

NZ FARMERS LIVESTOCK LIMITED TERMS AND CONDITIONS

These Terms govern the terms and conditions on which NZ Farmers Livestock Limited (“NZ Farmers Livestock”) offers the Trading Platform for the sale and purchase of Livestock. By registering as a Registered User, offering for sale Livestock, making or accepting an Offer and/or completing a Transaction each Registered User accepts and agrees to be bound by these Terms.

1. APPLICATION AND ACCEPTANCE OF TERMS

1.1 Binding Agreement

These Terms form a legally binding agreement between each Registered User and NZ Farmers Livestock in relation to the use and operation of the Trading Platform and when entering into a Transaction using the Trading Platform.

1.2 Amendments

NZ Farmers Livestock reserves the right to amend these Terms at any time by posting the relevant amended Terms on the Website from time to time. The amended terms will be effective immediately upon posting on the Website and Registered Users are deemed to have accepted the amended Terms by continuing to use the Trading Platform.

1.3 Exclusion of Forward Contracts

These Terms will not apply to Livestock sold by means of Forward Contracts. The Trading Platform cannot be used to sell Livestock by means of a Forward Contract and Registered Users agree that any purported contract formed using the Trading Platform will be void or voidable at NZ Farmers Livestock’s option. NZ Farmers Livestock’s standard terms and conditions applicable to Forward Contracts will apply to those transactions.

2. WHEN A SALE AGREEMENT OCCURS

A binding sale agreement, comprising:

- (a) the Listing Description;
- (b) the Verification Certificate (if applicable); and
- (c) these Terms,

(“**Sale Agreement**”) occurs between a Seller and Buyer when:

- (d) an Offer for Livestock is accepted by the Seller; or
- (e) a Buyer purchases Livestock by choosing the Buy Now Price option on a Listing,

provided that NZ Farmers Livestock may (at its sole discretion) declare any Sale Agreement void if it is satisfied that any Offer or Buy Now Price was accepted or was exercised in an unauthorised manner or was otherwise made in error.

3. OUR ROLE

3.1 Responsibilities

NZ Farmers Livestock will:

- (a) manage the operation of the Trading Platform;
- (b) appoint a Livestock Specialist to assist the Seller, and support negotiations for the sale of Livestock upon a Seller applying to list that Livestock;
- (c) facilitate the completion of Transactions; and
- (d) either:
 - (i) hold the Invoice Amount received from a Buyer until acceptance of the Livestock by the Buyer in accordance with clause 10, at which time NZ Farmers Livestock will pay the Purchase Price (plus GST (if applicable)) to the Seller and will retain the balance of the Invoice Amount; or
 - (ii) upon acceptance of the Livestock by the Buyer in accordance with these Terms, debit the Buyer's account for the Invoice Amount, pay the Purchase Price to the Seller (plus GST (if applicable)) and retain the balance of the Invoice Amount.

3.2 No Agency

- (a) A Transaction is between the Buyer and Seller as principals to that Transaction. NZ Farmers Livestock and any Livestock Specialist involved in a Transaction accepts no liability as a principal to that Transaction, and in particular NZ Farmers Livestock and/or a Livestock Specialist are not and will not be considered:
 - (i) a principal Buyer or Seller under any Transaction;
 - (ii) an agent for the Buyer or Seller (unless otherwise agreed pursuant to clause 3.3);
 - (iii) a Registered User;
 - (iv) responsible for any description of the Livestock by a Seller; or
 - (v) responsible for any late or non-Delivery or any physical or other defects of the Livestock.
- (b) Unless expressly agreed otherwise by NZ Farmers Livestock or in their capacity as a principle to a Transaction neither NZ Farmers Livestock nor a Livestock Specialist is a party to a Sale Agreement and they will not:
 - (i) have any obligations to either the Buyer or Seller in relation to the Transaction other than as set out in these Terms; or
 - (ii) endorse or guarantee Livestock; or

- (iii) make any representations, give any warranties or give any other assurance about Livestock (including ownership, description, quality) or a Listing (including accuracy or truth).

4. CHARGES

NZ Farmers Livestock will charge the following (“Charges”):

The Seller		The Buyer	
Charge (plus GST, if applicable)	When Payable	Charge (plus GST, if applicable)	When Payable
The Listing Fee	On posting of the Listing on the Trading Platform	The Purchase Price	On Invoice
The Verification Fee (if applicable)	14 days following the issue of the Verification Certificate	The Commission (if applicable)	On Invoice
The Commission	14 days following Delivery of the Livestock	Costs of Delivery	
Transfer fees associated with the NAIT System (As notified from time to time and to the extent that the Seller engages NZ Farmers Livestock to provide those services)	On Invoice (where payable)	Any other fees (including bank fees, legal fees), charges, levies or taxes that are required to be paid by these Terms or at law	On Invoice
		Grazing fees as agreed between NZ Farmers Livestock and the Buyer from time to time	On Invoice

Each Registered User agrees to pay the Charges when due and authorises NZ Farmers Livestock to deduct any Charges due from its account.

5. REGISTERING AS A USER

5.1 General Users

Any person may access and view the Website or the Trading Platform as a General User without having to register as a Registered User, but that General User may not List, sell and/or buy Livestock through the Trading Platform.

