

# DROUGHTMASTER

Australia's natural wonder

## TERMS AND CONDITIONS

The Society convenes the Society Sponsored Sales. As part of this role, the Society will undertake activities such as setting the date of the sale, selecting the sale venue, receiving nominations for Lots, producing the sales catalogue, identifying the standards and conditions relating to each Lot and coordinating general advertising.

The following terms and conditions apply to and govern the agreement between the Society and the Attendee in relation to the Attendee's attendance of, and participation in, the Society Sponsored Sale. These terms and conditions incorporate:

- a) any documents in the Annexure;
  - b) the Rules and Regulations;
  - c) the below terms and conditions;
  - d) the ALPA Terms and Conditions;
  - e) the Society Sponsored Sale venue rules and regulations; and
  - f) any other relevant terms and conditions and rules and regulations which are required by the operator of the Society Sponsored Sale venue or the Auctioneer or that are notified to the Attendee by the Society from time to time,
- (together, the **Terms and Conditions**).

### 1. DEFINITIONS AND INTERPRETATION

1.1 The meaning of the terms used in these Terms and Conditions are set out below:

Term	Meaning
<b>ALPA</b>	Australian Livestock & Property Agents Association Ltd
<b>Attendee</b>	an attendee of a Society Sponsored Sale, including Bidders, Buyers and Vendors
<b>Auctioneer</b>	the auctioneer authorised by the Vendor and endorsed by the Society to auction Lots on behalf of the Vendor

Term	Meaning
<b>Auctioneer Terms</b>	the terms and conditions proposed by the Auctioneer that are binding on the Buyer and Vendor concerning the sale of any Lot, which have been approved by the Society prior to the auction of any Lot (such approval not to be unreasonably withheld)
<b>Australian Consumer Law</b>	refers to the consumer law contained in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth)
<b>Bidder</b>	a bidder on a Lot at an auction
<b>Buyer</b>	the meaning given in clause 3.2
<b>Claim</b>	a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent
<b>DAF</b>	Queensland Department of Agriculture and Fisheries
<b>Disqualified Lot</b>	a Lot that is disqualified or not eligible for sale at a Society Sponsored Sale pursuant to the Rules and Regulations
<b>Eligible Member</b>	members of the Society approved by the Society to sell Lots at a Society Sponsored Sale as outlined in the Rules and Regulations
<b>Excluded Loss</b>	means: <ol style="list-style-type: none"><li>a) loss, or anticipated loss, of use, business, production, profit or revenue, loss of business reputation, business interruption of any nature or loss of opportunity;</li><li>b) exemplary or punitive damages; or</li><li>c) any loss or damage arising from special circumstances that are outside the ordinary course of things</li></ol>
<b>Intellectual Property Rights</b>	all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the

<b>Term</b>	<b>Meaning</b>	
	subject of any lapsed application or registration	(c) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
<b>Junior Member</b>	a "Junior Member" of the Society pursuant to the Rules and Regulations	(d) references to any document (including these Terms and Conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;
<b>Lot</b>	any stock available for purchase at a Society Sponsored Sale and which has been included in the sales catalogue produced by the Society	(e) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
<b>Nomination Form</b>	the nomination form made available to Eligible Members to nominate lots for sale in a Society Sponsored Sale	(f) any Annexures form part of these Terms and Conditions; and
<b>Personal Property Securities Register</b>	the Personal Property Securities Register established under the <i>Personal Property Securities Act 2009</i> (Cth)	(g) headings are included for convenience only and do not affect interpretation of these Terms and Conditions.
<b>Pre-existing IP Rights</b>	Intellectual Property Rights in all materials owned by the Attendee or Society independent of these Terms and Conditions	
<b>Related Body Corporate</b>	has the same meaning as in the <i>Corporations Act 2001</i> (Cth)	
<b>Reserve Price</b>	the Vendor nominated reserve price	
<b>Rules and Regulations</b>	the Rules and Regulations of the Society made available on the Website from time to time	
<b>Security Interests</b>	has the same meaning as in the <i>Personal Property Securities Act 2009</i> (Cth)	
<b>Society</b>	Droughtmaster Stud Breeders' Society Limited ACN 010 129 683 and its Related Body Corporate, employees, volunteers and agents	
<b>Society Sponsored Sale</b>	an auction sale convened by the Society	
<b>Upset Price</b>	the predetermined and applicable base market price for a particular Sale	
<b>Vendor</b>	the owner of the Lot or the person authorising the Auctioneer to sell that Lot on the owner's behalf	
<b>Website</b>	the website of the Society at <a href="https://www.droughtmaster.com.au/">https://www.droughtmaster.com.au/</a>	

