

Terms & Conditions

Suggested Sale Terms and Conditions protect buyer and seller.

by *Shauna Rose Hermel*

Bull sale season is ramping up across the country. As the value of those individuals increases, so does the likelihood of a complaint if the buyer isn't completely satisfied. If you've been in the business for any length of time, you know long-term success is built on customer satisfaction. It's likely you have made an adjustment or two that went over and above the call of duty to ensure a repeat customer.

But, what do you do when a buyer returns with an unrealistic expectation for compensation? For example, three years later, with two calf crops on the ground, a bull purchased from you fails a breeding soundness exam and the buyer wants you to replace him. What can you do to avoid hurt feelings or, in a worst-case scenario, avoid legal action?

The time to consider that is before the sale, not after, says Don Laughlin, director of member services for the American Angus Association in Saint Joseph, Mo. Laughlin encourages seedstock producers selling cattle at auction or by private treaty to do so under the *Suggested Sale Terms and Conditions* provided by the Association (see pages 267-268).

As the name implies, these are suggested terms and conditions of sale and their use is voluntary. They are intended to protect both buyer and seller, says Laughlin. They outline responsibilities of each party, so both parties have a clear expectation of what they are accountable for. If a question arises, specified terms and conditions give both parties something to fall back on as to what was agreed upon at the time of sale.

For instance, in our example above, item 2 under the "Breeding Guarantees" section specifies that the seller guarantees the bull to be a breeder for a period of 90 days (not three years) following initial turnout of the bull in the buyer's herd. Item 2 under "Privileges of Return or Adjustment: Options" specifies that all claims for adjustment or refund must be made in writing to the seller within 180 days following the sale. Item 3 under that same section would give the seller 180 days to demonstrate the bull to be a breeder before issuing a refund.

You'll note that there are several places in the *Suggested Sale Terms and Conditions* that carry the language "unless otherwise stated." They are amendable, Laughlin explains. As stated in the note at the beginning of the document, they are drafted for optional use as is or as modified to the seller's preference.

For instance, a breeder having a bull sale may want to save space in his or her sale book by running only those terms and conditions applicable to bull sales, or vice versa if the sale is a female sale. The important thing is for the terms to be provided to the buyer prior to sale. Both parties should keep a copy of the terms with their sale/purchase documents.

If the terms and conditions are modified from the original,

the seller should make the buyer aware of that fact, Laughlin suggests.

Not just for auctions

If you are having a sale, Laughlin recommends including the *Suggested Sale Terms and Conditions* in your sale book and/or having them available at the settlement table after the sale. Auctioneers will generally announce prior to the sale that the cattle are being sold under the *Suggested Sale Terms and Conditions* of the American Angus Association and specify any exceptions.

The Board of Directors adopted changes to the Association's *Suggested Sale Terms and Conditions* at its June 2012 Board meeting to make them more reflective of how business is conducted today and to make it more fitting for private-treaty sales. Laughlin encourages members selling cattle by private treaty to provide customers a copy of the terms and conditions with their sales material. One option might be to provide the buyer an invoice that lists information on the animal and the selling price with a note that the animal was sold under the *Suggested Sale Terms and Conditions* of the American Angus Association. Staple a copy of the terms and conditions to the invoice.

Again, if modifications are made to the terms, make sure the buyer is aware of those modifications and that they are documented.

If you've been in the business for any length of time, you know long-term success is built on customer satisfaction.

Be aware of changes

Several changes were made to the *Suggested Sale Terms and Conditions* in June 2012, so take time to acquaint yourself with the new document as presented on pages 267 and 268. A few highlights include:

- ▶ The new terms and conditions state the buyer will be responsible for artificial insemination (AI) certificates on any animals that need an AI certificate to be registered unless otherwise specified by the seller.
- ▶ Item 1 under "Pedigree, Performance and Genetic Information" is new and states that the seller guarantees the pedigree, performance and genetic information in sales material to be accurate, and that the seller will provide an "as of" date for all information generated from the Association database.
- ▶ Item 2 in the "Breeding Guarantees" section is a redefinition for how bulls are guaranteed, Laughlin explains.
- ▶ New language in item 1 under "Privileges of Return or Adjustment: Option" specifies that the seller will never be held liable to the buyer for more than the selling price of the animal.
- ▶ Item 2 in the same section says "all claims for adjustment or refund must be made in writing to the seller within 180 days following the sale of the animal in question."
- ▶ Laughlin emphasizes there is a big difference in item 3, allowing the seller to issue credit to the buyer for a future purchase or provide an animal of equal value. If the buyer prefers a refund of the purchase price, the seller has the option of taking possession of the bull and within 180 days demonstrating that the bull is a breeder.
- ▶ Changes also apply to items 4, 5, 8, 9 and 10 of that section.

The new terms and conditions note that a seller must disclose if any genetic material is retained, and the seller must disclose if any animal sold is a carrier or a potential carrier of a genetic defect.

Presenting the terms and conditions of sale to your customers prior to selling them an animal can help avoid disagreements down the road.

Suggested* Sale Terms and Conditions

American Angus Association • Effective June 7, 2012

*These Suggested Sales Terms and Conditions have been drafted for optional use by sellers in multiple types of transactions including auctions, internet auctions, private treaty sales and private treaty sale “bid offs.” Whether to use them as drafted, as modified, or not at all, is left to the independent business judgment of every seller. They are for sellers’ consideration and voluntary use.