5.2 Registered Users

- (a) A person must register as a Registered User in order to List, buy and/or sell Livestock on the Trading Platform, and may register as a Buyer, Seller or both provided that a person registering as a Buyer will be subject also to the additional provisions of clause 5.4 below.
- (b) At the time of registering and each time that the Website, Application or Trading Platform is accessed or used, each Registered User warrants and represents that:
 - (i) the information provided is accurate, complete and current;
 - (ii) the GST status (if applicable) of the Registered User is accurate and if there is any change in that GST status the User Profile will be updated before Listing, selling or purchasing Livestock;
 - (iii) the User Profile of a Registered User will only be used:
 - A. to list Livestock owned by that Registered User (or an entity that the Registered User is expressly authorised to represent);
or
 - B. to submit an Offer or purchase Livestock that will be purchased by that Registered User (or an entity that the Registered User is expressly authorised to represent);
 - (iv) the Registered User is a New Zealand citizen, an individual aged over 18 years and can form a legally binding contract.

5.3 Other Entities

If registering as a company, trust, limited partnership or other entity (collectively an “Entity”), the Registered User warrants that:

- (a) the Entity is validly incorporated, registered or constituted (as applicable) in New Zealand;
- (b) each person using the Entity’s User Profile will be over 18 years of age; and
- (c) each person using the Entity’s User Profile is expressly authorised by that Entity to enter into the Transaction on its behalf.

5.4 Registering as a Buyer

- (a) If a Registered User elects to register as a Buyer, then that Registered User must satisfy NZ Farmers Livestock’s credit checks before making an Offer.
- (b) NZ Farmers Livestock may collect information or complete such inquiries to satisfy itself of a Registered User’s suitability to be registered as a Buyer. NZ Farmers Livestock may use the services of credit reporting agencies on an

ongoing basis to obtain information on a Registered User and may exchange information on that Registered User with those agencies.

- (c) NZ Farmers Livestock will collect and hold the personal information about a Registered User and any Related Party of a Registered User (as applicable) on the terms and conditions of the Privacy Policy.
- (d) NZ Farmers Livestock may (in its sole discretion) refuse to allow a Registered User to be registered as a Buyer for any reason, including (without limitation) where:
 - (i) information is not provided or the information provided is false or misleading; or
 - (ii) credit checks conducted NZ Farmers Livestock are not to its satisfaction.

5.5 User Profiles

- (a) NZ Farmers Livestock may (in its discretion) refuse to register any person or entity as a Registered User for any reason.
- (b) NZ Farmers Livestock may also suspend or deregister a User Profile at any time for any reason, including:
 - (i) where a Registered User has not complied with these Terms;
 - (ii) where a Registered User fails to comply with any obligations under a Transaction or Sale Agreement;
 - (iii) where a Registered User becomes bankrupt or in the case of any Entity, that Entity suffered (or is likely to suffer) an Insolvency Event; or
 - (iv) to maintain the integrity or functionality of the Trading Platform.
- (c) All Registered Users must keep user names and passwords secure at all times and must not disclose passwords to any person not authorised to transact on a Registered User's behalf. A Registered User must not assign a User Profile to a third party.

5.6 Trading Platform Availability

- (a) NZ Farmers Livestock is unable to guarantee that the Trading Platform will be available and accessible at all times. From time to time there may be interruptions or disruptions to the availability of the Trading Platform or its operation may be affected in some way.
- (b) If a Registered User experiences interruptions in the availability or functionality of the Trading Platform and believes those interruptions may have adversely affected a Listing, a Registered User must immediately notify NZ Farmers Livestock by telephone or email (see details below) so that NZ Farmers Livestock can remedy the situation:

MyLivestock Administrator

Email: mylivestock@nzfl.co.nz
Telephone: 0800 695 483

- (c) To the maximum extent permitted by law, NZ Farmers Livestock (including its Related Parties) will not be liable for any claims, demands or actions for loss or damage caused by or arising from the Trading Platform not being available or the Trading Platform malfunctioning for any reason and each Registered User releases NZ Farmers Livestock and its Related Parties from any such liability.
- (d) NZ Farmers Livestock reserves the right to extend the Listing Period for any Listings adversely affected by any interruption in the Trading Platform.

5.7 Trading Platform and Listing Integrity

- (a) Each Registered User must not use the Trading Platform to:
 - (i) enter into any Forward Contract for the sale and purchase of livestock;
 - (ii) advertise any product or service other than Livestock, agreed livestock-related items, or anything else as determined by NZ Farmers Livestock from time to time (in its sole discretion) and only in accordance with these Terms;
 - (iii) manipulate, alter or misrepresent the prices of any Livestock listed for sale on the Trading Platform;
 - (iv) place an Offer that a Registered User, or one of a Registered User's Related Party's, have Listed;
 - (v) spread any virus, worm, trojan, cookie or other programme;
 - (vi) complete a Transaction outside of the Trading Platform or otherwise attempt to avoid the payment of any monies payable under these Terms;
 - (vii) defame any person; or
 - (viii) further a crime or other unlawful activity.
- (b) If a Registered User breaches these Terms, NZ Farmers Livestock reserves the right to:
 - (i) cancel, suspend or deregister any Registered User immediately and without notice; and
 - (ii) refuse to re-register a Registered User in future if that Registered User attempts to establish a new User Profile; and
 - (iii) remove any Listing or any Offer.
- (c) Each Registered User indemnifies NZ Farmers Livestock for any loss or damage which NZ Farmers Livestock may suffer or be liable to as a result of, or in connection with, any breach of these Terms by a Registered User.

