

# Sale Standards

Sale terms and conditions set standard for breeder sales.

by Rhonda Nida McCurry

“Cattle will sell according to the sale terms and conditions as recommended by the American Angus Association.” A standard in today’s sale books, these words might be taken for granted. The American Angus Association’s “Suggested Sale Terms and Conditions,” provided in the *Breeder’s Reference Guide* (included with this issue) are considered an industry model for cattle sold at public auction.

The Suggested Sale Terms and Conditions state seven “terms of sale,” including bidding, announcements, cash sales, buyer’s risk, identification (ID), certificate of registration and AI (artificial insemination) service certificates. There are also 11 “guarantees,” which range from health, pedigrees and breeding guarantees, to genetic defect guarantees and options and privileges of return or adjustment.

Each listing is considered a written agreement between parties regarding the sale of Angus cattle. The legal remedies ultimately benefit the buyer and exclude the seller from liability and damages.

The first set of sale terms and conditions was adopted June 9, 1961. Since then, the terms and conditions have been reviewed each year by the American Angus Association Board of Directors. The most recent version was modified June 10, 2005.

Once or twice a year, the standing Arbitration Committee of the Association Board of Directors reviews cases brought forth by breeders. Ben Eggers, past president of the American Angus Association and manager of Sydenstricker Genetics (SydGen), Mexico, Mo., says the terms and conditions serve as guidelines and allow the Board to make a fair decision for each dispute.

“The terms protect buyers a bit more than the seller and at a minimum give the buyer retribution based on what is stated in the suggested terms and conditions,” he says.

## On one condition

Most buyers primarily reference the “breeding guarantees” and “options and privileges of return or adjustment” sections. These two sections, among other matters, allow the seller to provide assurance that cattle older than 12 months of age are breeders; define the terms “safe-in-calf,” “served,” “open” and “pasture-bred”; and outline fertility issues regarding donor cows.

If an animal is claimed to be a non-breeder, it must be returned to the seller in good condition, and the seller is entitled to a six-month trial to prove the animal’s fertility. If at the end of six months the animal is not proven, the seller must either replace the animal with another of equal value or refund the purchase price.

More basic terms of sale state when an animal is sold its registration certificate must be transferred free of charge to the buyer within 45 days of the sale. Permanent ID marks, such as tattoos and brands, must be legible, and each animal is sold to the highest bidder — with disputes settled by the owner or auctioneer.

Eggers says several sections may seem archaic; but, as a seller, he appreciates the basic protection and understands the suggestions are at best a minimum standard for each cattle sale transaction.

The most common misconception among buyers is that Association terms and conditions are hard and fast rules to live by, when in fact the statement is not a legal contract between buyer and seller, but rather a suggestion and service to breeders and buyers of Angus cattle.

Bryce Schumann, Association director of member services and office management, says the use of sale terms is completely voluntary, as they exist to provide a framework for breeders working through disputes.

“If a dispute arises from a transaction based on something covered by the Association, the terms and conditions serve as a framework for working out the issue,

## PART 4: For Your Reference

### Suggested\* Sale Terms and Conditions

American Angus Association • Effective June 10, 2005

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.

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 and performance data of all animals, as represented in any sales materials (including any sale book, supplement sheet or day-of-sale announcement), is accurate.
2. 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

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for example, if one party doesn't perform adequately," Schumann says. "The process of resolution, however, is not governed by the Association."

During Egger's presidency in 2005, the Arbitration Committee reviewed the section regarding retention of genetic material, specifically cloning. After much discussion, the Board decided a seller could not retain genetic material of any animal, including embryos and semen, for the purpose of cloning.

That same year, the Board amended a section on when DNA-marker-typing proves incorrect parentage of an animal.

"We spent a lot of time on the new methodology to determine parentage," Eggers says. The end result was a condition that if DNA-marker-typing proves incorrect for parentage, the seller is obligated to make a satisfactory adjustment on the purchase price to the buyer or refund the purchase amount once the animal has returned to the seller's farm.

### Raising the standard

Individual breeders may provide guarantees above and beyond the minimum standards set by the Association. Gordon Stucky, Circle S Angus Ranch, Kingman,

Kan., says this can be what sets individual breeders apart.

In his annual sale book, Stucky prints an additional breeding guarantee that all bulls and breeding age females are guaranteed to be satisfactory breeders for the first breeding season following the sale.

In truth, Stucky says, he rarely refers to the Association sale terms and conditions.

"Realistically if something comes up, I have my own type of settlement and try to go the extra mile," he says. "It's important to have repeat business, and in unforeseen circumstances I want people to feel comfortable and protected if they make a large investment with our cattle."

Stucky got his start in the Angus business in 1976 and has learned to deal with customer issues from experience.

"What starts sorting the men from the boys is how you deal with oddities or situations so customers get their money's worth," he says. "After all, you want them to come back and buy more stock from you."

