

# GENERAL CONDITIONS OF SALE

**15. AGENCY:** No warranty: It is acknowledged by the Vendor and the Purchaser that The Company is acting *prima facie* solely as Agent for the person named in Clause 11 and that it gives no assurance warranty or guarantee as to any matter contained or implied in this contract and it is not a *del credere* agent for either the Vendor or the Purchaser. In the event of the Purchaser or the Vendor refusing to confirm this contract or repudiating it or suffering damage by reason of its breach then The Company, as Agent, shall not be responsible for any damage sustained by either of them. Subject to clause 20.3 (concerning the Company's right to retain a five percent (5%) Vendor administration retention), clause 16 (concerning the Company holding the deposit) and clause 43.1 (concerning the Company's right to deduct commission from the purchase price), the Company will promptly account to the Vendor for any monies which it receives on behalf of the Vendor in respect of the livestock referred to in this agreement.

## DEPOSIT AND PAYMENT OF PURCHASE PRICE:

**16.1** The Purchaser shall pay the deposit forthwith and the balance of the purchase price (plus GST) in cleared funds on the settlement date to the Company's "Trust Management Service Bank Account" ("TMS Account")

"Cleared funds means:

- Cash, or
- A Bank cheque, or
- An electronic transfer of funds that has been made pursuant to a protocol agreed between the parties.

The deposit shall be paid immediately upon the signing of this Agreement by both parties, time being of the essence, which funds will be held in the TMS Account as stakeholders until the Agreement becomes unconditional. After any finance condition and any conditions precedent have been waived or satisfied the Company at its request will be entitled to be paid its commission (plus GST) thereon together with all other charges to which it is properly entitled in accordance with this Agreement, which moneys will be paid to the Company from the deposit, and the signatures of the TMS Account are hereby irrevocably authorised and directed by the Vendor and the Purchaser to make payment accordingly upon the request of the Company, notwithstanding whether the commission or other charges are payable by the Vendor or the Purchaser as provided in clause 11 hereof. The balance of the deposit (if any) will be retained in the TMS Account in the name of the Purchaser who will be entitled to receive it as a credit on the settlement date. The interest (if any) accrued on such moneys will be credited to the Purchaser on completion of settlement.

**16.2** If either party is not agreeable to the funds being lodged in the TMS Account either party may stipulate that the funds are to be paid to a Solicitors' Trust Account to be nominated by the Company in which case the provisions of clause 16.1 will apply *mutatis mutandis*, and

(a) The Solicitors' costs and disbursements with regard to the sale and purchase and the handling and payment of the funds in accordance with this Agreement shall be met by the party so stipulating, or if both parties so stipulate then equally between them unless an alternative provision is made in clause 13, and

(b) The decision whether any funds held will be lodged in an interest, or non interest bearing account will be at the discretion of the Company and the Solicitors, and

(c) Where appropriate the Vendor hereby irrevocably authorises its fee liability to be deducted from any money due to it, and the Purchaser will be required to make payment of its fee liability on the settlement date.

**16.3** Where a nominated end of May date for the Delivery/Settlement Date, or for the satisfaction of a condition is not a Working Day, then the Delivery/Settlement Date, or the date for satisfaction of the condition, shall be the last Working Day before the day so nominated, except that if the 1<sup>st</sup> of June is the nominated Delivery/Settlement Date and this is not a Working Day, the Delivery/Settlement Date shall be the next Working Day after the date so nominated.

**17. FINANCE CONDITION:** This contract is subject to the Purchaser arranging finance in accordance with the terms of Clause 9 of this agreement. If finance is not approved by the day specified in that Clause then this Agreement shall be voidable at the option of either party, and on becoming void the deposit paid by the Purchaser plus any interest earned (*less any withholding tax properly deducted by The Company*) shall be refunded in full forthwith and neither party shall have any right or claim against the other. If there is no condition as to finance, or upon the condition as to finance being waived or satisfied, the purchaser if requested is to instruct a solicitor or bank to furnish The Company a letter stating that finance has been arranged and will be paid in full (*stating the amount*) to The Company on the Settlement Date as shown in Clause 12, to facilitate prompt payment to the Vendor in order to release the livestock to the Purchaser for transportation. A copy of the approval letter may be sent to the Vendor by The Company if requested. The Vendor and Purchaser upon signing this contract give their irrevocable authorities to The Company to approach any financier associated with either party to further gain any information required for the settlement of this contract. **The Company recommends that you seek advice from your financial advisors as to liability for and timing of GST payments in respect of this transaction.**