5.8 Privacy

NZ Farmers Livestock will comply with the Privacy Policy (which forms part of these Terms) in dealing with personal information provided by a Registered User.

6. LISTING TERMS

6.1 Listing Conditions

- (a) A Registered User may only List Livestock for sale:
- (i) if the Registered User:
 - A. is the legal and beneficial owner of the Livestock; or
 - B. is expressly authorised by the owner of that Livestock to sell that Livestock on the owner's behalf and, in each case, has possession and control of that Livestock;
 - (ii) where a Registered User owns Livestock jointly, that Registered User has the express authority from all owners (as applicable) to sell that Livestock;
 - (iii) where Livestock is required to be registered under the NAIT Scheme, that Livestock is physically located on the property associated with that NAIT Number;
 - (iv) if any NAIT numbers recorded in the Livestock Description are correct;
 - (v) if the Livestock will be sold free from any Encumbrances; and
 - (vi) if a Listing is accurate, complete and not misleading in any respect,
- (collectively, the "**Listing Conditions**").

6.2 Representation

By listing Livestock, the Seller warrants and represents to NZ Farmers Livestock as at the time of Listing and continuing until completion of the Transaction that each of the Listing Conditions are and will be true and correct. To the maximum extent permitted by law, NZ Farmers Livestock will not be liable to the Buyer and the Buyer agrees to release and hold harmless NZ Farmers Livestock from and against all claims for loss or damage arising (directly or indirectly) out of, or in connection with:

- (a) the conduct of the Listing; and
- (b) the content of a Livestock Description.

6.3 Listing Descriptions and Requirements

- (a) The:
- (i) Seller; or

- (ii) a person who is delegated by the Seller to act on the Seller's behalf (provided that person is to the reasonable satisfaction of NZ Farmers Livestock (in its discretion)),

is responsible for providing Livestock Descriptions which must be submitted through that Seller's Registered User profile or by a Livestock Specialist on behalf of a Seller.

- (b) A Seller is not entitled to, and will not be permitted to, sell Livestock using the Trading Platform until such time as the Livestock Specialist has complied with clause 6.4(d)(i) (to the extent that a Verification Certificate is required by NZ Farmers Livestock) or as otherwise agreed by NZ Farmers Livestock.
- (c) NZ Farmers Livestock reserves the right not to allow a Listing for any reason, including (without limitation) situations where:
 - (i) the information required to be included in the Livestock Description has not been supplied; or
 - (ii) the Livestock Specialist is not satisfied that the Livestock conforms with the Livestock Description; or
 - (iii) NZ Farmers Livestock has cause to suspect that the Livestock being sold is not owned by the Seller; or
 - (iv) any party associated with a Listing (including the Seller) has:
 - A. a serious complaint or multiple complaints made in respect of that party;
 - B. breached these Terms; or
 - C. a credit history that is not to the reasonable satisfaction of NZ Farmers Livestock; or
 - D. conducted itself in an unacceptable manner (in NZ Farmers Livestock's sole discretion) while using the Trading Platform.
- (d) When a Seller lists a Listing on the Trading Platform, the Seller does so with the intention of selling that Livestock through the Trading Platform. The Seller will not advertise that Livestock through any other forum unless the Seller and NZ Farmers Livestock agree otherwise in writing.
- (e) The Seller must comply with all relevant laws in each Transaction, including the Fair Trading Act 1986 and the Consumer Guarantees Act 1993.
- (f) All claims for any mis-description, misleading, deceptive conduct or otherwise must be resolved directly between the Seller and the Buyer. At NZ Farmers Livestock discretion, it may elect to assist the Buyer and Seller to resolve any such dispute.
- (g) The Seller represents and warrants to NZ Farmers Livestock and to the Buyer, as at the date of Listing the Livestock and as at the date of any Transaction, that:

- (i) the Livestock Description is accurate and complete;
- (ii) the Listing Conditions are true and correct;
- (iii) no information has been left out of the Livestock Description that might affect whether or not a reasonable Buyer would purchase the Livestock or the amount that a Buyer may Offer for the Livestock;
- (iv) all relevant details held by NZ Farmers Livestock or included in the Seller's User Profile that are necessary to complete the Transaction will be supplied to the Buyer on the sale of Livestock;
- (v) any photographs or videos that are included with a particular Livestock Description:
 - A. depict the Livestock actually Listed for sale;
 - B. are a true and fair representation of the condition of the Livestock; and
 - C. have either been taken by the Seller or, if not taken by the Seller, the Seller has the authority of any party who holds the copyright in the photographs or videos to display those photographs or videos on the Trading Platform;
- (vi) the Livestock is in a condition at the time of Delivery that will result in it being delivered to the Buyer at a similar or improved condition to how the Livestock is depicted in any photographs or videos;
- (vii) the Seller will, at the Seller's cost, maintain the Livestock in an equal or better condition as represented at the time of the Transaction until the time of Delivery; and
- (viii) the Livestock is and will be in a suitable condition for transportation.

