

NICK KIRSHNER Property & Livestock

Snowy Mountains Horse Sale

Terms & Conditions | Updated 22nd August 2019

Nick Kirshner Property & Livestock Terms and Conditions of Horse Sale:

Once a horse / saddlery / floats & trucks have been added to the sale, they must not be removed or sold prior to the horse sale and you (the principal) acknowledge that you are denied the right to sell the horse / saddles & saddlery / floats & trucks without paying a fee. The agent is entitled to the fee if the agent effectively introduces the principal / horse / saddles & saddlery / floats & trucks to a purchaser who subsequently enters into a binding contract. This applies for 28 days after the sale. No fee is payable (other than the registration fee) unless the horse / saddles & saddlery / floats & trucks are sold. The principal is required to complete the vendor form prior to the sale and provide photos if applicable. Proceeds of the sale will occur 28 days after the horse sale (or earlier if we are able to do so), once cheques have cleared, payments received, disbursements done and the final reconciliation have been completed.

General Terms | Conditions | Instructions (clearance sale | Livestock Auctions | property & land auctions)

| Clearance sale

This information is given solely for the purpose of occupational health and safety legislation and regulation and is not available or to be construed as any promise warranty representation or statement about the condition, operation or suitability for any purpose of anything sold at this sale. The Occupational Health & Safety Act 1985 and Regulations impose obligations in respect of safety for workers arising out of the design, manufacture and supply of plant for use in the workplace. The auctioneer warns buyers that no plant or equipment offered for sale at this auction is fit for use in the workplace and it is the responsibility of the buyer to ensure that it is brought to a standard necessary to comply with the Occupational Health & Safety Act 1985. Buyers are warned that breaches of the Act incur very large penalties.

In the interest of the health and safety for workers, safety inspections of plant and equipment purchased at auction are recommended to be performed by authorized people or companies.

The Buyer acknowledges and agrees:

1. All items offered for auction may not comply with occupational health and safety criteria.
2. The highest approved bidder shall be the purchaser, subject to the vendor's approval and the reserve price, if any.
3. The Auctioneer may at his discretion refuse to accept any bid from any person, and no bid, if accepted, shall be retracted without the consent of the Auctioneer. No Bidder shall advance a less sum or percentage at bidding than the Auctioneer is willing to accept.
4. A Bid shall be deemed to be accepted unless the Auctioneer forthwith after it has been made declares his non-acceptance or dissent.
5. If any dispute or difference shall arise as to the highest Bidder the Auctioneer may re-open the bidding and resubmit the item commencing with the highest amount previously bid for the same, or he may decide on the highest bidder. In such other manner as he in his absolute discretion shall deem fit, and his discretion shall be final.
6. The Auctioneer reserves the right to bid for and on behalf of the Vendor.
7. Auction will be conducted on a GST exclusive basis, which means that GST will be added to the bid price, where GST is applicable.
8. Where any person is bidding on behalf of another person, the bidder must first provide the Auctioneer with a copy of his written authority to bid and enter into an agreement for Sale and Purchase of the lot to the Auctioneer prior to the commencement of the auction, otherwise the bidder is deemed to be acting on his own behalf.
9. Payment must be received on the day of the purchase prior to removal of goods.
10. The whole of the lots having been available for inspection prior to the auction no allowance or refunds will be made, nor will any Buyer be permitted to reject any lot on the grounds that it is not correctly described in the catalogue (if any). The said lots are to be taken with all faults and defects (if any) and will be at the risk of the buyer on the fall of the hammer and thereafter the Seller will be free of all responsibility for safeguarding the lot and will not be liable for any loss or damage to the lot sold whether such loss or damage is caused or contributed to by any act neglect or default of the Seller, its servants, employees or agents. It is the responsibility of buyers to inspect all items before bidding and satisfy themselves as to their condition.