**18. PURCHASER INSPECTION:** The Purchaser, or the Purchaser's nominee (*excluding The Company as Agents*), will inspect all livestock for soundness and condition each month from the date of this contract and shall carry out a final inspection not less than seven days before the Delivery/Settlement Date (*the Final Inspection Day*). The Purchaser may on the final inspection day or on the Delivery/Settlement Date prior to the stock being loaded for transportation or released for driving reject any beast which does not comply with the terms of this contract or reject any beast which has tested positive to any statutory notifiable disease or where the Vendor has failed to comply with the provisions of Clauses 3, 4, 5, 6, 7, 8, 13, (*if applicable*), 25, 26, 27, 28, 32, 33, 34, and 35 herein. **Except as specifically provided in this Agreement the Purchaser shall have no claim in respect of any livestock of which delivery is taken.**

## 19. DELIVERY:

**19.1** The Date of Delivery and Settlement specified in clause 12 will be the date for both delivery and settlement ("Delivery/Settlement Date"), unless the parties agree otherwise in writing. If the parties agree in writing to bring forward the date for delivery or settlement, then that earlier date will be the date for both delivery and settlement, and the new Delivery/Settlement Date for the purposes of this agreement. Unless the Vendor and Purchaser shall make some other arrangement, the Vendor shall deliver the livestock to the Purchaser, or the Purchaser's Agent, on the Delivery/Settlement Date and at the Vendor's herd location. Unless the Vendor and The Company have been otherwise notified prior to that day, the Purchaser is deemed to be satisfied with the Vendor's delivery arrangements and property and risk in the livestock shall pass to the Purchaser (but without prejudice to the rights of the Purchaser under clauses 26, 29 and 30, the Vendor under clauses 20.2 and 22.1(d), and the Company under clause 22.3) from the earlier of:

- 12.00 noon the Delivery/Settlement Date as stated in Clause 12, or
- at the time of actual delivery by the Vendor to the Purchaser, or
- when the livestock pass over the tail-gate of the transportation vehicle, or
- immediately upon leaving the boundary of the Vendor's herd location on hoof.

**19.2** If the Purchaser fails to take delivery of any animal on the Delivery/Settlement Date in accordance with the Purchaser's obligations hereunder the Purchaser will be liable at the option of the Vendor to a penalty of \$10.00 plus GST per day for each animal of which the Purchaser has been in breach of his obligation to take delivery in addition to any penalty interest or other charges levied pursuant to clause 21 hereof.

## 20. SETTLEMENT:

**20.1** The Purchaser will pay on the Delivery/Settlement Date to the Company's TMS Account (or otherwise as provided in clause 16(2)), the balance of the purchase price in cleared funds in accordance with the statement delivered to the Purchaser by the Company. The sale proceeds will be disbursed to the Vendor, after compliance with the Vendor's obligations under clause 20.3 hereof less any retentions or deductions as provided in this Agreement.

**20.2** To secure the Purchaser's obligation to pay the Vendor the purchase price, the Purchaser grants to the Vendor a security interest in the livestock. The provisions of clause 22.3(c)-(f) (with all necessary changes) apply to the security interest granted to the Vendor under this clause.

**20.3** The Vendor represents and warrants that (a) the livestock will on delivery be transferred to the Purchaser free of any security interests, liens or encumbrances of any kind, and (b) the sale of the livestock is a sale in the ordinary course of the business of the Vendor (for the purposes of section 53 of the Personal Property Securities Act 1999 ("PPSA")) and does not constitute a breach of any security agreement to which the Vendor is party. The Vendor undertakes to deliver on settlement such documentation as requested by the Purchaser or the Company to ensure that the Purchaser will be obtaining clear and unencumbered title to, and property in, the livestock. Such documentation may comprise a release deed poll or authorisation of the dealing from the Vendor's secured parties.

**A five per centum (5%) administration retention will be held by The Company for 15 working days, thereafter to be released subject to all contract obligations being fulfilled. The Company may release the retention earlier at its discretion.**

**21. PENALTY INTEREST:** If from any cause whatever save the default of the Vendor any portion of the purchase price is not paid on the due date the Purchaser shall pay to the Vendor interest at the interest rate for late settlement at the rate set out in Clause 12 (a) on the portion of the purchase price so unpaid from the due date for payment until actual payment. This stipulation is without prejudice to any of the Vendor's other rights or remedies including any right to claim compensation for additional expenses or damages.