6.4 **Withdrawing Livestock**

- (a) By Listing Livestock on the Trading Platform, the Seller is demonstrating an intention to sell that Livestock using the Trading Platform. Any Transaction completed outside of the Trading Platform is a breach of these Terms.
- (b) Despite clause 6.4(a), a Seller may withdraw a Listing at any time prior to a Transaction arising in accordance with these Terms and provided that the Seller immediately withdraws a Listing from the Trading Platform. Withdrawal of Livestock from the Trading Platform will not affect any claim that NZ Farmers Livestock may have against the Seller or the Seller's agent for costs and expenses incurred by NZ Farmers Livestock or the Commission Fee.
- (c) Livestock is not withdrawn from sale until:
 - (i) the Seller has withdrawn the Listing through the Trading Platform; or
 - (ii) NZ Farmers Livestock withdraws the Listing at the request of the Seller.

- (d) At any time during the Listing Period, NZ Farmers Livestock may appoint a Livestock Specialist who may conduct an inspection of Livestock as listed in any Listing to confirm whether that Livestock conforms to that Livestock Description. If the Livestock Specialist:
- (i) is satisfied (in the Livestock Specialist's sole discretion) that the Livestock conforms to the Livestock Description, the Livestock Specialist may issue a Verification Certificate in relation to that Livestock listed; or
 - (ii) is not satisfied (in the Livestock Specialist's sole discretion) that the Livestock conforms to the Livestock Description, the Livestock Specialist may:
 - A. immediately suspend and/or terminate the Listing as that Livestock Specialist considers appropriate; or
 - B. require the Seller to amend the Livestock Description so that the description more closely represents the Livestock.

6.5 Price

- (a) When submitting a Listing, the Seller will be asked to nominate (at the Seller's option):
- (i) the Listing Price; and/or
 - (ii) a Buy Now Price; and/or
 - (iii) otherwise request offers for the sale and purchase of the Livestock.
- (b) The Seller must take care when nominating a price for the purchase of Livestock as Livestock will be available for purchase at the price the Seller nominates. Neither NZ Farmers Livestock nor any Livestock Specialist accepts any responsibility or liability for errors in nominating the Listing Price or Buy Now Price, or lapses of judgement in assessing, the Listing Price or Buy Now Price. The Seller, or the person acting on behalf of the Seller, is responsible for updating the Buy-Now Price, the Listing Price or the decision on whether to accept any offer received for the sale and purchase of the Livestock.

6.6 Offers

- (a) Buyers must be registered as a Buyer by NZ Farmers Livestock before making an Offer to purchase Livestock or purchasing Livestock through the Buy Now Price option.
- (b) Offers may only be placed or otherwise confirmed through the Trading Platform, which may include a Livestock Specialist registering an Offer through the Trading Platform for and on behalf of a Registered User (who is accredited by NZ Farmer Livestock as a Buyer) on the authority of that Registered User.
- (c) A Buyer is deemed to be a principal to the Transaction when purchasing

Livestock and will be bound to pay the Invoice Price.

- (d) Once made, an Offer will be an irrevocable offer to purchase the Livestock unless the Offer was made by bone fide mistake or error, in which case the Registered User and the Seller may mutually agree to withdrawal the Offer, or in the event that the Registered User and the Seller cannot reach agreement, then NZ Farmers Livestock has the sole discretion to withdraw the Offer from the Trading Platform.
- (e) An Offer is deemed to have been made when it is received through the Trading Platform.
- (f) If the Offer is accepted by the Seller, the Buyer will be legally obliged to complete the Transaction in accordance with these Terms.
- (g) Buyer's must not:
 - (i) collude with any other person in relation to a Listing; or
 - (ii) induce or attempt to induce another person to abstain from making an Offer; or
 - (iii) agree that another person will be able to take over the Transaction as Buyer; or
 - (iv) do any other act or thing that might prevent free and open competition in respect of the Listing.

7. INVOICING AND PAYMENT

7.1 Invoice

On the occurrence of a Sale Agreement, NZ Farmers Livestock will issue a tax invoice to the Buyer for payment of the Invoice Amount.

7.2 Payment

- (a) Subject to there being no dispute between the Buyer and Seller regarding the Livestock, the Buyer must pay the Invoice Amount to NZ Farmers Livestock on the date and time of the Transaction or within 14 days of the date of the Sale Agreement (unless otherwise agreed in writing) by one of the methods specified on the Website or the Application from time to time.
- (b) If there is no dispute between the Buyer and Seller regarding the Livestock and the Buyer has not paid the Invoice Amount in accordance with clause 7.2(a), then:
 - (i) the Buyer will be deemed to have requested and authorised NZ Farmers Livestock (and NZ Farmers Livestock may, at its sole discretion, but without any obligation) to:
 - A. advance the Invoice Amount to the Buyer on the terms and conditions set out in these Terms; and

- B. pay the Purchase Price to the Seller for and on behalf of the Buyer.
- (ii) if clause 7.2(b)(i) applies to the Transaction, the Buyer agrees to pay NZ Farmers Livestock the Invoice Amount in full on or before the Payment Date.
 - (iii) if the Buyer does not pay the Invoice Amount on or before the Payment Date, the Buyer must pay interest on all unpaid amounts from the Delivery Date until the actual date of payment at an interest rate posted by NZ Farmers Livestock from time to time on two weeks' notice and payable from the Delivery Date until payment of the Invoice Amount in full. Interest will be calculated daily and capitalised monthly.
- (c) If the Buyer disputes the Invoice Amount, the Buyer will pay the undisputed portion of the Invoice Amount to NZ Farmers Livestock in accordance with this clause 7.

