

# Suggested\* Sale Terms and Conditions

American Angus Association • Effective February 18, 2009

UNLESS OTHERWISE EXPRESSLY STATED IN THESE SALE TERMS AND CONDITIONS OR ANY OTHER WRITTEN AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF ANGUS CATTLE UNDER THESE SALE TERMS AND CONDITIONS, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO THE PARTIES.

THE REMEDIES PROVIDED IN THESE SALE TERMS AND CONDITIONS ARE THE EXCLUSIVE REMEDIES OF THE BUYER, OR ANY PARTY CLAIMING THROUGH THE BUYER, AND UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

## TERMS OF SALE

### Bidding

1. Each animal will be sold to the highest bidder. The person in charge will settle any disputes as to bids, and his decision on such matters will be final.

### Announcements

1. If there is any inconsistency in the terms of any sale book, supplement sheet or day-of-sale announcement, (i) the day-of-sale announcement will control over both the supplement sheet and the sale book, and (ii) the supplement sheet will control over the sale book.

### Cash Sale

1. All sales are for cash unless satisfactory credit arrangements, including any possible reservation of security interest by the vendor, have been made with the vendor prior to sale.

### Buyer's risk

1. The risk of loss and injury of each animal passes to the buyer as soon as it is sold; but it is the obligation of the seller to ensure that animals are fed and cared for free of charge to the buyer until loaded for shipment or until the expiration of 48 hours after the sale, whichever occurs sooner.

### Identification

1. The seller must ensure that each animal has a readable permanent identification mark (e.g., tattoo, hot-iron brand or freeze brand) corresponding to its registration.
2. The buyer must check all permanent identification marks for accuracy.
3. In those cases where a nickname is used by the seller, the nickname must also be accompanied by the official registered name and number of the animal.

### Certificate of registration

1. A transferred certificate of registration must be furnished by the seller free of charge to the buyer for each animal within 45 days following the later of the date of sale and receipt of full payment.

### Artificial insemination (AI) service certificates

1. Upon the buyer's request, AI Service Certificates must be furnished by the seller free of charge to the buyer for all females bred artificially to bulls not owned by the seller.

## GUARANTEES

### Health

1. Unless otherwise announced, the seller guarantees that all animals are eligible for interstate shipment as required by federal regulations.

### Conformance with registration

1. The seller guarantees that all animals are registered under the rules of the American Angus Association.
2. The seller guarantees to the buyer that all animals conform to the registration certificate as entered in the Herd Book of the American Angus Association.

### Pedigree

1. The seller guarantees to the buyer that the pedigree, performance data and individual genetic defect designation of the animal, as represented in any sales materials (including any sale book, supplement sheet or day-of-sale announcement), is accurate.
2. The absence of any such designation on the pedigree of an animal, in a sale book, does not establish that the animal in question is not a carrier of any such genetic defect or genetic factor.
3. In those cases where a commonly understood nickname is used by the seller, the seller guarantees the pedigree of the animal based on the commonly understood nickname.

### Sex

1. Unless otherwise represented by the seller, there are no guarantees that offspring will be of a particular sex.

### Breeding guarantees

1. The seller guarantees that all bulls are breeders, but only if such bulls are at least 12 months old at the time of sale and have not been allowed to run with the herd until at least 14 months of age. A bull that settles a cow by natural service and passes a fertility test made by competent veterinarians mutually agreed upon by the buyer and the seller, during any six-month period of trial (provided for in paragraph 2 of the section entitled "Options and privileges of return or adjustment") will be considered a breeder. Unless otherwise agreed by the buyer and the seller, the seller makes no guarantees with respect to the ability to freeze semen.
2. The seller guarantees that all animals are breeders, with the exception of: (a) calves under 12 months of age at the time of the sale; (b) animals shown after the sale has occurred (in such cases, the breeding guarantees, if any, will be those guarantees

\* For voluntary consideration and use by sellers in their independent business judgment.

- as are agreed upon between the seller and the buyer); (c) injury or disease occurring after the sale; and (d) gross negligence or willful misconduct on the part of the buyer.
3. "Safe-in-calf" females are guaranteed by the seller to have been examined by a competent veterinarian and determined to be in calf.
  4. "Served" females are not guaranteed to be in calf.
  5. "Pasture-bred" females have been exposed but are not guaranteed to be in calf.
  6. "Open" females have not been served and are guaranteed by the seller to be without calf.
  7. Donor females:
    - a. Unless otherwise agreed by the buyer and the seller, a female that has been used in an embryo transfer program is not guaranteed to be a breeder after the date of the sale.
    - b. Unless otherwise agreed by the buyer and the seller, a female is not guaranteed to be a breeder after the date of the sale, when that female is to be used, or attempted to be used, in an embryo transfer program.
  8. The seller makes the following guarantees with respect to all "pregnant recipients": (i) that the female is pregnant, (ii) that the resulting calf is of the pedigree represented, and (iii) that the resulting calf is of the sex represented (if so represented).