## 22. FAILURE OF PURCHASER TO SETTLE:

**22.1** If the purchaser does not settle the purchase on the Settlement Date the Vendor may cancel the contract and exercise all or any of the following remedies, namely:

- claim for the Vendor's own benefit the deposit paid less any commission or other deductions properly due to the Company plus all accrued interest (if any) on the deposit.
- resell the livestock and sue the Purchaser for any damages accruing to the Vendor resulting from such resale.
- the damages claimable by the Vendor shall include all damage claimable at common law or in equity and shall also include (*but not be limited to*) any loss incurred by the Vendor on any bona fide resale. The amount of the loss may also include interest on the unpaid portion of the purchase price at the interest rate for late settlement from the Settlement Date to the settlement of such resale, all costs and expenses reasonably incurred in any resale or attempted resale, all outgoings on or maintenance expenses in respect of the livestock from the Settlement Date to the settlement of such resale. Any surplus money arising from a resale shall be retained by the Vendor.
- exercise any of its rights as a secured party under the PPSA, including immediately retaking possession of any livestock of which the Vendor parted with possession and for that purpose the Purchaser hereby irrevocably grants to the Vendor and its agents full leave and license to enter into or upon any premises controlled by the Purchaser upon which the livestock may be or may reasonably be believed to be and to use such reasonable force as may be necessary for the purpose of repossessing the livestock or as agent of the Purchaser to enter upon any other premises upon which the livestock may be or may reasonably be believed to be for the purpose of repossessing the livestock without notice to the Purchaser and without liability to the Purchaser or to any person claiming under the Purchaser. If the Purchaser should on-sell the livestock before payment of the full purchase price to the Vendor, the Purchaser will advise any such subsequent Purchaser of the provisions of this sub-clause and shall obtain from such subsequent Purchaser an acknowledgement as above (*mutatis mutandis*) in favour of the Vendor. The provisions of clause 22.3(c)-(f) (with all necessary changes) apply to the Vendor's enforcement rights against the Purchaser and the livestock.

**22.2** The Trustees may at their discretion any time on or after the Delivery/Settlement date credit the Vendor on behalf of the Purchaser with any funds held to which the Vendor is entitled from the Trust Account, and the Trustees are hereby irrevocably authorised and directed by the Purchaser to make payment accordingly.

**22.3** If the Company credits the Vendor with the purchase price (less permitted deductions) and debits the amount to the Purchaser's account, then:

- The Purchaser agrees to pay the Trustees the debited amount on or before the settlement date.
  - To secure the Purchaser's obligations to pay the debited amount, the Purchaser grants to the Company security interest over the livestock.
- The Purchaser agrees:
- that the Company may at any time at its discretion register a security interest under the PPSA in respect of the Purchaser and the livestock;
  - that it waives the right to be given a copy of any verification statement in respect of the registration of any financing statement or financing change statement registered by the Company;
  - to do at its cost all such things as are necessary to enable the Company to perfect and maintain its security interest;
  - that the Company may exercise any powers given by the PPSA to a secured party with priority over other secured parties, whether or not the Company is a first ranking secured party. Nothing in sections 114(1)(a), 133 or 134 of the PPSA applies to this agreement. The Purchaser's rights under sections 116, 120(2) and 121 of the PPSA do not apply in respect of this agreement or the Purchaser's rights in respect of the livestock.

## 23. FAILURE BY VENDOR TO PRESENT LIVESTOCK:

**23.1** Subject to Clauses 34 and 35 and force majeure events if the Vendor fails to present the livestock to the Purchaser on the Delivery/Settlement Date, the Purchaser may without prejudice to any other rights or remedies available at law or in equity:

- Cancel the contract and require the Trustees to pay to the Purchaser the net funds held in the Trust account; and sue the Vendor for any loss or damage.
- Sue the Vendor for any shortfall of funds plus interest on such sums at the interest rate for late settlement from the due date or dates of payment until payment.

**23.2** In the circumstances detailed in clause 23.1 above, and the Purchaser not being in default, if the Company has deducted any amount for commission or other charges from the deposit the Purchaser will be reimbursed by the Company for such amount or amounts.