## 2. GENERAL

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- 2.1 By attending the Society Sponsored Sale (whether in person or by other means), the Attendee agrees to be bound by these Terms and Conditions. All persons attending a Society Sponsored Sale shall be deemed to have notice of these Terms and Conditions.
- 2.2 Subject to clause 2.6:
- (a) these Terms and Conditions apply to the Attendee's attendance at and participation in any respect in the Society Sponsored Sale to the exclusion of all other terms proposed by the Attendee;
- (b) if the Society agrees (in its sole discretion) to incorporate any terms and conditions proposed by the Attendee (**Attendee Terms**), these Terms and Conditions shall apply to the extent of any inconsistency with the Attendee Terms; and
- (c) the Society will only be deemed to have accepted the Attendee Terms where the Society has confirmed the acceptance in writing, signed by a director of the Society.
- 2.3 The Society may change these Terms and Conditions by posting updated Terms and Conditions on the Website.
- 2.4 These Terms and Conditions shall be binding on the Attendee's personal representatives, successors and permitted assigns and shall be for the benefit of the Society's successors and assigns.
- 2.5 If a Vendor is a Junior Member, these Terms and Conditions bind the guardian of that Junior Member, and the guardian agrees to be legally responsible for any and all actions taken by or on behalf of the Junior Member under these Terms and Conditions.
- 2.6 If Auctioneer Terms apply to the auction of any Lot at a Society Sponsored Sale, the Auctioneer Terms shall apply to the Buyer and Vendor in respect of the sale of that Lot to the extent of any inconsistency between these Terms and

### 1.2 In these Terms and Conditions:

- (a) words importing the singular include the plural and vice versa;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- Conditions and the Auctioneer Terms regarding clauses 3, 4 and 5 only.
- 2.7 The Society reserves the right to exclude any person from an auction or the auction venue at its absolute discretion.
- 2.8 Bidders, Buyers and Vendors must:
- (a) be at least 18 years of age or a Junior Member; and
  - (b) in the case of Vendors:
    - (i) be Eligible Members of the Society; and
    - (ii) have no outstanding debts to the Society.
- 2.9 Any Eligible Member wishing to enter a lot for sale at a Society Sponsored Sale must on or prior to the relevant dates referenced in the Annexure and on the Website:
- (a) return a duly completed Nomination Form to the Society; and
  - (b) pay all nomination fees and any other required amounts to the Society.
- 3. CONDITIONS OF SALE BY AUCTION**
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- 3.1 Prior to the auction, an Attendee must register with the Auctioneer (in the case of Vendors and Bidders) in order to participate in the auction. The Society or the Auctioneer may reject the registration of any Attendee as a Vendor or Bidder at its absolute discretion.
- 3.2 The Buyer will be the successful bidder for a Lot as determined by the Auctioneer, subject to these Terms and Conditions.
- 3.3 The Auctioneer acts as agent for the Vendor.
- 3.4 In any auction or sales event at a Society Sponsored Sale, the highest approved Bidder shall be the Buyer of a Lot subject to:
- (a) any Reserve Price;
  - (b) these Terms and Conditions;
  - (c) acceptance by the Vendor (as denoted by the Auctioneer's declaration of "Sale" or similar after the fall of the hammer); and
  - (d) the sole discretion of the Auctioneer.
- 3.5 Should the Vendor reject the bid of the highest Bidder before the fall of the hammer, such Bidder will have the right of first refusal of the Lot at the Vendor's nominated price for one hour after the Lot has been passed out of the ring, subject to these Terms and Conditions.
- 3.6 A successful Bidder at a Society Sponsored Sale must give to the Auctioneer immediately after the fall of the hammer:
- (a) the Buyer's name; or
  - (b) the bid card number which identifies the Buyer; or
  - (c) the name of the Buyer on whose behalf the successful bid was made; and
  - (d) the Property Identification Code (known as the "PIC") of destination.
- 3.7 Each Lot will be sold subject to passing all veterinary tests required by the Society, the Rules and Regulations, these Terms and Conditions and the law of the state or country to which the Buyer intends to transport that particular Lot (including, for the avoidance of doubt, all DAF Approved Tick Treatments if required), such tests to be undertaken at the Vendor's expense. All information in relation to veterinary tests must be made available to the Auctioneer, Society and Bidders prior to the Society Sponsored Sale.
- 3.8 For the avoidance of doubt:
- (a) the Society offers no warranty regarding the accuracy of any test results or information provided by the Vendor; and
  - (b) the Buyer must make their own enquiries regarding any representation provided by the Vendor in connection with the test results pursuant to clause 3.7.
- 3.9 The Auctioneer reserve its rights:
- (a) to remove or disallow any Vendor from selling any Lot if the Auctioneer determines (in its absolute and unfettered discretion) that information provided regarding a Lot (whether in a catalogue or otherwise) is misleading, deceptive, incomplete or otherwise provided in breach of the Terms and Conditions;
  - (b) to not disclose the existence and/or quantum of the Reserve Price (if any) of a Lot prior to the close of bidding or withdrawal of the Lot;
  - (c) to resubmit any Lot for resale by auction, before, during or after the auction of that particular Lot, at the Auctioneer's absolute discretion; and
  - (d) subject to clause 3.5, to arrange for a Lot that is not sold at an auction to be sold by private agreement (but not for less than the Upset Price for that Lot at auction).
- 3.10 Any Attendee who removes the sale number from any Lot after it has been sold will fully indemnify all affected parties for any Claim should the Lot be wrongly delivered.
- 3.11 The Buyer shall not, until the full purchase price is paid and all other obligations owed by the Buyer to the Vendor, the Auctioneer and the Society are fulfilled, register or attempt to register any Security Interest in the Lot.
- 3.12 A Vendor may not:
- (a) sell a Disqualified Lot; or
  - (b) remove a Lot during the auction without first informing the Society and the Auctioneer.
- 3.13 Any dispute arising in respect of the sale or purchase of any Lot is between the Buyer and the Vendor and the parties release the Society and the Auctioneer from any Claim in