7.3 **GST**

All amounts payable under these Terms will be in New Zealand dollars and are exclusive of GST (unless specifically stated otherwise) and the relevant party must pay the applicable GST in addition to any amounts payable under these Terms.

7.4 **Deductions**

Payment of all outstanding amounts must be paid free of any counterclaim, set-off, deduction or other claim whatsoever. NZ Farmers Livestock may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any monies owing to it.

7.5 **Delivery Costs**

The Purchase Price excludes the cost of Delivery, which must be arranged by the Buyer. The Seller agrees to fully cooperate with the Buyer to organise and arrange Delivery of the Livestock, the costs of which are payable by the Buyer.

7.6 **NZ Farmers Livestock Costs and Expenses**

Any expenses, disbursements and legal costs incurred by NZ Farmers Livestock in the enforcement of any rights contained in these Terms or under a Sale Agreement will be paid by the applicable defaulting party (whether the Seller or Buyer), including NZ Farmers Livestock's reasonable solicitor's fees or debt collection agency fees, on demand by NZ Farmers Livestock.

8. **DELIVERY**

8.1 **Delivery**

Delivery will occur when the Buyer or the Buyer's representative (such as a nominated freight carrier) collects the Livestock from the Seller's property, unless otherwise agreed in writing between the Seller and Buyer.

8.2 **Attending to Delivery**

The Seller and the Buyer are responsible for co-ordinating the Delivery of the Livestock. Unless expressly agreed in writing otherwise, NZ Farmers Livestock will not arrange the Delivery of Livestock or provide or procure freight services. Any drover or other person involved in the Delivery of Livestock whether nominated or appointed by the Buyer will be deemed an agent of the Buyer, and NZ Farmers Livestock will not be liable or responsible for any act or omission of such drover or any other person.

8.3 Compliance with Law

The Seller and the Buyer must comply with all laws, regulations or industry codes relating to the welfare and transport of Livestock. Each Buyer and Seller will:

- (a) ensure the Livestock are tagged with approved RFID tags where applicable; and
- (b) fully comply with their respective obligations under the NAIT system and in accordance with clause 8.5 of these Terms; and
- (c) any other condition or requirement under law.

8.4 Time for Delivery

- (a) Delivery of the Livestock must occur within 7 Business Days of the date of the Transaction (the "**Delivery Period**") or other such shorter period as agreed in writing between the Seller and Buyer.
- (b) If the Buyer is unable to secure trucks or transport within the Delivery Period or is, due to any other cause beyond the Buyer's reasonable control (including a Force Majeure Event), unable to take delivery within that period, the Livestock will be at the Buyer's risk on and from the end of the Delivery Period, and may incur grazing costs.
- (c) The Buyer will indemnify the Seller against any loss or damage suffered by the Seller in connection with the Livestock on and from the end of the Delivery Period (including the costs of maintaining the Livestock during that period).

8.5 Notifications

Where the Livestock are registered under the NAIT System, the Seller and Buyer must:

- (a) notify the administrators of the NAIT System of the receipt of the Livestock within 48 hours of the Livestock arriving on the property of the Buyer;
- (b) comply with all other applicable laws and regulations or other requirements of the administrators of the NAIT Scheme, and
- (c) the Seller and Buyer releases NZ Farmers Livestock from any obligation to do any of the above.

8.6 NZ Farmers Livestock Attendance

If the Seller and/or Buyer engage the services of NZ Farmers Livestock, as an accredited entity for the purpose of the NAIT System, to attend to the completion of

their obligations and responsibilities under the NAIT System, NZ Farmers Livestock will perform those services. The Buyer and/or Seller (as applicable) will pay the fees of NZ Farmers Livestock for those services as notified on the NZ Farmers Livestock from time to time.

9. TITLE AND RISK

9.1 Title and Risk

- (a) Title and risk in the Livestock will pass to the Buyer on the earlier of:
- (i) the time of actual Delivery by the Seller to the Buyer; and
 - (ii) when the Livestock passes over the tail-gate of the transportation vehicle transporting the Livestock purchased; and
 - (iii) immediately upon leaving the boundary of the Seller's property (on hoof).

9.2 Seller's Obligations

The Seller must (at its cost) maintain the Livestock in the same or similar condition as represented in the Livestock Description until the time that the Livestock is Delivered to the Buyer. In particular, the Seller must:

- (a) maintain the Livestock in good and sound condition consistent with the description in the Livestock Description;
- (b) keep Livestock on reasonably good and appropriate feed and water;
- (c) pay careful attention to Livestock until Delivery; and
- (d) if applicable, keep suckling animals on their mothers and otherwise ensure that calves that have not been weaned are appropriately fed milk or milk powder substitute.

10. REJECTION

10.1 Right of Rejection

The Buyer may inspect the Livestock at Delivery and, at any time prior to 5:00pm on the day following the day on which Delivery occurred, reject Livestock that:

- (a) does not reasonably conform to the Livestock Description;
- (b) is blind or maimed, unless disclosed in the Livestock Description;
- (c) has had its production value compromised for any reason without prior disclosure to the Buyer, including because of disease; or
- (d) is unfit to travel or does not meet the Livestock movement or health requirements of any relevant legislation.