**23.3** If the Vendor fails to present the livestock to the Purchaser on the Delivery/Settlement Date in a condition that complies with the Vendor's obligations under Clause 7.1/7.2 then the Purchaser has the right to:

- reject such stock as do not comply with the warranty under Clause 7.2 and may reject the highest condition scored livestock (*NB: prior to actual delivery but no later than 12 noon on the Delivery/ Settlement Date whichever is the earlier*) determined either in accordance with an authoritative condition score industry method approved by The Company (*such as Dexcel's Condition Scoring, Made Easy*), or determined by a qualified Veterinarian / Farm Consultant nominated by The Company, until the remaining stock to be taken by the Purchaser comply with the provisions of Clause 7.1.
- accept the noncompliant stock but reduce the purchase price of those stock by such sum per head as agreed between the Vendor and the Purchaser or failing agreement as is fixed by mediation/arbitration in accordance with Clause 41.

**23.4** The Purchaser has the right to renegotiate any of the prices set out in Clause 1 (a), (b), (c), and (d) if the indices of the stock vary negatively by between 5% and 10% and/or repudiate the stock if the indices negatively vary by over 10% of the total tally being drafted from than the relative average evaluations at the drafting date of Livestock Improvement Corporation, Ambreed NZ Limited or any other similar organization.

**23.5** Nothing in this Clause shall be deemed to restrict any right which the Purchaser may have to claim damages or compensation for any breach of this Agreement or to terminate the Agreement for any breach.

**24. PRO RATA TRANSACTIONS:** If the livestock are specified in Clause 1 to be sold and purchased on a pro rata basis then, with time being the essence, the Vendor after excluding all unsound and vetted non in-calf livestock from the total of livestock on a pro rata basis shall:

- immediately update returned matings (*AB and natural mated calving dates*), remove excluded unsound livestock and deaths on the Herd Profile with the data recording company then;
- appoint an independent professional third party to apportion the Purchaser's tally of sound livestock respectively described in any of Clause 1 (a), 1 (b), and 1 (c) of the total number of the Vendor's livestock for sale stated under the heading in this Agreement "Drafted from approx." based on the indices ticked respectively in 1 (a), 1 (b), and 1 (c) and to average the Purchaser's portion as close as reasonably possible to the Vendor's respective average(s) of either (*or all*) 1 (a), 1 (b), 1 (c) that includes the allowable rejection rate(s) stated in Clause 2. **NB: Clause 1 (a) is also to be apportioned on age.**
- where several Purchasers agree to purchase a herd in approximately equal portions, determined according to criteria agreed by the parties, the allocation of the portions to the respective buyers will be by lot.

**25. CARE:** Subject to any special conditions contained in Clause 13 of this Agreement the Vendor shall between the date of this Agreement and the Delivery/Settlement Date properly feed and attend to the livestock as a prudent farmer would having regard to the nature and quality of the livestock at the time of the signing of this Agreement, the nature of the Vendor's farm, the district in which the farm is situated and the prevailing climatic conditions and will if necessary obtain suitable off-farm grazing at a location mutually acceptable to both parties or obtain additional supplementary feed to ensure that the livestock are presented to the Purchaser on the Delivery/Settlement Date in a condition that complies with the Vendor's obligations under this Clause and Clause 7.1 and 7.2.

## 26. IN-CALF GUARANTEE:

**26.1 CASH RETENTION:** The Vendor has in the contract given an in-calf guarantee and the Vendor and the Purchaser authorise and instruct The Company to retain 5 per centum of the purchase price until the date referred to in Clause 3 (c). The Vendor guarantees that each beast will be in-calf at the date of delivery. Upon production by the Purchaser within the period commencing on the Delivery/Settlement Date and terminating at noon on the date specified in Clause 3 (c) of a certificate from a qualified Veterinarian stating in writing the life time identification and/or Animal Health Board identification of any beast being claimed and that in the Veterinarian's opinion it has not aborted, and was not at the date of delivery in-calf then:

- the Vendor and the Purchaser authorise and instruct The Company to make a refund to the Purchaser from the monies retained under this Clause of the purchase price plus GST of the beast; and
- within seven days of receipt by the Vendor of a copy of The Veterinarian's certificate the Vendor shall at the Vendor's own expense remove the beast from the Purchaser's property.