respect of any disputed Lot. Any dispute relating to a Lot must be resolved between the Vendor and the Buyer and neither the Vendor nor the Buyer may return to the Society or the Auctioneer any Lot the subject of a dispute or otherwise. The Buyer and the Vendor expressly authorise the Society and the Auctioneer to provide relevant contact details of the Buyer and Vendor to one another upon request by either party.

3.14 Notwithstanding any dispute in respect to the sale of any Lot, the Buyer shall nevertheless be obliged to pay to the Auctioneer the full purchase price and any other moneys or interest payable by the Buyer in accordance with these Terms and Conditions.

3.15 Any person (including any Attendee) who attends a Society Sponsored Sale does so entirely at their own risk and the Society does not assume or accept any responsibility or liability of whatever nature for any injury or damage which may occur, except to the extent caused by the negligence of the Society.

#### **4. DEFAULT**

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If a Vendor fails to deliver any part of a Lot, the Vendor must refund the Buyer any amounts paid by the Buyer on account of the purchase.

#### **5. TITLE**

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5.1 Upon the fall of the hammer each Lot shall be at the risk and expense in all respects of the Buyer and the Buyer shall indemnify the Society and the Auctioneer in respect of and pay to the Society and the Auctioneer on demand all loss, damage, costs and expenses incurred or suffered by the Society or the Auctioneer (as applicable) in respect of the Lot while the Lot is at the Buyer's risk and expense. In particular, the Buyer will be liable for, feeding, yard fees and associated charges for Lots not removed on the day of the Society Sponsored Sale.

5.2 The Society will not accept the return of any Lot for any reason. At no point will the Society have title to, or risk in any Lot.

#### **6. WARRANTY**

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6.1 Unless expressly provided in these Terms and Conditions, no guarantee or warranty shall be given by the Society to the Attendee in relation to type, quality, condition, characteristic, pedigree, sex, age, breeding condition or otherwise of a Lot or the accuracy of any information included in any catalogue or supplementary material relating to a Society Sponsored Sale.

6.2 The Attendee acknowledges and agrees that it does not rely on the skill or judgment of the Society in relation to the purchase of a Lot. Any advice, recommendation, information or assistance provided or purportedly provided by the Society is provided without any liability by the Society whatsoever.

6.3 The Society assumes no liability in respect of any error, misdescription or omission in any descriptions, pedigrees or other information pertaining to the type, quality, condition, characteristic, sex, age, breeding condition or otherwise of

any Lot offered for sale, including on account of any information included in a catalogue relating to a Society Sponsored Sale. No such error, misdescription or omission shall entitle the Attendee to claim compensation or damages against the Society.