### **Semen**

1. Unless otherwise agreed by the buyer and the seller, with respect to the sale of semen the seller makes no guarantees with respect to the performance or characteristics of such semen and the buyer is purchasing such semen "as is."

### **Embryos**

Unless otherwise agreed by the buyer and the seller, with respect to the sale of embryos the seller makes no guarantees with respect to the performance or characteristics of such embryos and the buyer is purchasing such embryos "as is."

### **Options and privileges of return or adjustment**

1. Except as provided in paragraph 2 of this section, all claims for adjustment or refund must be made in writing on or before the later of (i) six months after the sale date and (ii) the date on which the animal reaches 30 months of age.
2. All claims relating to the misrepresentation of service sire and all claims relating to paragraphs 10 and 11 of this section must be made in writing on or before the second anniversary of the date of sale.
3. If an animal is claimed to be a non-breeder, the animal may be returned to the seller if in good condition and complying with the health requirements of the seller's state. The seller is entitled to six months trial following the return of the animal in which to prove that the animal is a breeder. If at the end of the six-month period the seller is unable to prove the animal is a breeder, the seller must, at the option of the buyer, replace the animal with another of equal value or refund the purchase price. The return of the full purchase price will be deemed full satisfaction and settlement. Any expense incurred for transporting an animal claimed to be a non-breeder will be the responsibility of the buyer, except that the seller will be responsible for transportation costs in excess of the distance between the buyer's farm and the location where the sale took place. If the seller proves the animal to be a breeder, it will be the obligation of the buyer to take delivery of the animal and pay all transportation expenses.

4. If a female sold as "safe in calf" proves not to be in calf, the buyer may receive service from the bull previously used, if available. If the bull is not available, the seller must make a satisfactory adjustment on the purchase price to the buyer or, at the buyer's option, refund the purchase price upon return of the animal to the farm of the seller. Any adjustment provided for in this paragraph will absolve the seller from further liability, except in if such female proves to be a non-breeder. If a female represented as "safe in calf" to a certain bull at the time of sale proves to have been bred to a different bull, the seller must make a satisfactory adjustment on the purchase price to the buyer or, at the buyer's option, refund the purchase price upon return of the animal to the farm of the seller (adjustments will not be considered to be a breeding fee or an allocation of the purchase price to any unborn calf).
5. If a female sold as "open" proves to be with calf, the buyer may return the animal to the farm of the seller prior to calving for a refund of the full purchase price or for another animal of equal value, whichever is acceptable to the buyer. The Seller is responsible for all transportation expenses.
6. Cows with calves at their side are presumed to be breeders with no further fertility guarantee.
7. White skin or hair must not be painted or altered. If such painting or alteration has occurred, the buyer may return the animal to the farm of the seller for a refund of the full purchase price or for another animal of equal value, whichever is acceptable to the buyer.
8. If an animal (including the offspring of a pregnant recipient) is sold and at a later date proves not to have been eligible for registration under the rules of the American Angus Association, the seller must make a satisfactory adjustment on the purchase price to the buyer, or at the option of the buyer, refund the purchase price upon the return of the animal to the farm of the seller.
9. If (i) an animal is sold (including the offspring of a pregnant recipient) and through DNA-marker-typing is proven to have incorrect parentage, as represented by the certificate of registration, and for which parentage can be determined, or (ii) the resulting calf of a pregnant recipient is not of the sex represented, the seller is obligated to make a satisfactory adjustment on the purchase price to the buyer or, at the buyer's option, refund the purchase price upon the return of the animal to the farm of the seller.
10. Except as provided in paragraphs 4 and 6 of this section, all transportation expenses incurred will be the responsibility of the buyer, except that the seller will be responsible for transportation costs in excess of the distance between the buyer's farm and the location where the sale took place.

### **Retention of genetic material**

1. Unless otherwise agreed in writing by the seller and the buyer, the seller will not retain any genetic material of any animal (including embryos and semen) for the purpose of cloning.

### **DISCLOSURE OF TESTS RESULTS FOR KNOWN GENETIC DEFECTS AND FACTORS**

The seller shall have an affirmative duty to notify the buyer of any test results for genetic defects or genetic factors not otherwise reflected on an animal's pedigree.

**Optional Guarantee: Genetic Defects**

1. The buyer and seller may determine the scope and duration of a guarantee, if any, on an individual basis. The seller may, but is not required, to provide a guarantee to the buyer relating to genetic defects.
2. Nothing contained herein should be construed to relieve the parties from complying fully with all the rules and policies of the Association relating to genetic defects generally or individually.

**MISCELLANEOUS**

1. The above terms and conditions of sale constitute a contract between the buyer and the seller of each animal and are equally binding upon both parties. Each sale or resale of an animal constitutes a separate transaction.
2. Neither the sponsor or sponsors, the sale manager, nor any other person connected with the management of the sale, assumes any liability, legal or otherwise.
3. These sale terms and conditions and all rights, obligations and duties arising hereunder and all disputes arising hereunder will be construed in accordance with, and governed by, the laws of the state in which the sale of the animal or animals occurs, without giving effect to such state's choice of law rules.