11. All lots which have been paid for in full must be removed by the buyer at the buyer's expenses by 5.00pm on the day of the sale (unless prior arrangements have been made by the buyer with the seller or seller's agent).
12. PLEASE NOTE Insurance and removal are the Buyers Responsibility, unless otherwise stated by the Auctioneer, at the time of Auction.
13. The Auctioneers make no Guarantees or Warranties, Expressed or Implied on any equipment sold.
14. You must register prior to bidding and you must retain this card as your identification when bidding and expose it to the auctioneer.
15. If you are the successful bidder for any of the items offered for auction, you hereby acknowledge that you will be bound to purchase the said items in accordance with the terms and conditions as displayed, handed out, read out at the beginning of the auction and or included in this document.
16. All items are the responsibility of the purchaser upon the fall of the hammer.
17. Payment terms: cash, approved cheque or alternative options as notified on the day of sale or as pre-arranged.
18. All electrical items purchased at auction must be checked by authorized personnel prior to use.
19. Any one attending the auction is advised by the seller and seller's representative 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 item has its own inherent risk and anyone attending the auction must be aware of this. All persons attending the auction do so at their own risk and the seller and seller's representative do not take any responsibility. 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 the sale as directed by the seller. The seller's agent has no control over any items offered for sale.

| Land and livestock

1. The principal's reserve price must be given in writing to the auctioneer before the auction commences.
2. 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.
3. The highest bidder is the purchaser, subject to any reserve price.
4. In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
5. The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the seller.
6. 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.
7. A bid cannot be made or accepted after the fall of the hammer.
8. As soon as practicable after the fall of the hammer, the purchaser is to sign the agreement (if any) for sale.
9. The purchaser of livestock must pay the stock and station agent who conducted the auction 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.

| Residential property or rural land

1. All bidders must be registered in the bidder's record and display an identifying number when making bids.
2. Subject to 18 (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.
3. Immediately before making the vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce vendor bid.

| Sale by auction of co-owned residential property or rural land or the sale of such land by a seller as an executor or administrator

1. More than 1 vendor bid may be made to purchase the interest of a co-owner.
2. A bid by or on behalf of an executor or administrator may be made to purchase in that capacity.
3. Before 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.
4. Before commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any other person registered to bid on behalf of any co-owner, executor or administrator.

| Extra Conditions applicable to this horse sale

OUTSIDE SALES

A lot entered for sale at the auction may be sold outside the auction only in accordance with the following provisions:

- (a) No lot shall be sold privately prior to the auction without the prior written consent of NICK KIRSHNER Property & Livestock
- (b) In the event of any prior sale NICK KIRSHNER Property & Livestock shall be entitled to commission as if the lot was sold under the hammer, and the vendor shall provide NICK KIRSHNER Property & Livestock with full details of any such sale.
- (c) Any lot passed in at the auction shall, unless NICK KIRSHNER Property & Livestock waives this condition, remain on sale at the reserve price for a period of 28 days. NICK KIRSHNER Property & Livestock shall be entitled to commission on any lot so sold, as if it were sold under the hammer. Any person wishing to make an offer on a passed in lot should contact NICK KIRSHNER Property & Livestock for private sales who will make the offer to the vendor. If the offer is accepted by the vendor the sale can be completed in the normal manner.
- (d) The sale of passed in lots must be referred to the vendor for approval.

FALL OF THE HAMMER

Upon the fall of the hammer the purchaser must complete the buyer registration form and make the required payment. The auctioneer is authorised to execute a contract, memorandum, sale book, or other acknowledgement of a sale on behalf of both the vendor and the purchaser, and any such action by the auctioneer shall be binding on the parties.

VENDORS RIGHT TO SALE

The vendor authorises NICK KIRSHNER Property & Livestock to take the lot on consignment and sell by auction or private treaty. NICK KIRSHNER Property & Livestock must pay the proceeds of sale to the vendor within 14 days of the sale unless other arrangements have been agreed to in writing between the vendor and NICK KIRSHNER Property & Livestock or the sale is validly cancelled under these terms.

Prior to paying the proceeds of sale to the vendor, NICK KIRSHNER Property & Livestock may deduct all of its fees as set out on the entry form or otherwise agreed in writing.