#### **7. VENDOR AND BUYER TERMS**

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7.1 The Vendor warrants to the Buyer and the Society:

- (a) that to the extent possible, any description of the Lot is materially accurate and complete and not misleading or deceptive having regard to genetic, scientific and laboratory inaccuracies and third-party administrative errors and omissions;
- (b) all photos or videos of the relevant Lot depict the Lot that is actually listed for sale, and are not misleading or deceptive;
- (c) the Lot is suitable for transportation;
- (d) the sale of the Lot is in accordance with any applicable laws;
- (e) all warranties included in the Annexure and any other document that forms a part of these Terms and Conditions;
- (f) the Lot is not a Disqualified Lot;
- (g) the Vendor has clear title to the Lot;
- (h) the Vendor has full authority to sell and/or deal with the Lot; and
- (i) there are no undisclosed Security Interests over the Lot and on transfer of title to the Lot in accordance with these Terms and Conditions, the Buyer will be entitled to possession of the Lot, at the time of delivery of a Lot.

7.2 The Vendor will guarantee the fertility of the Lot, and warrants to the Buyer and the Society:

- (a) a bull, with the exception of a bull calf at foot, is a guaranteed breeder and will so prove within six months of the date of the Sale, or by reaching the age of 30 months, whichever date shall be later.
- (b) a female, with the exception of a female calf at foot, will conceive a pregnancy within 6 months of the date of Sale, or by the age of 30 months, whichever date shall be later.

*A claim made under this guarantee of fertility, must be made to the Vendor within six months of the date of purchase, or prior to the animal entering a quarantine area other than on the Vendor's property.*

7.3 The Vendor warrants to the Buyer of a joined female, that the pedigree of the resultant calf is as stated in the catalogue.

7.4 If the Buyer is a consumer within the meaning of that term in the Australian Consumer Law, the Vendor makes each

guarantee required as a provider to a consumer under the Australian Consumer Law but only to the extent required by the nature of the Buyer.

- 7.5 The Buyer warrants to the Vendor and the Society:
- (a) that it will, to the extent practical, undertake its own inquiry as to the accuracy of the description of the Lot, acknowledging that genetic, scientific and laboratory inaccuracies and third-party administrative errors and omissions of any description with regard to a Lot can occur which are outside of the knowledge or control of the Vendor;
  - (b) all warranties included in the Annexure and any other document that forms a part of these Terms and Conditions;
  - (c) it has full authority to purchase the Lot; and
  - (d) it has the immediately available financial resources to purchase any Lot for which it is the Buyer.

## **8. CLAIMS UPON THE SOCIETY**

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- 8.1 At no point does the Society have control or custody of a Lot. The Society is not a party to the sale or purchase of a Lot. The Society does not owe any obligation to the Buyer or the Vendor in relation to the sale or purchase of a Lot, including any obligation to deliver a Lot or in respect of the description or condition of any Lot.
- 8.2 The Attendee acknowledges and agrees that it attends a Society Sponsored Sale entirely at its own risk.
- 8.3 To the maximum extent permitted by law (except to the extent caused by the negligence of the Society), the Society will not be liable to the Attendee:
- (a) for any damage to, or injury suffered by, the Attendee, whether by accident, illness, disease or otherwise, while attending, or as a consequence of attending, a Society Sponsored Sale; or
  - (b) for any damage to, or injury suffered by, a Lot, whether by accident, illness, disease or otherwise, while the Lot is held or remains at the Society Sponsored Sale venue, or as a consequence of the Lot being held or remaining at the Society Sponsored Sale venue.
- 8.4 To the maximum extent permitted by law, the Society will not be liable to the Attendee
- (a) in respect of any error, misdescription or omission in any descriptions, pedigrees or other information pertaining to the type, quality, condition, characteristic, sex, age, breeding condition or otherwise of any Lot offered for sale, including on account of any information included in a catalogue relating to a Society Sponsored Sale and no such error, misdescription or omission shall entitle the Attendee to claim compensation or damages against the Society; or
  - (b) for any Excluded Loss.