The balance of the retention after deduction of all proven claims together with any accrued interest will be paid to the Vendor on the date referred to in Clause 3 (c) OR,

**26.2 NON RETENTION IN-CALF GUARANTEE:** The Purchaser and The Company upon receipt of a letter from the Vendor's solicitor guaranteeing that each beast will be in-calf at the date of delivery agrees that no 5 per centum retention shall be retained by The Company under the provisions set out in Clause 26.1 above but:

- the Vendor and the Purchaser authorise and instruct the Vendor's solicitor to make a refund in full to the Purchaser of the purchase price plus GST of any beast proven not in-calf in accordance with the conditions described in Clause 26.1 above but,

- if no letter is received from the Vendor's solicitor prior to the Delivery/Settlement Date then the Vendor and Purchaser instruct The Company to retain a 5 per centum retention as in accordance with the terms and conditions of Clause 26.1 OR,

**26.3 VETTED IN-CALF GUARANTEE:** The Vendor has in the contract given a vetted in-calf guarantee and shall employ a qualified Veterinarian or give consent to the Purchaser, at the Vendor's expense, to employ a qualified Veterinarian to pregnancy diagnose (*P/D*) all livestock described herein as in-calf no earlier than ten days prior to the Delivery/Settlement Date. Should a P/D have taken place prior to the ten days the Purchaser reserves the right, at the Vendors' expense, to request a complying P/D. The Vendor shall not be liable for any non in-calf claims after the Delivery/Settlement Date.

## 27. STOCK NUMBERS:

**27.1 REJECTION RATE:** On a day to be mutually agreed between the Vendor and the Purchaser (*'the Drafting Day'*) being a day not later than 21 days before the Delivery/Settlement Date the Vendor will present for the Purchaser's inspection the livestock referred to in Clause 1 such livestock to be sound in all respects. On the **Drafting Day** the Vendor will have all current relevant data referred to in Clause 32 and the Purchaser will have the right to reject sound livestock in accordance with the allowable rejection rate referred to in Clause 2. Should the tally on the drafting date be greater than the approximate tally referred to in Clause 1 (a), 1 (b), 1 (c) or 1 (d) then the Purchaser has the right to purchase the extra stock at the respective prices above set out for such stock. **OR** the excess stock to be retained by the Vendor will be selected on a pro rata basis. **No livestock are to be culled without the Purchaser's consent, or removed from the property where they were depastured at the date of this Agreement without the Purchaser's consent.**

**27.2 INSUFFICIENT NUMBERS:** Should the Vendor not be able to deliver to the Purchaser at the Delivery/ Settlement Date the said number of stock by reason of the sickness or death or unsoundness of any of them this sale shall not be thereby annulled but shall proceed for the reduced number;

**28. DRYING OFF WARRANTY:** Subject to the provisions of Clause 13 the Vendor guarantees that all milking cattle will be dried-off completely by the time stated in Clause 4 or by such earlier date as is mutually agreed in the event of adverse climatic conditions affecting normal seasonal management. All known incurable cases are excluded from this agreement and both parties have agreed in Clause 5 to use one of the following:

**28.1 SAMM PLAN (Seasonal Approach To Managing Mastitis):** The Vendor warrants that all lactating cattle described in 1 (a), (*and 1 (d) if applicable*) have received mastitis treatment protection according to the SAMM Plan that was current at time of selling. The effect of which is that;

- Any beast with one or more clinical mastitis episode and/or which has had a Somatic Cell Count exceeding the SAMM critical threshold since the previous drying off will have had Dry Cow antibiotic administered at most recent drying off.
- Records of the use of antibiotics at drying off are available to the Purchaser and are accurate.
- All antibiotics used at drying off have been administered as a result of consultation with a qualified Veterinarian and that the antibiotics and *Teaseal* used have been administered strictly according to label OR,

**28.2 BLANKET DRY COW TREATMENT:** It is agreed between both Parties that the Vendor will dry cow every lactating animal stated in 1 (a) and 1 (d) of this contract at drying off in accordance with sound animal husbandry practice under qualified Veterinarian guidance using the approved dry cow product(s) stated in Clause 5 (d) OR,

**28.3 AGREED SOMATIC CELL COUNT THRESHOLDS:** If any somatic cell count thresholds stated in Clause 5 (a) and 5 (c) are exceeded by any individual cow in any single herd test during the current lactation prior to the Delivery/Settlement Date stated in Clause 12, then it is agreed by both parties that the dry cow treatment will be administered by the Vendor in accordance with sound animal husbandry practice under qualified Veterinarian guidance using the approved dry cow product(s) stated in Clause 5 (d)

## 29. CALVING DURATION WARRANTY:

**29.1** If any beast calves with a full term calf more than fourteen days after the expiration of the calving duration as stated in Clause 3 (a) then,

- the Vendor shall immediately upon demand pay to the Purchaser \$7.00 plus G S T per day for such beast from the fourteenth day after the expiration of the calving duration period to the date of actual calving, which sum shall be paid and accepted as a genuine estimate of the value of the loss suffered by the Purchaser in respect of late calving animals retained by the Purchaser or,
- the Vendor if required by the Purchaser remove the beast and its calf from the Purchaser's property at the Vendor's expense within the seven days of being advised by the Purchaser of the actual calving date and the Vendor shall within the same seven day period refund to the Purchaser the purchase price plus GST of such beast.