10.2 Deemed Acceptance

The Buyer is deemed to have accepted Delivery of the Livestock and the condition of that Livestock if the Buyer fails to notify NZ Farmers Livestock and the Seller in accordance with this clause 10.

10.3 **Dispute Resolution**

- (a) Any dispute on the condition of the Livestock at Delivery (a “**Dispute**”) will be referred to NZ Farmers Livestock who will inspect that Livestock and will confirm whether or not the Livestock conforms to the Listing Description and any other factor NZ Farmers Livestock considers relevant and appropriate.
- (b) NZ Farmers Livestock will act as an expert and not as an arbitrator. The Dispute will be resolved by NZ Farmers Livestock as soon as possible and the parties agree to be bound by the decision of NZ Farmers Livestock including any reduction in the Purchase Price, in the absence of manifest error. Reference of the Dispute to NZ Farmers Livestock will not be a submission to arbitration for the purposes of arbitration statutes and those statutes will not apply to or govern a dispute’s resolution. The Seller and the Buyer will pay NZ Farmers Livestock’s costs and expenses in the proportions as determined by the Livestock Specialist.
- (c) Nothing in this clause 10.3 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under these Terms.

10.4 **Female Livestock**

On the sale of female Livestock described in the Livestock Description as having been served, mated or running with bulls, there is no express or implied warranty that the animal has actually conceived and the Buyer may not reject the animal on the basis that it has not actually conceived or has aborted. The Seller, NZ Farmers Livestock and/or a Livestock Specialist will not be liable to the Buyer if the Livestock is sold on that basis and that Livestock fails to give birth.

10.5 **Process for Rejecting**

If the Buyer rejects Livestock, the Buyer must:

- (a) immediately notify the Seller that the Livestock has been rejected and the reasons for their rejection, together with any evidence in support of those reasons;
- (b) send a copy of the notice to NZ Farmers Livestock advising of the rejection;
- (c) if rejected following Delivery, hold the Livestock on the Buyer’s property and (at the Seller’s cost) maintain the animal in at least the same condition it was delivered, including by providing water and reasonably good feed; and
- (d) comply with any reasonable directions of NZ Farmers Livestock or the Livestock Specialist on how to handle the rejected animal if it is not safe to hold it on the Buyer’s property.

10.6 **Retention of Invoice Amount**

If NZ Farmers Livestock are notified that the Livestock has been rejected, NZ

Farmers Livestock will retain the Invoice Amount, pending resolution of that dispute.

11. PERSONAL PROPERTY SECURITIES ACT 1999

11.1 Grant of Security Interest

If 7.2(b) applies, the Buyer grants to NZ Farmers Livestock a security interest in all Livestock (and all proceeds relating to that Livestock) purchased by the Buyer under a Transaction to secure payment of all moneys owing by the Buyer to NZ Farmers Livestock from time to time. The Buyer will do all things necessary so as to enable NZ Farmers Livestock to register a financing statement on the Personal Property Securities Register (“PPSR”) and to ensure the security interest is a first ranking perfected security interest over the Livestock purchased and any proceeds relating to that Livestock. NZ Farmers Livestock may register a security interest on the PPSR as secured party despite that we may be acting as an agent for a Seller.

11.2 Exclusions

Nothing in section 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Buyer’s rights under sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA do not apply.

11.3 Verification Statement

The Buyer waives the right under section 148 of the PPSA to be given a copy of any verification statement in relation to any financing statement or financing change statement that NZ Farmers Livestock may register.

11.4 Proceeds

The security interests granted by the Seller take effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Livestock.

11.5 Benefit of Security Interest

NZ Farmers Livestock may use the benefit of any security interest, security agreement, encumbrance, charge or mortgage given by the Buyer or any guarantor or other grantor of surety to secure payment and performance of the Buyer’s obligations under these Terms. With the exception of security granted in favour of NZ Farmers Livestock, the Buyer will not without NZ Farmers Livestock prior written consent grant any lien or security interest over the Livestock to any other party whatsoever nor commit any act or omission that would give any other party a security interest over the Livestock until all that Livestock is paid for in full.

12. LIABILITY

12.1 Despite anything else contained in these Terms:

- (a) the Buyer and Seller agree and acknowledge that if the Livestock is supplied by or acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to that supply, and that it is fair and reasonable to exclude their application;
- (b) the parties agree and acknowledge that if they are both in trade, and that the Livestock is supplied by the Seller and acquired by the Buyer in trade, the

provisions of the Consumer Guarantees Act 1993 will not apply to the Sale Agreement and that it is fair and reasonable to exclude their application;

- (c) the Buyer and Seller agree and acknowledge that the provisions of the Sale of Goods Act 1908 will not apply;
- (d) unless these Terms expressly provide otherwise, to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
- (e) for the purposes of this clause the Buyer and Seller acknowledge that they have had a reasonable opportunity to review these Terms, discuss them with the other party, and receive advice from its legal advisor it wished to do so.

12.2 Except as otherwise provided in these Terms neither NZ Farmers Livestock nor any Livestock Specialist will be liable for any loss or damage of any kind whatsoever arising from the sale and purchase of the Livestock, including consequential or indirect loss whether suffered or incurred by the Buyer, Seller or another person or entity and whether in contract or tort or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the sale and purchase of the Livestock.

