

Elders Standard Terms and Conditions for Sale and Purchase of Livestock

1. Definitions

“Agent” means Elders Rural Services Australia Limited, acting as agent for the Vendor.

“Aus-Meat Code” means the code of practice for over-the-hooks trading to Aus-Meat accredited abattoirs. “Delivery Date” means the date specified in Item 3 in the Schedule.

“Delivery Location” means the location specified in Item 3 in the Schedule. “Charges” means the charges specified in Item 6 in the Schedule.

“Commission” means the commission payable to the Agent as specified in Item 3 in the Schedule. “Buyer” means the buyer whose name and address is specified in Item 2 in the Schedule and includes its authorised representatives.

“Purchase Price” means the price (as specified in Item 5 in the Schedule) for all Livestock delivered pursuant to these Terms.

“Terms” means these terms and conditions, including the attached schedule and any Special Conditions. “Vendor” means the vendor whose name and address is specified in Item 1 in the Schedule and includes its authorised representatives.

2. Sale and purchase

2.1 The Vendor agrees to sell (through the Agent) and the Buyer agrees to purchase the livestock, details of which are set out in Item 5 in the Schedule (numbers being approximate and not guaranteed) (“Livestock”), free of all encumbrances, for the Purchase Price upon and subject to these Terms.

2.2 The parties acknowledge that the Agent may receive from the Buyer a fee for its services and the parties further acknowledge that in such instances the Agent will be acting as agent for both the Buyer and the Vendor and notwithstanding that a conflict may arise, the parties hereby consent to the Agent, and will not make any claim against the Agent, acting in such capacity. Further, the Vendor expressly acknowledges that the Buyer might from time to time be a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of the Agent, and notwithstanding that a conflict may arise, the Vendor hereby consents to, and will not make any claim against the Agent in connection with, such an agreement.

2.3 The parties acknowledge that the Buyer may have obtained finance for the purchase of the Livestock from a third party financier to whom the Agent referred the Buyer and that, as a result of that referral, the Agent may receive a fee from the third party financier. The parties hereby consent to the Agent receiving any such a fee and will not make any claim against the Agent in connection with the receipt of such a fee.

3. Delivery and right of rejection

3.1 The Livestock shall be counted on or before the Delivery Date and delivery shall be taken by the Buyer at the Delivery Location on the Delivery Date.

3.2 At the time of delivery (but not at any time thereafter), the Buyer may reject any Livestock that are blind, maimed, diseased or unfit to travel and/or do not meet the Livestock movement, or health requirements of any relevant legislation.

3.3 On the sale of any female Livestock described as having been served, mated or depastured there is no express or implied warranty that such Livestock has actually conceived. The Vendor must keep suckling animals on their mothers which must be kept on reasonably good feed and water and must pay reasonably careful attention to them until delivery to the Buyer.

3.4 The Buyer must accept the number in each line of Livestock delivered by the Vendor provided that it does not vary by more than 10% of that specified in Item 5 in the Schedule. However, the Buyer may, at its option, accept any number of Livestock mustered for delivery.

3.5 Subject to clause 3.7 below, the Livestock will be at the risk of the Buyer on and from delivery. The Buyer must, in the name of the Vendor, the Agent and the Buyer, insure at market value, the Livestock against mortality from delivery until payment for the Livestock is made in full by the Buyer.

3.6 If the Buyer is unable to secure trucks or transport on the Delivery Date or is, due to any other cause beyond the Buyer's reasonable control, unable to take delivery on the Delivery Date, the Livestock shall be at the Buyer's risk from that day, but an extension of time shall be given by the Vendor (maximum period 21 days) in which to take delivery. If, pursuant to this clause, delivery is delayed beyond 21 days, the Buyer will pay agistment charges to be mutually agreed between the Buyer and the Vendor and in default of agreement at a rate fixed by the Agent, regardless of whether or not the Buyer actually takes delivery of the Livestock.

3.7 The Buyer shall indemnify the Vendor against any loss or damage suffered by the Vendor in connection with the Livestock on and from the day that the Livestock are at the risk of the Buyer pursuant to these Terms.

3.8 The Buyer acknowledges that it has the obligation to notify Meat & Livestock Australia (and/or any other applicable body) of the change of ownership of the Livestock within the relevant time required by legislation. The Buyer releases the Vendor and the Agent from any obligation to do so.

3.9 The Vendor acknowledges that it has the obligation to notify the secretary of any breed society applicable to the Livestock of the full name and address of the Buyer together with the payment of transfer fees within the time period specified by the relevant breed society of which the Vendor is a member.

3.10 The parties agree at all times to abide by the requirements of any relevant legislation relating to the treatment of the Livestock.