**29.2** If any beast calves with a full term calf more than 14 days prior to commencement of the calving duration period the Purchaser may require the Vendor to remove the beast and its calf from the Purchaser's property at the Vendor's expense within seven days of being advised by the Purchaser of the actual calving date and the Vendor shall within that seven day period refund to the Purchaser the purchase price plus GST of such beast.

**Notification of any claim must be in writing by the 31st October from the Purchaser to the Vendor based upon the latest updated calving dates supplied by the Vendor at delivery.**

**30. INDIVIDUAL CALVING DATE WARRANTY:** All of the livestock are sold on the basis of a guaranteed calving date and if 90% of such livestock do not calve with a full term calf within a period of fourteen days before or fourteen days after the guaranteed calving date, then in respect of such livestock which do not calve within that period.

- if required by the Purchaser the Vendor will at his own expense and within seven days of receiving notice from the Purchaser remove such livestock outside the 10% tolerance as the Purchaser describes in his notice and shall within that same period refund to the Purchaser the purchase price of the livestock to be removed or,
- the Vendor shall pay the Purchaser \$7.00 per day plus G S T from the guaranteed calving date to the date of actual calving for each beast outside the 10% tolerance which calves more than fourteen days after the guaranteed calving date and which is retained by the Purchaser, which sum shall be paid and accepted as a genuine estimate of the value of the loss suffered by the Purchaser in respect of late calving animals retained by the Purchaser.
- the Vendor will only honour proven claims on livestock that have calved prior to the duration of calving commencement dates provided in Clause 3 (a) in respect of livestock not calving with a full term calf within a period of 14 days before the guaranteed individual calving date.
- the Purchaser's claim for late calving cows outside of the 10% tolerance shall be made firstly in respect of livestock that have the longest gap between the projected calving date and the actual calving date, or in the case of an induced animal to The Veterinarian diagnosed calving date, and progressively in respect of livestock where the gap is less.

**Notification of any claim must be in writing by the 31st October from the Purchaser to the Vendor based upon the latest updated calving dates, or The Veterinarian's pregnancy diagnostic report which ever being the most relevant, supplied by the Vendor at delivery.**

## 31. INDUCED ANIMALS:

**31.1** It is obligatory on any Purchaser who wishes to induce livestock and subsequently make a claim under Clauses 29 or 30 above that the Vendor is notified and the Vendor's consent is obtained to any induction in writing.

## 32. DATA:

**32.1** The Vendor will present to the Purchaser on the Drafting and Final Inspection Days all current relevant animal record data in relation to the livestock including where applicable the Herd Profile, individual calving dates, natural mating dates, artificial breeding mating records, herd testing records (*refer Clause 8.1*), factory production records, shed records, TB and EBL Certificates, Animal Transfer Location Certificates and other such documentation required (*NB: The responsibility of transferring Animal Transfer Location Certificates and NAIT records are strictly between Vendor and Purchaser*).

**32.2** The Purchaser upon signing this contract acknowledges both the authenticity and accuracy of all animal records supplied by either the Vendor and/or The Company. Further the Purchaser acknowledges that they rely on their own expertise in the acquisition of such goods and services and that they do not rely on any assurances or statements given by the Vendor and/or The Company. The Purchaser acknowledges that this term specifically replaces any obligation under the Consumers Guarantees Act 1993 and is made pursuant to Section 44 of that Act

**32.3** The Vendor and Purchaser upon signing of this contract give their irrevocable authorities to The Company to approach Livestock Improvement Corporation, Ambreed NZ Limited or similar dairy livestock data recording organization, in order to obtain and/or uplift (a) Animal Transfer Location Certificates, (b) any information on the Vendor's or the Purchaser's records of animals included in this Agreement (*refer Clauses 1 and 8*), before or after the Delivery/Settlement Date. The Vendor and Purchaser acknowledge that this term specifically waives any obligations under the Privacy Act 1993 and also that any costs plus GST incurred by The Company administering this Clause will be passed on to the defaulting party.