NICK KIRSHNER Property & Livestock does not need to pay the vendor unless:

- (a) The vendor has executed all documents and done all other things necessary to permit registration of a transfer of the title to the lot in the name of the purchaser;
- (b) If the vendor is not identical with the registered owner, the vendor has produced to NICK KIRSHNER Property & Livestock such evidence as NICK KIRSHNER Property & Livestock reasonably requires by way of evidence of the vendor's authority to receive the purchase price;

PAYMENT BY THE PURCHASER

Upon the fall of the hammer the full purchase price shall become due and payable and shall be paid by the purchaser to NICK KIRSHNER Property & Livestock in cash / pre-approved cheque or as otherwise agreed.

PASSING OF RISK

The vendor shall bear the sole risk and responsibility for a lot until risk in the lot passes to the purchaser.

Upon the fall of the hammer, the sole risk and responsibility for a lot shall be borne by the purchaser, who shall thereafter be responsible for all expenses incurred in respect of the lot, including care of the lot. The purchaser will be liable for stabling, agistment and transport charges.

Such risk and responsibility shall include any loss, expenses, injury or damage caused by intentional act or omission, negligence (whether caused by any act or omission on the part of NICK KIRSHNER Property & Livestock or its servants or agents), accident, disease, illness, or otherwise.

The purchaser indemnifies and holds harmless NICK KIRSHNER Property & Livestock the auctioneer and the vendor for any loss, expense, injury or damage.

Any lot not sold, or for which any sale is subsequently cancelled, shall remain at, or revert to, the risk of the vendor, who shall be responsible for all expenses pertaining to the lot and for removal of the lot from the premises.

PASSING OF TITLE

Title in a lot shall not pass to the purchaser until the full purchase price and all other costs and expenses owed by the purchaser to NICK KIRSHNER Property & Livestock or the vendor for the lot have been paid by the purchaser to NICK KIRSHNER Property & Livestock notwithstanding that the purchaser may have taken delivery of the lot.

After the fall of the hammer, the auctioneer shall be authorised on behalf of the vendor to complete the registration and transfer documentation in the name of the purchaser, and to do all such other acts and things as may be necessary to effect the transfer of title to the lot. Both the vendor and the purchaser must execute such other documents and do such other acts and things as are necessary to give effect to these conditions and to complete the sale and transfer of title to the lot.

NICK KIRSHNER Property & Livestock is entitled, but without being under any obligation to do so, to retain the title documents for a lot until the purchase price and all other moneys owing by a purchaser to the vendor or

NICK KIRSHNER Property & Livestock have been paid. Where the vendor buys back a lot, NICK KIRSHNER Property & Livestock may retain the registration documents until all commissions and other moneys owing by the vendor have been paid.

VENDOR'S WARRANTIES

The vendor warrants that:

- (a) The description, pedigree and other information for the lot as specified in the Entry Details and otherwise provided to NICK KIRSHNER Property & Livestock is true and correct in all respects;
- (b) The vendor has the right to sell the lot and can give good title to the lot;
- (c) Where the lot is two years old or less, full and complete disclosure has been made to NICK KIRSHNER Property & Livestock as to whether the lot has undergone invasive joint surgery or surgical intervention of the upper respiratory tract or has undergone abdominal surgery of any type (and the vendor is solely responsible for ensuring the complete accuracy of the disclosure to NICK KIRSHNER Property & Livestock; and
- (d) The lot is not and has not previously been subject to any bans, embargoes or other restriction imposed by any horse authority, other than as notified by the vendor to NICK KIRSHNER Property & Livestock and disclosed by NICK KIRSHNER Property & Livestock at the sale (and it is the responsibility of the vendor to see that such disclosure is made).

The details of any Security Interest or other encumbrance over the lot has been disclosed to NICK KIRSHNER Property & Livestock.