- 8.5 To the maximum extent permitted by law, the Society will not be liable to the Attendee, or the Attendee's executors, administrators, successors in title or assigns, for any loss, injury, death or damage, except to the extent that loss, injury, death or damage is caused by the negligence of the Society, arising (directly or indirectly) out of or in connection with:
- (a) the conduct of any Society Sponsored Sale;
  - (b) any attendance at a Society Sponsored Sale; and
  - (c) the content of any Lot description.
- 8.6 Without limiting any other provisions of this clause 8, the maximum aggregate liability of the Society to the Attendee for any Claim (or series of connected Claims) under or in connection with these Terms and Conditions howsoever arising shall be limited to the price received by the Society in respect of the nomination fee paid for the Lot.
- 8.7 If any Attendee brings to the Society Sponsored Sale any Lot which is dangerous, or infected with any disease, that Attendee shall be liable for all injury, damages, costs, losses or expenses sustained by the Society or other Attendees as a result of the Attendee's conduct.
- 8.8 The Vendor indemnifies the Society in respect of and will pay to the Society on demand all loss, damage, costs and expenses incurred or suffered by the Society, together with any Claims, in respect of any of the Lots it is presenting for sale, except to the extent caused by the negligence of the Society.
- 8.9 The Vendor acknowledges and agrees that it is responsible for its own public liability insurance and that it must have public liability insurance for a minimum cover of \$20,000,000 to be eligible to nominate and sell Lots at a Society Sponsored Sale.
- 8.10 The Vendor must submit to the Society, at the time the Lots are nominated for the Society Sponsored Sale, a certificate of currency for the public liability insurance required under clause 8.9. The certificate of currency must note the 'Droughtmaster Stud Breeders' Society Limited' as an interested party.
- 8.11 The Attendee undertakes to comply in all respects with these Terms and Conditions and indemnifies the Society on demand for all loss, damage, costs and expenses incurred or suffered by the Society, together with any Claims, in respect of any breach of these Terms and Conditions by that Attendee (including in respect of any Annexure).
- 8.12 Any liability of the Vendor to the Society under this clause 8 is reduced to the extent that the Society caused or contributed to the loss or liability through its own negligent act or omission, wilful misconduct or breach of these Terms and Conditions.
- 8.13 Nothing in this clause 8 restricts or limits the Society's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under an indemnity.

## **9. TRUST AND TRUSTEES**

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Where the Attendee enters into these Terms and Conditions as a trustee, the Attendee warrants that it has the full power and authority to enter into these Terms and Conditions on behalf of the trust and that it shall be bound by these Terms and Conditions both personally and as trustee, irrespective of whether or not it discloses to the Society that it is a trustee.

## **10. PERSONAL PROPERTY SECURITIES ACT**

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The Society provides no warranty regarding clear title to goods purchased through a Society Sponsored Sale. The Attendee is responsible for conducting searches of the Personal Property Securities Register to ascertain whether any Security Interests affect any Lot prior to purchase.

## **11. NOTICE**

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- 11.1 All notices given under these Terms and Conditions must be in writing and may be delivered in person or by mail or by the medium specified in the address for service notified by each party to the other.
- 11.2 A party may change its particulars for service by notice in writing to the other parties.
- 11.3 A notice sent by post will be deemed:
- (a) given on the day it is posted; and
  - (b) received six days after posting.
- 11.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.
- 11.5 For the purposes of clause 11.4, 'delivery' of an email means the time that an email reaches the recipient's server.

## **12. INTELLECTUAL PROPERTY**

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- 12.1 These Terms and Conditions do not confer on the Attendee any license to the Intellectual Property Rights of the Society.
- 12.2 All Pre-existing IP Rights remain the sole property of the owner.
- 12.3 The Vendor grants the Society a non-exclusive, royalty-free, non-transferable licence to use the Pre-existing IP Rights owned by it for any purpose in connection with the Society Sponsored Sale.
- 12.4 The Society grants the Vendor a non-exclusive, royalty-free, non-transferable licence to use the Pre-existing IP Rights owned by the Society solely in relation to advertising a Lot in connection with a Society Sponsored Sale.

## **13. GENERAL**

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### **Variation**

- 13.1 No amendment or variation to these Terms and Conditions has force unless it is in writing and signed by the parties.

### **Joint and Several**

- 13.2 An obligation of two or more persons under these Terms and Conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of these Terms and Conditions will take effect for the benefit of those persons jointly and severally.

### **Entire Agreement**

- 13.3 These Terms and Conditions govern the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings between the Attendee and the Society.

### **Governing Laws**

- 13.4 Unless varied by notice in writing by the Society, these Terms and Conditions shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts in Queensland.
- 13.5 The parties agree that proceedings may be commenced in any Court in Queensland and consent to that Court having jurisdiction by virtue of clause 13.4 even though the Court would not otherwise have such jurisdiction without this consent.

### **Waiver**

- 13.6 Any failure by the Society to insist upon strict performance of any terms and/or conditions herein shall not be deemed a waiver thereof of any right that the Society may have and shall not be deemed to be a waiver of any subsequent breach of any terms and/or conditions.

### **Severance**

- 13.7 In the event that the whole or any part or parts of any provisions in these Terms and Conditions should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these Terms and Conditions but the validity and enforceability of the remainder of these Terms and Conditions shall not be affected.

## **14. ANNEXURE(S)**

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[To include the Droughtmaster Australia Sponsored Sales Conditions of Entry Bull Sales]