Stucky's sale book doesn't print the full terms and conditions of the American Angus Association, but it refers to them on the inside cover on the sale information page. Stucky has experienced buyers who specifically ask about terms and conditions, so he keeps a paper copy in his office. However, he says, the breeding guarantee printed in his sale book is more important for customers to understand.

"That's the real nuts and bolts, especially for bull buyers, to show how they'll be treated if something happens," Stucky says.

Approximately 3%-5% of Circle S Angus Ranch bulls are re-evaluated during their first breeding season. While Stucky doesn't cover death of an animal, he would work with a buyer if a bull couldn't fulfill its duty.

"We guarantee reproductivity on yearling bulls, so if something happens customers know they're fully covered reproductively," he says.

Stucky says customers should call him if a bull is not settling females. All sale bulls are semen-checked, measured for scrotal circumference and given a breeding soundness exam (sometimes referred to as a BSE) by the local veterinarian. A replacement bull will be provided or credit issued equal to the animal's purchase price minus its salvage value.

Stucky keeps private-treaty bulls available in case a customer needs a replacement right away. Otherwise, if a customer has the luxury to wait, he'll offer credit to the buyer in the upcoming Circle S Angus Ranch sale.

"Spelling that out in the sale book doesn't



PHOTO BY SHAUNA ROSE HERMEL

► Ben Eggers, Sydenstricker Genetics, says the Suggested Sale Terms and Conditions provided by the American Angus Association are an additional benefit for an Angus breeder to use when selling or buying cattle. Each year the Association Board reviews the listing to update it with industry trends and potential disputes.

leave any gray area,” he says. “It’s pretty black-and-white. We follow that breeding guarantee much closer than the Association terms and conditions.”

### Protecting the seller

Even with SydGen’s additional breeding guarantee, Eggers says the operation will continue to use the Association sale terms and conditions because it offers protection to the seller.

Eggers says that when a reputation is on the line, breeders will go above and beyond expectations to make a buyer happy. In the case of a bull not settling cows, SydGen replaces the bull with another, then brings the original bull back home to semen-test.

SydGen’s replacement policy was written after two instances of a buyer deciding a bull was not a breeder and shipping him to the local sale barn, rather than first contacting Eggers. Under the Association sale terms and conditions, the seller is obligated to take the bull back home to prove he is a breeder.

“In general, we have Association terms and conditions to fall back on, but when it’s all said and done, the golden rule is really what applies,” Eggers says. “You guarantee cattle as you expect others to guarantee to you. We can’t protect against death loss, but we do expect bulls to do a reasonably good job of settling cows in a normal time frame.”

Years ago, SydGen printed the full version of the Association sale terms and conditions in its sale book but, as time evolved, most breeders began to develop stronger guarantees than the suggested terms.

Customer issues regarding heifers that have been flushed encouraged SydGen to enhance its female guarantee as well.

“If you flush a heifer prior to breeding for her first natural calf, the guarantee is null and void,” Eggers says. “This statement makes them think long and hard about doing it.”

If a female is determined to be a non-breeder, SydGen will offer the difference of her purchase price minus her salvage value as a credit in any future sale. Or, they credit buyers with the full purchase price upon her return. If a female sold as bred turns out to be open, SydGen refunds 30% of the amount paid. The female still qualifies for the remainder of the credit if she does not breed back.

### A safety net

As an Angus breeder and current Board member of the Association, Stucky considers the suggested terms and conditions a solid background piece, specifically designed for a buyer-vs.-seller dispute.



PHOTO BY ERIC GRANT, API CREATIVE MEDIA

►Kingman, Kan., cattleman Gordon Stucky says he appreciates the Association’s sale terms and conditions but also offers a more extensive breeding guarantee to his buyers. He says this personal step is critical to setting individual breeders apart, and buyers should verse themselves on both the Association’s and the seller’s own terms before purchasing seedstock.

“To me, that set of conditions was legally developed for a worst-case scenario,” he says. “Because the Association terms were written by an attorney, they provide sound documents for both the buyer and seller to fall back on.”

When a new customer specifically requests their guarantee, Stucky hands over a copy of the Association sale terms and conditions and goes through both documents, step-by-step, with the new buyer.

“I tell them, ‘Here’s a document developed through the American Angus Association,’ and this is a starting point,” he says. “On top of that, here’s our Circle S

Angus Ranch condition of how we like to handle the breeding guarantee of our cattle.”

Stucky says his commercial bull buyers pay particular attention to the sale terms and conditions. He adds that if a buyer plans to spend much above market price, they’re typically very well-versed on each breeder’s guarantee.

“It makes better customer relations when the buyer knows what they’re getting and saves a lot of heartache down the road,” Stucky says. “Experience is the best teacher. That’s what starts to separate breeders and quality and reputation.”