13. **INTELLECTUAL PROPERTY**

13.1 **Ownership**

NZ Farmers Livestock, including its suppliers, advertisers or third party providers, will own or have rights to all copyright and other intellectual property associated with the Website, Application and the Trading Platform. Everything on the Website, Application or the Trading Platform, unless otherwise stated, is subject to copyright that is owned by NZ Farmers Livestock. These Terms do not grant a Registered User any right to make commercial use of any intellectual property owned by NZ Farmers Livestock (including, without limitation, trade secrets, patents, copyright, trade marks and industrial designs).

13.2 **End-User Licence Agreement**

13.3 The End-User Licence Agreement is a legally binding agreement between each Registered User and NZ Farmers Livestock in relation to the use and operation of the Application and forms part of these Terms.

13.4 **No rights**

The sale of Livestock under the Trading Platform will not, unless expressly agreed in writing, give any Registered User the right to use, sell, disseminate or duplicate any intellectual property (including any trademark, copyright, design or any other intellectual property right) associated with or connected to the Trading Platform.

14. **FORCE MAJEURE**

14.1 A party, provided that it complies with this clause 14, will not be liable for a breach of its obligations under these Terms or under a Sale Agreement (except a payment obligation) arising from a Force Majeure Event.

14.2 Any party that is subject to a Force Majeure Event will not be liable for a breach of

this Agreement provided that:

- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- (b) it has taken all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this and to resume the performance of its obligations as soon as reasonably possible.

14.3 If the Force Majeure Event prevails for a continuous period of more than 7 days, either party may terminate this Agreement by giving 7 Business Days written notice to the other party. On the expiry of the notice period this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

15. **DISPUTE RESOLUTION**

15.1 **Exclusive process**

Any dispute, other than a dispute referred to in clause 10.3, will be discussed and resolved in accordance with this clause 16. No party may commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a dispute:

- (a) without first giving a notice of dispute under clause 15.2; and
- (b) complying with, and completing, the dispute resolution process under this clause 15,

except where it is seeking urgent interlocutory relief.

15.2 **Notice of dispute**

If a party considers that a dispute has arisen, it will give a notice to the other parties, setting out in reasonable detail the dispute ("**Dispute Notice**").

15.3 **Discussions between the parties**

On receiving a Dispute Notice, each party must promptly commence discussions to attempt in good faith to resolve the dispute. Representatives of each party will meet as soon as possible (but no later than 10 Business Days after the date of the Dispute Notice) and as often as necessary to:

- (a) gather all information with respect to the dispute which is appropriate in connection with its resolution; and
- (b) discuss the dispute and negotiate in an effort to resolve the dispute.

15.4 **Mediation**

- (a) If the dispute has not been resolved within 30 Business Days (or other period agreed in writing by the parties), after the matter is discussed between the parties under clause 15.3, the party's will try to resolve the dispute by mediation conducted by a single mediator, in accordance with the terms of the LEADR New Zealand Inc. Standard Mediation Agreement and at a fee to be agreed by the parties.

- (b) The mediator will be such person as the parties may agree upon in writing or, failing agreement being reached, the mediator will be chosen and the mediator's fee determined by the chairperson for the time being of LEADR New Zealand Inc. (or his or her nominee).

15.5 **Arbitration**

- (a) If the dispute has not been resolved pursuant to clause 15.4 within 30 Business Days (or other period agreed in writing by the parties), after the matter is referred to mediation, then the parties agree to refer the dispute to arbitration in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). However, where the parties to the dispute fail to agree on the appointment of an arbitrator within 15 Business Days of referral of the dispute to arbitration, the appointment will be made by the President for the time being of the New Zealand Law Society (or his or her nominee). The place of arbitration will be Hamilton.
- (b) The parties will bear their own costs in the arbitration and will share equally the arbitrator's costs. The decision of the arbitrator referred to clause 15.5(a) will be final and binding on the parties to the dispute.

16. **MISCELLANEOUS**

- 16.1 While NZ Farmers Livestock endeavours to supply accurate information on the Website and the Application, errors and omissions may occur. NZ Farmers Livestock do not accept any liability, direct or indirect, for any loss or damage which may directly or indirectly result from any advice, opinion, information, representation or omission whether negligent or otherwise, contained on the Website or the Application. Each Registered User is solely responsible for the actions taken in reliance on the content on, or accessed, through the Website or Application. NZ Farmers Livestock reserves the right to make changes to the content of the Website or the Application at any time and without notice. To the extent permitted by law, NZ Farmers Livestock makes no warranties or representations in relation to the merchantability, fitness for purpose, freedom from computer virus, accuracy or availability of the Website or the Application.
- 16.2 No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms and NZ Farmers Livestock will not have waived or be deemed to have waived any provision of these Terms unless such waiver is in writing and executed by NZ Farmers Livestock.
- 16.3 If any provision in these Terms will be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 16.4 A Seller or Buyer may not directly or indirectly assign to any person any of their benefits or burdens in respect of the Sale Agreement created by these Terms.
- 16.5 The Sale Agreement and these Terms will be construed and governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand.