## 33. TUBERCULOSIS (TB):

**33.1** Upon signing this contract the Purchaser shall notify the Animal Health Board of the place where the cattle are kept in accordance with the provisions of the Biosecurity (*National Bovine Tuberculosis Management Strategy*) Order 1998 that all dairy livestock in this Agreement have been sold and/or purchased. If any TB tests are required under the terms of that Order these will be arranged by and carried out at the Vendor's expense prior to the Delivery/ Settlement Date in accordance with any regulation for the time being in force. If such tests take place prior to the Final Inspection Day any beast returning a positive test will be deemed unsound and shall not be presented for the Purchaser's inspection. If such tests take place after the Final Inspection Day then the Purchaser may on the Delivery/Settlement Date reject any beast returning a positive test.

**33.2** The Vendor must provide a correctly completed and signed Animal Status Declaration in a form approved by the Animal Health Board and the NZ Food Safety Authority. If the transaction involves the movement of stock the Vendor shall ensure the stock are correctly identified as required by the Animal Health Board under the Biosecurity (*Animal Identification Systems*) Regulations 1999, or any other relevant statutory provision or regulation.

**34. FACIAL ECZEMA WARRANTY:** Once under contract, animals will be protected from facial eczema by the Vendor (*at Vendor's cost*). Methods of protection are to be mutually agreed as set out in Clause 6 (e) between Vendor and Purchaser, and documented as part of the sale agreement. Matters to be agreed and recorded (*if any*) will include the type of treatment, and the treatment method according to local spore counts. Records of treatment will be available to the Purchaser on request.

- Clinical facial eczema:** If clinical facial eczema cases occur in a mob of animals under contract, then any animal displaying facial eczema lesions is deemed to be unsound for Delivery and Settlement of the contract.
- Subclinical facial eczema:** In the event of clinical facial eczema cases occurring, to ascertain whether any other animal under the contract is suffering from subclinical facial eczema, the Purchaser (*at Purchaser's cost*) may nominate any, or all, of the livestock under contract to be blood tested to determine the concentration of Serum Gamma Glutamyl Transferase (*GGT*) levels. Blood sampling and interpretation of test results is to be carried out by an independent qualified Veterinarian (*The Veterinarian*) prior to the Delivery/Settlement Date. For accurate interpretation of GGT levels, two blood tests will be required for each animal, usually at least 4 weeks apart but The Veterinarian shall determine the timing of the blood tests and has the authority of the Vendor and Purchaser to exclude further animals from the contract if in The Veterinarian's opinion they are deemed unsound due to facial eczema liver damage (*on the basis of GGT levels in blood and the cow condition at sampling date*).

**The Vendor and Purchaser agree that The Veterinarian's decision to exclude any stock from the sale under this Clause is final and binding on the parties.**

**35. BIOSECURITY:** From the date of the Agreement the Vendor and the Purchaser shall comply in all respects with the provisions of the Biosecurity Act 1993 or any Act in modification or substitution therefor and any regulations made thereunder in respect of the livestock and shall notify the appropriate authority of any notifiable livestock disease occurring in the livestock.

**36. TRANSPORTATION:** Any drover, transport operator or other person into whose care the livestock are delivered whether such person is nominated or appointed by the Purchaser, or by The Company shall be deemed to be contracting directly with the Purchaser, and **The Company shall not in any way be liable or responsible for any act or omission of such drover, transport operator or other person.**

**37. ACQUISITION PRICE:** The purchase price for the livestock is the lowest price that the parties would have agreed upon for the livestock under the Rules relating to the accruals treatment of income and expenditure in the Income Tax Act 2004 and on that basis no income or expenditure arises under those Rules.

**38. CREDIT CHECK:** The Purchaser authorises the Vendor or The Company to carry out a credit check.

**39. GOODS AND SERVICES TAX (GST):** It is acknowledged by the Vendor and the Purchaser, that the Purchaser shall in addition to the purchase price payable pursuant to this contract pay GST on that purchase price and the Vendor or the Vendor's Agent shall issue to the Purchaser a tax invoice on or before such date as the Purchaser is entitled to delivery of an invoice under the Goods and Services Act 1985. Where any GST is not so paid to the Vendor the Purchaser shall pay the Vendor:

- interest at the Interest Rate for late payment on the amount of GST unpaid from the GST date until payment and,
- any additional GST, penalty or other sum levied against the Vendor under the Goods and Services Tax Act 1985 by reason of non payment of the GST payable in respect of the supply made under this Agreement but not including any sum levied against the Vendor by reason of default by the Vendor after payment of the GST to the Vendor by the Purchaser. It shall not be a defence to a claim against the Purchaser for the payment to the Vendor of any default GST that the Vendor has failed to mitigate the Vendor's damages by paying an amount of GST when it fell due under the Goods and Services Tax Act 1985. Any sum referred to in this Clause is included in the balance of the purchase price referred to in Clause 20.

