue.
- 4.6. Following the sale, the wool, with the consent of the Buyer (the receipt of shipping instructions will imply consent), may be transferred by the Broker to Store and dumped prior to payment without affecting the contract of sale.

#### 4.7. **Service Fee and Charges–**

- (a) The Broker may at its sole discretion charge the Buyer a service fee, on a per bale basis, to cover the costs to the Broker generated by the Buyer in taking possession of the wool and for all services performed by the Broker for the Buyer provided however that the Broker may not charge the Buyer a service fee for the costs of:
  - (i) Storage.

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- (ii) The additional portion of any rebranding of the bales, in excess of a normal rebrand (a combination of six letters or figures, plus, or within a geometric symbol, plus a port name, plus renumbering of the bales, plus gross weight/net weight).

Separate charges for Storage, for additional rebranding and other services as requested by the Buyer from time to time may be made by the Broker.

- (b) Where the following services are requested by the Buyer, the Broker may charge for:
  - (i) Storage.
  - (ii) The following rebranding:
    - (A) Export Shipment - export branding.
    - (B) Renumbering - the inclusion of renumbers in the shipping brand.
    - (C) Net weight / gross weight- the rebranding of net weight / gross weight in the shipping brand.
  - (iii) Any additional services as requested from time to time by the Buyer.

Provided however that none of the charges referred to in this clause 4.7(b) are payable by the Buyer unless:

- (i) they have been agreed to by the New Zealand Council of Wool Exporters Incorporated.
- (ii) the Buyer otherwise agrees to the charging of the same.

For the avoidance of doubt no charge is payable by the Buyer to the Broker for a single line scouring brand (which may be applied in felt pen).

- 4.8. The Buyer shall pay the Broker for services requested by the Buyer prior to loading the wool on to transport and for the costs of cartage.
- 4.9. All bales shall be in a fit condition for shipping in accordance with Export Packaging Standards.
- 4.10. Where the Buyer has made payment for the wool, and Prompt has expired, but the Buyer has failed or neglected to give proper instructions for immediate Delivery the wool may be removed by the Broker to any Store after giving seven days' notice to the Buyer. The wool, its removal and Storage will be at the risk and expense of the Buyer, and the Buyer shall be liable for all Storage and other charges prior to, incidental to, or consequent on, removal.

## 5. Insurance

- 5.1. Brokers will insure the wool against fire, earthquake, war and disaster to the amount of the invoice cost up to the expiration of Prompt or until the wool is paid for, whichever first shall happen. The insurance will be subject to the same conditions and exemptions as are contained in fire policies issued by members of the Insurance

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Council of New Zealand. The insurance will be for the cost and the interests of the Vendor.

- 5.2. If settlement is not made by Prompt, fire insurance, on the same conditions and exemptions referred to in clause 5.1, shall continue in the interests of the Vendor, but at the Buyer's expense.

**6. Default**

- 6.1. If the Buyer fails to pay for the wool or part of the wool on or before the expiration of Prompt (time being of the essence):

- (a) The deposit (if paid) shall be absolutely forfeited to the Vendor;
- (b) The Buyer shall be liable for all loss, including Storage at such sum as may be specified from time to time by the Broker, interest at a rate not exceeding the Broker's current bank rate, charges on resale, survey fees, fire insurance (as defined under Clause 5.1) and all other charges whatever that may accrue;
- (c) The Broker or Vendor may re-sell the wool at public auction, without being responsible or liable for any losses, and may buy in at any such re-sale, with or without notice to the Buyer, and any loss on re-sale, including all expenses incidental to the re-sale, shall be recoverable from the Buyer when ascertained and as liquidated damages. The proceeds of any resale shall be applied in the following order:
  - (i) Firstly, in payment of the Broker's and Vendor's expenses for the re-sale; and
  - (ii) Secondly, in payment of the purchase price for the wool; and
  - (iii) Thirdly, the surplus (if any) to the Buyer.
- (d) The Broker or Vendor may by notice in writing to the Buyer cancel the sale instead of reselling the wool pursuant to Clause 6.1 and neither the Broker nor the Vendor shall have any claim against the Buyer except for losses under Clause 6.1(b).