The vendor is solely responsible for the accuracy of any statement, description or particular relating to the lot contained in the Entry Details and must notify NICK KIRSHNER Property & Livestock of any error, omission or inaccuracy prior to the sale of the lot. NICK KIRSHNER Property & Livestock have no responsibility for any such error, omission or inaccuracy.

Each lot is sold with the benefit of any current engagements.

PURCHASER'S ACKNOWLEDGMENTS AND OBLIGATIONS

The purchaser acknowledges that:

- (a) He has had the opportunity to inspect the lot prior to the sale;
- (b) He makes the purchase solely in reliance on his own enquiries and inspections;
- (c) He has not relied on any statement or representation made by or on behalf of the vendor or NICK KIRSHNER Property & Livestock, other than the vendor's warranties and any auctioneer's announcements
- (d) All lots are sold in their present condition, subject to all faults, imperfections or other defects
- (e) No compensation is payable by either the vendor, NICK KIRSHNER Property & Livestock and the auctioneer for any faults, imperfections or other defects save as required by law.

Any dispute arising between the vendor and the purchaser in relation to a lot must be resolved between them only, and a lot cannot be returned to NICK KIRSHNER Property & Livestock without limiting any other obligations or liabilities of the purchaser under these conditions of sale, until the purchase price and any interest payable thereon and any other moneys payable by the purchaser under these conditions of sale have been paid in full the purchaser must:

- (a) Keep the lot in good health and condition and protect it from injury and damage;
- (b) Insure the lot for its full insurable value against all risks, and have the interests of the vendor and NICK KIRSHNER Property & Livestock noted on the insurance policy;
- (c) Notify NICK KIRSHNER Property & Livestock of the location of the lot;
- (d) Not sell, lease, assign or create any security interest in the lot;
- (e) Not move the lot outside Australia;
- (f) Not submit the lot to any surgical procedure; and
- (g) Not do any act or thing prejudicial to the respective interests of the vendor and NICK KIRSHNER Property & Livestock in the lot.

SPECIAL CHARACTERISTICS

Windsuckers and Wobblers:

(a) The Vendor must disclose in writing to NICK KIRSHNER Property & Livestock full details of any lot which shows symptoms of being a Wobbler or Windsucker prior to the sale. NICK KIRSHNER Property & Livestock will disclose this before or at the time of the sale.

(b) If the vendor or NICK KIRSHNER Property & Livestock fails to make the disclosure and if the lot proves to be a Windsucker or Wobbler within seven (7) days of the sale, then subject to the purchaser producing at his expense written evidence, signed by a veterinary surgeon approved by NICK KIRSHNER Property & Livestock, certifying that the lot is a Windsucker or Wobbler, then, subject to negotiation the purchaser may cancel the sale by notice in writing to NICK KIRSHNER Property & Livestock.

Roarers and Respiratory Problems:

(a) The vendor must disclose in writing to NICK KIRSHNER Property & Livestock full details of any lot which shows symptoms of being a Roarer prior to the sale. NICK KIRSHNER Property & Livestock will disclose this before or at the time of the sale.

Impaired Vision:

(a) The vendor must, prior to the sale, disclose in writing to NICK KIRSHNER Property & Livestock full details of any lot which shows symptoms of having impaired vision such that it could be deemed unfit to race. NICK KIRSHNER Property & Livestock will disclose this before or at the time of the sale.

GOODS AND SERVICES TAX (GST)

Bidding will be on a GST exclusive basis. Where the vendor of a lot is registered for GST and the lot is sold, then GST will be added to the final bid price.

The vendor will pay GST on all supplies provided by NICK KIRSHNER Property & Livestock and on all supplies provided by the auctioneer as agent.

NICK KIRSHNER Property & Livestock is entitled to rely on all representations made to it by the vendor regarding the vendor's GST registration status.

The vendor and the purchaser must do all things necessary to ensure that the provisions of the GST legislation are complied with in relation to each sale.

NICK KIRSHNER Property & Livestock shall not in any circumstances have any liability or obligation to the vendor or the purchaser in relation to GST, and specifically shall not be under any obligation to pay to the vendor any amount in respect of GST on a sale unless and until NICK KIRSHNER Property & Livestock has been paid the relevant GST by the purchaser.