TERMS OF SALE

Announcements

1. If there is any inconsistency in the terms of any sales materials, including sale books, supplement sheets or day-of-sale announcements, (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 seller, have been made with the seller prior to sale.

Buyer’s Risk at the Time of Sale

1. The risk of loss and injury of each animal passes to the buyer as soon as it is sold; however, it is the obligation of the seller to ensure that sold animals are fed and cared for free of charge to the buyer until loaded for shipment or until the expiration of **24** hours after the sale, whichever occurs sooner.

Identification Responsibilities

1. Prior to the sale, 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 upon possession and report any discrepancies or irregularities to the seller immediately.
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.

Certificates 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 either the date of sale or upon the receipt of full payment.

Artificial Insemination (AI) Service Certificates

1. AI Service certificates will be the responsibility of the buyer unless otherwise specified by the seller.

GUARANTEES

Health

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

Conformance with Registration

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

Pedigree, Performance and Genetic Information

1. The seller guarantees to the buyer that the pedigree, performance data and genetic information, as represented in any sales materials (including any sale book, supplement sheet or day-of-sale announcement), are accurate. The seller shall provide “as of” date for all information from the American Angus Association database.
2. The absence of any such designation on the pedigree of an animal, as set forth in any sales materials, 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 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 as are agreed upon between the seller and the buyer); (c) animals who suffer injury or disease following the sale; and (d) animals subjected to gross negligence by or willful misconduct on the part of the buyer.
2. The seller guarantees that all bulls are breeders for a period of **90** days following the initial turn out with buyer’s herd, 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 performed by a competent veterinarian or reproductive technician mutually agreed upon by the buyer and the seller 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.
3. Cows with calves at their side are presumed to be breeders with no further fertility guarantee.
4. “Safe-in-calf” females are guaranteed by the seller to have been examined by a competent veterinarian or reproductive technician and determined to be safe-in-calf by examination or other proven method (e.g., ultrasound, pregnancy blood tests and rectal palpation).
5. “Served” females are not guaranteed to be in calf.
6. “Pasture-bred” females have been exposed but are not guaranteed to be in calf.
7. “Open” females are guaranteed by the seller to be without calf.
8. 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.
9. 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

1. Embryos being offered for sale will be sold “as is” unless the seller provides additional guarantees.

CONTINUED ON PAGE 268

Privileges of Return or Adjustment: Options

1. With the exception of any applicable transportation expenses described herein, a seller shall never be liable to a buyer for an amount greater than the original selling price of any animal sold under these Sales Terms and Conditions.
2. Unless otherwise stated, all claims for adjustment or refund must be made in writing to the seller within 180 days following the sale of the animal in question.
3. If an animal is claimed to be a non-breeder, the animal may be returned to the seller if it is in good condition and complies with the health requirements of the seller's state. At the option of the buyer, the seller may issue a credit to the buyer for use in a future purchase or provide an animal of equal value subject to the approval of buyer. If the buyer exercises either such option, the claim shall be deemed fully and satisfactorily resolved. However, in the event that the buyer requests a refund of the purchase price, the seller may, at its option, either issue a refund of the full purchase price or, shall have 180 days from the date the animal is returned to the seller's farm to conduct a trial to demonstrate the returned animal is a breeder. Refund of the full purchase price or demonstrated proof that the animal is a breeder during the test trial shall be deemed full satisfaction and settlement of the claim.

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 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 claim for adjustment or refund under this paragraph must be made in writing to the seller on or before the first anniversary of the date of the sale.
5. 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. Any claim for adjustment or refund under this paragraph must be made in writing to the seller on or before the first anniversary of the date of sale.
6. 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.
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 is sold and subsequently becomes ineligible for registration under the rules of the American Angus Association for reasons other than incorrect parentage, 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 an animal (including the offspring of a pregnant recipient) is sold and through parentage verification is proven to have incorrect parentage, as represented by the animal's certificate of registration, and for which correct parentage can be determined, 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. Any claim for adjustment or refund under this paragraph must be made in writing to the seller on or before the second anniversary of the date of the sale.
10. If the resulting calf of a pregnancy is not of the sex represented at the time of the sale, 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. Any claim for adjustment or refund under this paragraph must be made in writing to the seller on or before the first anniversary date of the sale.

11. Unless stated otherwise, 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.

Disclosure or Retention of Genetic Materials

1. If seller retains any genetic materials of an animal being sold that can be used for cloning, the seller must disclose such fact to any potential buyers prior to the sale.

GENETIC DEFECTS AND FACTORS: REQUIRED DISCLOSURES RELATING TO CERTAIN TEST RESULTS OR POTENTIAL CARRIER STATUS OF AN ANIMAL.

1. In advance of any sales of an animal, the seller shall have the affirmative duty to notify any potential buyer of (1) any test results in which an animal for sale has tested positive (under a test and at a laboratory approved by the American Angus Association) as a carrier of any genetic defect or genetic factor recognized by the American Angus Association, and (2) whether the animal has a potential carrier notation on its pedigree for any defect or factor that is recognized by the American Angus Association.

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 American Angus Association nor any director, officer, employee or representative of the Association or any of its related entities assumes any liability, legal or otherwise, in connection with any sale or transaction conducted under the terms of the Suggested Sales Terms and Conditions. Nor shall the American Angus Association, its directors, officers, employees or representatives assume any liability or be responsible in any way for enforcing the terms and conditions of any agreement between buyer and seller.
3. 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.
4. 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.

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.