**7. Notices**

- 7.1. All notices or other communications to be given pursuant to these Conditions by a party to another shall be at the recipient's last known place of address in New Zealand (or such other address within New Zealand as that party may have specified in writing) and shall be deemed to have been duly given or made:

- (a) in the case of a communication by letter at 12 noon on the Business Day next following the date of posting by prepaid post addressed to the last known place of address (if any) in New Zealand of the party to whom the notice is sent;
- (b) if given by hand, on personal delivery to the recipient or such address; or

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- (c) in the case of a communication by facsimile when transmitted with no indication of incomplete transmission to the recipient's last known facsimile number.

provided that the address of the Vendor will be the address of the Broker.

## 8. Disputes Procedure

- 8.1. If a dispute arises under these Conditions, except a dispute as to payment or a dispute as covered by Clause 3.6, the matter shall be dealt with pursuant to Clauses 8.2 to 8.5.
- 8.2. One Mediator will be chosen by the Broker, the other by the Buyer. An Umpire may be nominated by the Mediators if they are unable to agree on a resolution of the dispute. The final decision of the Mediators or the Umpire will be binding.
- 8.3. Should the Mediators or Umpire find in favour of the Vendor, the Buyer shall be bound to accept the wool as sold, but should the decision be in favour of the Buyer, the Buyer shall be at liberty to cancel the sale, and demand replacement of the wool at the Broker's expense.
- 8.4. In the event of any false packing, fraud or misdescription being discovered, the Mediators or Umpire shall refer the vendor to the appropriate authorities for investigation and follow-up.
- 8.5. The cost of resolution of the dispute or claim shall be determined by the Mediators or the Umpire (as the case may be) except where Clause 8.4 applies. If clause 8.4 applies the cost shall be paid by the Vendor.

## 9. Strikes and Lockouts

- 9.1. If a general or partial strike or lock out occurs prior to Prompt and before the wool is paid for which delays or prevents Delivery being completed at Prompt, Prompt shall be extended for such period as may be arranged (in this clause called "Strike Prompt") by agreement between a person nominated by the New Zealand Woolbrokers' Association and a person nominated by the New Zealand Council of Wool Exporters Incorporated.
- 9.2. In the event that the representatives are unable to agree whether a general or partial strike or lock out has occurred or as to the date of Strike Prompt, the matter or matters in dispute shall be referred to Mediators and an Umpire as provided in Clause 8. The provisions of that clause shall mutatis mutandis apply, and the decision of the Mediators or Umpire shall be final and binding on all parties.
- 9.3. If delivery shall be delayed or prevented by a general or partial strike or lock out the charges on the undelivered wool shall, up to Strike Prompt or until the wool is paid for, whichever event shall first happen, be borne by the Vendor, and the undelivered wool shall be at the Vendor's risk up to Strike Prompt or until the wool is paid for, whichever event shall first happen.

## 10. Extended Prompt or Strike Prompt

- 10.1. In any case where the provisions of Clause 9 apply and a Strike Prompt has been arranged or determined, Strike Prompt as the case may require shall be substituted for Prompt in these Conditions and these Conditions shall apply accordingly.

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10.2. A new date for Prompt after the declaration of Strike Prompt will be notified to the parties not later than 11 a.m. on the Business Day immediately prior to the new date for Prompt.

11. **Governing Law**

11.1. These Conditions shall be governed by, and construed in accordance with, the laws of New Zealand.

11.2. The Vendor, Buyer and Broker unconditionally and irrevocably submit to the jurisdiction of the Courts of New Zealand in respect of all matters arising out of these Conditions and waive any right they may have to object to an action being brought in those Courts, to claim that an action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

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**SCHEDULE 1**

**DIRECTION TO WOOLBROKERS**

The Conditions must be attached to the Catalogue, which the Auctioneer uses.

Brokers should have printed, or rubber-stamped, on the Conditions, the following:

“A”

“These are the Conditions of Sale marked “A” referred to in the annexed Catalogue as the Conditions of Sale subject to which the lots of wool in the annexed Catalogue are sold by me this day at auction.”

.....Auctioneer

“Dated the ..... day of ..... 20.....”

The above should in every case be signed by the Auctioneer immediately before the auction, and the date filled in.

At the end of the Catalogue should be printed, or rubber stamped, the following:

“Each lot of wool in the foregoing Catalogue, on pages ..... opposite to which the Buyers’ name has been written on the fall of the hammer by me or by my clerk as agent for the Buyer, was this day sold at auction subject to the Conditions of Sale annexed marked “A” by me as agent for the owner or Vendor of such lot, and bought by the Buyer at the price per kilogram set opposite each Buyer’s name.”

.....Auctioneer

Dated the ..... day of ..... 20.....”

The Auctioneer must sign the foregoing certificate and fill in the date. Such signing must be done promptly.

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