4. Payment terms

4.1 Subject to clause 6.5, the Buyer will pay the Agent in cleared funds the Purchase Price on delivery of the Livestock.

4.2 The Purchase Price is exclusive of GST (unless expressly stated otherwise) and the Buyer will pay GST in addition to the Purchase Price (where applicable) and will pay GST with respect

to any other taxable supply in accordance with these Terms. The Buyer will pay any other applicable charges, duties (including any stamp duty or custom duty) impost, levies, excise and/or lot charges with respect to these Terms and the sale, purchase and/or slaughter of the Livestock.

4.3 If the Purchase Price is not paid in full on the due date for payment, the Buyer will pay interest (at the Supplier's prevailing rate at that time) and will be charged (calculated on a daily basis and debited monthly in arrears to the account) on the overdue amount from invoice date to the date of payment.

4.4 The Agent is entitled to deduct its Commission and Charges from the Purchase Price payable to the Vendor.

4.5 The Agent acts as del credere agent and will pay the Purchase Price (less its Commission and Charges) to the Vendor within the customary payment period after the Delivery Date. The buyer acknowledges that the Agent may recover the Purchase Price from the Buyer and exercise those remedies available to the Vendor as if the Vendor had not received the Purchase Price from the Agent.

4.6 Notwithstanding clause 4.5, nothing in these Terms shall render the Agent liable in any way whatsoever to the Buyer as Vendor nor entitle the Buyer to set up against the Agent any right the Buyer may have against the Vendor under these Terms or otherwise.

4.7 Property and title in the Livestock shall pass to the Agent upon payment by the Agent of the Purchase Price (less Commission and Charges) to the Vendor. Property and title in the Livestock shall only pass to the Buyer upon full payment by the Buyer of the Purchase Price to the Agent and until such time the Buyer shall hold the Livestock as bailee.

4.8 The Agent will pay all amounts owing to the Vendor to the credit of the Vendor's account with the Agent unless instructed otherwise, and noted on Item 7 in the Schedule.

5. Exclusion of warranty

5.1 In accepting delivery of the Livestock, the Buyer acknowledges that it has examined the Livestock and that it is relying entirely on its own judgement and not on any statements made by the Vendor (or the Agent) and that the Vendor makes no representation or warranty as to the condition, merchantability, quality or fitness of the Livestock in any respect.

5.2 All conditions and warranties expressed or implied by statute or otherwise and whether as to condition, quality or fitness for any particular purpose or as to any other matter or thing whatsoever are hereby excluded from these Terms to the fullest extent permitted by law.

5.3 Where such rights cannot be excluded, modified or limited, the Vendor's liability for any breach is limited at its option to the replacement or re-supply of equivalent Livestock or repayment of the cost of the same.

5.4 The Vendor will indemnify and keep indemnified the Agent at all times against any liabilities, losses, damages, costs or expenses incurred or suffered by the Agent and all actions, proceedings, claims or demands made against the Agent arising from any negligent act or misdescription by the Vendor affecting the Livestock or the condition of the Livestock.

5.5 The Agent will not be responsible for any breach of warranty by the Vendor or the Buyer. The Agent gives no warranty as to the Vendor's title to the Livestock or the Vendor's right to sell the Livestock and is not liable in respect of any error, misdescription or omission in any particulars appearing or stated regarding the description or pedigree of any of the Livestock.

6. Livestock purchased for slaughter

The following provisions apply only with respect to Livestock purchased for slaughter (as indicated in the Schedule):

6.1 The Purchase Price payable by the Buyer will be determined by the grading of carcasses, such carcasses to be inspected by the Buyer's representatives upon slaughter in accordance with Aus-Meat language descriptions (as published by Aus-Meat from time to time).

6.2 The Buyer will:

(a) permit the Vendor or Agent to view the slaughter or to inspect to the carcasses within 12 hours after slaughter;

and

(b) provide to the Vendor or Agent, Aus-Meat slaughter floor data within 12 hours and chiller assessment data (if assessed) for every animal delivered pursuant to these Terms within 24 hours of slaughter and shall provide a hard copy of this data within 48 hours of slaughter.

6.3 The Buyer's representatives shall make a decision as to the grading, subject that if the Vendor disagrees with such decision the parties shall attempt to agree the grading in good faith. If they cannot agree, either party may request an inspection to be carried out by an independent third party to be agreed between the parties, the cost of which will be shared equally between the parties, and such decision shall be final and binding.

6.4 In addition to these Terms, the terms and conditions contained in the Aus-Meat Code will apply unless expressly excluded, provided that if the Buyer is not an Aus-Meat accredited establishment then this clause and the reference to Aus-Meat in this clause 6 will not apply except to the extent that the Aus-Meat Code can and does apply to non-accredited Aus-Meat establishments and such application is usual practice in the industry.