NICK KIRSHNER Property & Livestock's POSITION

If any sale is cancelled for any reason, NICK KIRSHNER Property & Livestock shall remain entitled to receive its commission on the sale, and to be paid or reimbursed for all moneys owing to it by either the vendor or the purchaser, for any charges.

NICK KIRSHNER Property & Livestock shall be entitled to appropriate and deduct from any money held or received by it from any source, such amounts as may be necessary to cover any commission or other moneys owing to it by the vendor or the purchaser. If NICK KIRSHNER Property & Livestock does not hold any moneys on behalf of the vendor, then any amounts owing to NICK KIRSHNER Property & Livestock by the vendor shall be paid by the vendor to NICK KIRSHNER Property & Livestock on demand.

NICK KIRSHNER Property & Livestock shall not have any liability either to the vendor in consequence of any breach or default on the part of the purchaser, or to the purchaser in consequence of any breach or default on the part of the vendor. NICK KIRSHNER Property & Livestock's liability to both the vendor and the purchaser for any negligent act or omission, or any breach or default on the part of NICK KIRSHNER Property & Livestock, shall, to the extent that any such liability exists and is not effectively excluded by these conditions of sale, be limited to the lesser of the party's actual direct loss or the sale price of the lot. Under no circumstances shall NICK KIRSHNER Property & Livestock be liable for any consequential loss.

POWER OF ATTORNEY

Each of the vendor and the purchaser, for the purpose of enabling the auctioneer to give full force and effect to these terms and conditions of sale, hereby irrevocably appoint the auctioneer to be their attorney, with full powers to the auctioneer to execute on their behalf any necessary documents, to give all necessary instructions, and to do all such other acts and things as may be necessary to permit the auctioneer to give full force and effect to these conditions of sale.

OCCUPATIONAL HEALTH AND SAFETY

To the extent that a vendor or a purchaser or their employees or agents may conduct any activities on NICK KIRSHNER Property & Livestock's premises then that vendor or purchaser shall be responsible, to the exclusion of NICK KIRSHNER Property & Livestock, for establishing and observing appropriate occupational health and safety procedures, and for complying with any relevant legislation provisions, in relation to those activities.

A vendor or purchaser conducting any activities on the premises of NICK KIRSHNER Property & Livestock does so at his own risk in all respects and must indemnify NICK KIRSHNER Property & Livestock in respect of any claims for personal injury or damage to property which may be made against NICK KIRSHNER Property & Livestock arising out of any such activities.

GENERAL

Any variation to these conditions of sale must be in writing and signed by or on behalf of the parties intended to be bound by the variation.

If any provision in these conditions of sale is or becomes unenforceable or invalid, the remaining provisions shall not be affected but shall remain in full force and effect to the fullest extent permitted by law.

All conditions, guarantees and warranties expressed or implied, other than those expressly contained in these terms and conditions are excluded from the sale to the extent permissible by law.

To the extent that section 102 of the Australian Consumer Law ("ACL") may be applicable we advise that the ACL provides the following prescribed wording is to be included in these terms and conditions:

"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure".

The ACL guarantees as to acceptable quality and fitness for purpose do not apply to sales by auction.

FOR SALES CONDUCTED IN THE STATE OF NEW SOUTH WALES

(a) The provisions of the Property Stock and Business Agents Act 2002 (NSW), the Sale of Goods Act 1923 (NSW), the Crimes Act 1900 (NSW), the Fair Trading Act 1987 (NSW), any equivalent legislation in other States and Territories, the Competition and Consumer Act 2010 (Cth) and any regulations under this legislation shall apply to each sale, save to the extent that any provisions of these statutes are validly excluded from these conditions of sale (b) These terms and conditions of sale are to be construed and shall take effect in accordance with the laws of New South Wales. All parties agree to consent to the non-exclusive jurisdiction of the Courts of New South Wales.