17. **DEFINITIONS**

17.1 Definitions

When used in these Terms (as defined below), the following words will have the following meanings:

“**Application**” means the mobile device application available for download on which the Trading Platform may be accessed.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in each of the places in which an act needs to occur or, if used in a context where no act needs to occur, in Hamilton, New Zealand;

“**Buyer**” means a Registered User who is permitted and authorised by NZ Farmers Livestock to purchase or submit an Offer to purchase Livestock through the Trading Platform;

“**Buy Now Price**” means a price nominated by a Seller at which a Buyer may elect to purchase Livestock immediately;

“**Charges**” has the meaning given to that term in clause 4;

“**Commission**” means the commission payable by a Seller to NZ Farmers Livestock calculated as a percentage of the Purchase- Price (excluding GST (if applicable)), that percentage being the amount notified on the Website or the Application at the time of the occurrence of a Sale Agreement or as otherwise agreed;

“**Delivery**” means delivery of the Livestock to the Buyer in accordance with these Terms;

“**Delivery Date**” means the date that the Livestock are Delivered;

“**Encumbrance**” means an interest or power reserved in or over an interest in any asset created or otherwise arising:

- (a) under a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the PPSA), title retention, preferential right, right of pre-emption or other similar instrument, device or power; or
- (b) by way of security for the payment of a debt or any monetary obligation,
- (c) and includes any agreement or arrangement to grant or create any of the above;

“**Force Majeure Event**” means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with or the performance of, a party’s obligations, including:

- (a) fire, floods, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, act of civil or military authority;
- (c) nuclear, chemical or biological contamination;
- (d) any act of a third party (not being an employee, agent or subcontractor of that party) engaged in subversive or terrorist activity or sabotage;

but does not include an event to the extent that such event constitutes a:

- (e) strike, lock-out or other industrial dispute involving the work force of the party so prevented;
- (f) lack of funds, mere shortage of labour, materials, equipment or supplies unless caused by events or circumstances which are themselves Force Majeure Events;

“General User” any person accessing or viewing the Trading Platform, but excluding any Registered Users;

“GST” means goods and services tax chargeable in accordance with the GST Act;

“GST Act” means the Goods and Services Tax Act 1985;

“Forward Contract” means a contract for the sale and purchase of livestock where delivery of that livestock is to occur on a date that is at least 7 days after the agreement date for a specified price and the extent of that agreed delayed delivery following the agreement (or other specific requirements) reasonably requires the definition of livestock (as at the date of delivery) condition, weight, compliance with export protocols, or other features not adequately dealt with under the Trading Platform in the determination of NZ Farmers Livestock or any Livestock Specialist.

“Insolvency Event” means:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, voluntary administrator, statutory manager, or similar official, to that party;
- (d) the suspension or threatened suspension by that party of the payment of its debts;
- (e) cessation by that party of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

“Invoice Amount” means the amount invoiced to a Buyer for a Transaction, being the Purchase Price plus any other Charges payable by the Buyer in accordance with these Terms;

“Listing” means the sales process conducted through the Trading Platform in which Livestock is offered for sale;

“Listing Fee” means the fee payable by the Seller in an amount notified from time to

time on the Website or the Application prior to the Seller uploading a Listing;

“Listing Period” means the period set out in a Listing or until such time as the Buy Now Price is confirmed by a Buyer;

“Livestock” means any animal that is permitted to be sold on the Trading Platform from time to time, provided those animals are not restricted for sale or purchase by law;

“Livestock Specialist” means a livestock specialist appointed and accredited by NZ Farmers Livestock;

“Livestock Description” means the description of the Livestock provided by the Seller and displayed on the Trading Platform;

“NAIT System” means National Animal Identification and Tracing system;

“Offer” means an offer by a Buyer to the Seller for the purchase of Livestock;

“Payment Date” means the date that is 14 days following the Delivery Date;

“PPSA” means the Personal Property Securities Act 1999;

“Purchase Price” means the price for which Livestock is sold under a Listing and, where applicable, excluding GST (if applicable);

“Registered User” means any person, company or other entity that registers as a user in order to List, sell and/or sell Livestock through the Trading Platform;

“Related Company” has the meaning given to that term in section 2(3) of the Companies Act 1993;

“Related Party” means in relation to a particular person, any of the following persons:

- (a) a Related Company of that person; or
- (b) any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that same person; or
- (c) where the first person is an individual:
 - (i) the husband/wife of that first person or any person with whom is living in a relationship in the nature of marriage;
 - (ii) any parent, child or grandchild of that first person;
- (d) any trust established exclusively or principally for the benefit of that first person or for the benefit of one or more of the persons specified in paragraphs (c)(i) or (ii) of this definition; or
- (e) a company in which all of the shares are held by or on behalf of that first person or by or on behalf of any of the persons specified in paragraphs (c)(i), (ii) or (iii) of this definition;

“Sale Agreement” has the meaning given to that term in clause 2;

“Seller” means a person who offers Livestock for sale through the Trading Platform;

“Terms” means these terms and conditions as amended from time to time;

“Trading Platform” means the NZ Farmers Livestock trading facility, trading under the name MyLivestock;

“Transaction” means the sale and purchase of Livestock through the Trading Platform;

“User Profile” means the registration of a profile on the Website or on any mobile device via the Application for the Registered User to offer for sale or to offer to purchase Livestock;

“Verification Certificate” means a validation certificate issued by a Livestock Agent in respect of a Listing;

“Verification Fee” means the verification fee charged by a Livestock Agent to inspect and, if appropriate, issue a validation certificate in respect of a Listing; and

“Website” means the website www.Mylivestock.co.nz, being the web domain on which the Trading Platform is hosted and accessed.