6.5 The Buyer shall ensure that the Livestock are slaughtered in accordance with the requirement of any relevant legislation within 48 hours of delivery and payment of the Purchase Price shall be made within 7 days or such other period as advised by Elders from time to time.

6.6 The Vendor warrants to the Buyer that at the date of delivery the disease and residue status of the Livestock complies with the applicable statutory requirements for disease and residue status.

6.7 Within 7 days (or any greater period as prescribed by statute from time to time) from the date of delivery the relevant authority may test the carcasses for contamination. The price paid (or due) for any carcass condemned under the authority of any Act or relevant authority as containing residue in excess of the amount prescribed for Australian consumption or as unfit for human consumption will be deducted from the Purchase Price.

6.8 If the Buyer has paid the Purchase Price it will promptly receive from the Vendor a refund of the price paid with respect to each contaminated carcass. If the Purchase Price has not been paid, the Buyer may deduct the price of each contaminated carcass from the Purchase Price.

6.9 The Buyer will not be entitled to recover any damages from the Vendor for such condemned Livestock. Hides and offal from the affected Livestock will, however, remain the property of the Buyer.

6.10 The Buyer will have no claim against the Vendor for any loss the Buyer may suffer if the Livestock are contaminated through the fault of the Buyer.

7. Force majeure

7.1 The Vendor will not be responsible for any loss of Livestock between the date of this agreement and the Delivery Date caused by any Force Majeure Event, provided that the Vendor makes every reasonable effort to muster the Livestock and to deliver them to the Buyer. In such circumstances the Buyer is not entitled to take any action for non-performance under these Terms but is entitled to elect whether or not to accept any number of Livestock mustered for delivery.

7.2 Subject to clause 7.3, if either party is interrupted in, or prevented from, the performance of its obligations under these Terms by reason of any Force Majeure Event, such party will not be in breach of these Terms and the time for performance of its obligations under these Terms will be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, provided that if any such period exceeds 30 days, either party may immediately terminate this agreement without liability, by notice in writing to the other.

7.3 If the Livestock are intended for export as live animals (as indicated in Item 6 of the Schedule), the Buyer may only invoke its rights pursuant to clause 7.2 before:

- (a) for FAS (free alongside ship) sales (as defined in the latest published version of Incoterms formulated by the International Chamber of Commerce), before the weighing of the transport vehicle and Livestock at the Delivery Location; or
- (b) for all other sales, before unloading of the Livestock at the Delivery Location.

7.4 In this clause 7, "Force Majeure Event" means any rain event, flood, fires, lockouts, labour disputes, quarantine restrictions, epidemic, storm, earthquake, act of God, or any act (including laws, regulations, disapprovals or failure to approve) of any government or agency, whether national, municipal or otherwise or any other cause beyond a party's reasonable control.

8. Breach of contract

If the Buyer breaches any of its obligations under these Terms the Vendor or the Agent may (in addition to any other rights and/or remedies):

- (a) rescind this agreement;

(b) use such force as is necessary to retake possession of the Livestock and for that purpose the Buyer authorises the Vendor to enter any premises where the Livestock are located; and/or

(c) resell the Livestock upon such terms and conditions as the Vendor elects and any deficiency arising and all expenses of and incidental to any such resale (including any attempted sale) shall be recoverable from the Buyer as liquidated damages.

9. Miscellaneous

9.1 The parties warrant that their representatives present on the date of delivery have the authority to act for them, including to accept and/or reject Livestock and to bind them in all respects save as may be otherwise notified in writing before the delivery of Livestock under these Terms. The parties warrant that they hold any and all necessary licences, permits or accreditations that may be required to hold pursuant to any relevant legislation for the sale and/or slaughter of the Livestock.

9.2 These Terms contain the entire agreement between the parties concerning all matters dealt with by it and supersede any prior agreement between the parties in regard to those matters.

9.3 These Terms may only be amended in writing signed by the parties.

9.4 The waiver of a breach of any of these Terms will not be a waiver of any other breach of that provision or the breach of any other provision.

9.5 If any provision of these Terms is found to be void or unenforceable at law, that provision will not affect any other provision of these Terms and, as far as is possible, will be read down to the extent required to make it enforceable.

9.6 These Terms are governed by the laws of the State of Australia in which the Vendor is resident (or if a company, in which it has a registered office) and the parties submit to the jurisdiction of the courts of that State and the Federal Court of Australia.

10. Special Conditions

10.1 The special conditions (if any) set out in Item 7 in the Schedule ("Special Conditions") form part of this document.

10.2 In the event of any inconsistency between the Special Conditions and the terms set out in clauses 1 to 9 of this document, the Special Conditions will supersede those terms and those terms will be deemed to be severed to the extent of any inconsistency with the Special Conditions.