**40. FORCE MAJEURE:** The Vendor will not be liable for any inability to make any or all of the livestock available for the PURCHASER to take delivery in accordance with this contract because of any reason beyond the Vendor's reasonable control including death, disease, theft, flood, earthquake or any other natural disaster (*force majeure*). The Vendor must promptly notify the Purchaser and The Company, of any force majeure event and do anything reasonably practical to mitigate the effect of that event.

**41. DISPUTES/MEDIATION/ARBITRATION:** In the event of there being any dispute arising out of or connected with this contract or the breach, termination, validity or subject matter thereof, the parties agree to first endeavour to resolve the dispute by promptly meeting together with the intention of reaching an acceptable solution.

If the dispute cannot be so resolved and is in connection with an Animal Health matter then the Company may, at its discretion, appoint an independent qualified Veterinarian to resolve the dispute. That Veterinarians, [remainder unchanged] decision will be final and binding on the parties. (*N.B. The challenging party will be required to pay all veterinarian charges but will be reimbursed by the other party to the extent that claims are substantiated*).

If there is any other disputes between the parties, such dispute or disputes shall be resolved by mediation conducted in accordance with the New Zealand Law Society (NZLS) mediation guidelines. In the event that the dispute has not been settled within twenty-eight (28) days (*or such other period as agreed to in writing between the parties hereto*) after the appointment of the mediator then after consultation with the Vendor and Purchaser The Company is authorised to appoint an independent professional third party (*The Adjudicator*) to settle any dispute that has not been resolved. The decision of The Adjudicator shall be final and binding on the parties and any related costs will be payable by the vendor and/or purchaser as determined by The Adjudicator. If the parties do not agree to an adjudicator being appointed the dispute shall be referred to arbitration in accordance with the provisions of The Arbitration Act 1996 and any arbitrator or umpire as appointed by the President of the Arbitrators and Mediators Institute of New Zealand pursuant to this clause shall be a specialist in rural issues and disputes. Any related costs will be payable by the vendor and/or purchaser as determined by the arbitrator or umpire. If any health tests or condition scoring are required all parties are requested to be present.

**42. SERVICE:** All notices and documents to be given or served under or in relation to this contract may be given or served as provided in Sections 352 to 361 of the Property Law Act 2007, and in any event shall be sufficiently given or served if actually received by the party on whom service is to be made.

## 43. RELATIONS BETWEEN THE PARTIES AND THE COMPANY:

**43.1 AGENCY – COMMISSION:** The Vendor or Purchaser (as applicable) which is identified in clause 11 as being liable to pay the commission acknowledges that the Company is appointed as its agent in respect of the sale of livestock in terms of this contract. The Company shall be entitled to deduct from the purchase price the commission payable to it in terms of clause 11 together with the GST on such commission and any other charges properly payable by the Vendor or the Purchaser. The Company shall be entitled on all the conditions precedent (if any) having been waived or satisfied, to request the Trustees to deduct from the deposit monies paid by the Purchaser the commission payable to it whether by the Purchaser or the Vendor together with the GST on such commission together with any other charges properly payable by the Vendor or the Purchaser and the Vendor and the Purchaser hereby irrevocably authorise and direct the Trustees to make payment accordingly.

**43.2** The parties agree that:

- The Company may act as Agent for both the Vendor and the Purchaser under this contract and/or as a principal buying and selling livestock on its own account.
- The Company notwithstanding any conflict of interest may deal with the Vendor and the Purchaser in whatever capacity it considers fit. The Company shall not be under any duty to disclose to any party matters which have come to its knowledge as a result of acting or dealing with any other party and shall not be under any fiduciary or other duty arising out of its actions in respect of this contract. The Company shall not be liable in respect of any loss incurred by any of the parties as the result of any action, failure to act, breach, or other action by either the Vendor or the Purchaser unless such loss shall be occasioned by the fraud of The Company.