

PRIVATE SALE/FORWARD SUPPLY AGREEMENT

SAMPLE

MANDATORY REQUIREMENTS

- This is a legal document.
- Signatures of all parties are a legal requirement!
- Please ensure that all parties have read, understood and signed the document. If not, they should be advised to seek independent legal advice.
- Each signature must be witnessed by someone who is over the age of 18 years old and is independent. i.e. not related to one of the parties.
- Nutrien Ag Solutions employees can only sign on behalf of the purchaser if they have written authorisation from the purchaser to do so.
- When filling out Preg Status, use the following guide to complete it correctly -
Status as at (enter date) per (person responsible for scanning)
- Completed copies of this agreement need to be supplied to both the vendor and the purchaser.
- PO Box numbers cannot be used in this agreement.

REMINDER

- If special instructions/charges apply to this agreement then make sure that all details are completed, including who is responsible for the cost of this arrangement.
- When entering in delivery dates allow for external factors that may affect delivery dates, if unsure enter a date range.
- If you are unsure about how to complete this document please contact your **Regional Livestock Manager**.

ABN REQUIREMENTS - FOR VENDOR

- If a supplier/vendor has an ABN, this should be noted at schedule 1.
- If a supplier/vendor does not have an ABN, the supplier needs to select the correct reason (see below) for not having an ABN and note the number in schedule 1.
- If no reason is identified, tax will be withheld at the prevailing withholding rate.

Reason	Explanation
1.	The payer/buyer is not making the payment in the course of carrying on an enterprise in Australia.
2.	The supplier/vendor is an individual aged under 18 years and the payment does not exceed \$350 AUD a week.
3.	The payment does not exceed \$75 AUD, excluding GST.
4.	The supplier/vendor is an individual and the supply is made in the course or furtherance of an activity done as a private recreational pursuit or hobby.
5.	The supplier/vendor is an individual and the supply is wholly of a private or domestic nature.
6.	The supply is made by an individual or partnership without a reasonable expectation of profit or gain.
7.	The supplier/vendor is not entitled to an ABN as they are not carrying on an enterprise in Australia.
8.	The whole of the payment is exempt income of the supplier/vendor.

VENDOR COPY

Private Sale/AuctionsPlus Forward Supply Agreement



This agreement is dated ____ / ____ / ____
day month year

between:

- A.** the party whose name appears in schedule 1 (**Vendor**); and
- B.** the party whose name appears in schedule 2 (**Buyer**); and
- C.** Nutrien Ag Solutions Limited ABN 73 008 743 217 (t/as Nutrien Livestock) (as agent for the Vendor) (**Nutrien**), (together the **parties**).

The parties acknowledge that they have read and understood the attached terms and conditions and agree to be bound by them. The parties further acknowledge that the schedules and any attached Appendix forms part of this agreement (**Agreement**) and that this Agreement is a record of the final and binding agreement between the parties.

Sale Type: Stud Slaughter Store Live Export Prime/Fat Feedlot

SCHEDULE 1

Vendor: _____
 Address: _____
 PIC No: _____
 Representative: _____
 ABN: _____ No ABN (Reason #): _____

SCHEDULE 2

Buyer: _____
 Address: _____
 PIC No: _____
 Representative: _____

SCHEDULE 3

Delivery point: _____
 Delivery date: _____
 Delivery numbers (final): _____

SCHEDULE 4

Date and place of inspection: _____
 Location of livestock until delivery: _____

SCHEDULE 5 - DESCRIPTION OF LIVESTOCK

Numbers	Description (species/breed/sex)	Dentition/Age	kg	Price	ID

SCHEDULE 6

Additional animal description:

Last shearing date: _____
 Live weight range: _____
 Fat score range: _____
 Preg Status: _____
 Have growth promotants been used? Yes No _____
 Days on feed at an Aus-Meat accredited feedlot: _____
 Accredited feedlot registration no: _____
 MSA registration no: _____
 Other: _____

Special Instruction / Charges

Transit insurance required
 At the expense of **Buyer / Vendor** (circle)
NLIS scanning & transfer required
 At the expense of **Buyer / Vendor** (circle) \$ _____ / HD
 Carried out by: **Buyer / Vendor / Nutrien** (circle)
 Location of scanning: _____
 Cartage: _____ Rate: _____
 At the expense of **Buyer / Vendor** (circle)
 Any other instructions / charges (railage, dipping, weighing, vet): _____
 Is price grid attached? Yes No
 Is FOB export declaration attached? Yes No

SCHEDULE 7 Commission rate: _____%

If Conjunctional Agent:
 Name: _____
 Company: _____
 Proportion of commission rate for Conjunctional Agent: _____%
 of Commission rate (above)

SCHEDULE 8 Due date: _____

SCHEDULE 9 See clause 4.7(b) any additional requirements by the Buyer (attach documents).

Signed for and on behalf of the Vendor

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Buyer

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Nutrien (as agent)

Print name: _____
 Signature: _____
 Witness sign: _____

BUYER COPY

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day month year

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 Is price grid attached? Yes No
 Is FOB export declaration attached? Yes No

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 Company: _____
 Proportion of commission rate for Conjunctional Agent: _____%
 of Commission rate (above)

SCHEDULE 8 Due date: _____

SCHEDULE 9 See clause 4.7(b) any additional requirements by the Buyer (attach documents).

Signed for and on behalf of the Vendor

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Buyer

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Nutrien (as agent)

Print name: _____
 Signature: _____
 Witness sign: _____

OFFICE COPY

Private Sale/AuctionsPlus Forward Supply Agreement



This agreement is dated ____ / ____ / ____
day month year

between:

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- B. the party whose name appears in schedule 2 (Buyer); and
- C. Nutrien Ag Solutions Limited ABN 73 008 743 217 (t/as Nutrien Livestock) (as agent for the Vendor) (Nutrien), (together the parties).

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 Is price grid attached? Yes No
 Is FOB export declaration attached? Yes No

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If Conjunctonal Agent:
 Name: _____
 Company: _____
 Proportion of commission rate for Conjunctonal Agent: _____%
 of Commission rate (above)

SCHEDULE 8 Due date: _____

SCHEDULE 9 See clause 4.7(b) any additional requirements by the Buyer (attach documents).

Signed for and on behalf of the Vendor

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Buyer

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the Nutrien (as agent)

Print name: _____
 Signature: _____
 Witness sign: _____

RETAINED COPY

Private Sale/AuctionsPlus Forward Supply Agreement



This agreement is dated ____ / ____ / ____
day month year

between:

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- B. the party whose name appears in schedule 2 (**Buyer**); and
- C. Nutrien Ag Solutions Limited ABN 73 008 743 217 (t/as Nutrien Livestock) (as agent for the Vendor) (**Nutrien**), (together the **parties**).

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 Is price grid attached? Yes No
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SCHEDULE 7 Commission rate: _____%

If Conjunctional Agent:
 Name: _____
 Company: _____
 Proportion of commission rate for Conjunctional Agent: _____%
 of Commission rate (above)

SCHEDULE 8 Due date: _____

SCHEDULE 9 See clause 4.7(b) any additional requirements by the Buyer (attach documents).

Signed for and on behalf of the **Vendor**

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the **Buyer**

Print name: _____
 Signature: _____
 Witness sign: _____

Signed for and on behalf of the **Nutrien** (as agent)

Print name: _____
 Signature: _____
 Witness sign: _____

Livestock Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

- a) **Agent** means Nutrien Ag Solutions Limited (ACN 008 743 217) and includes its related bodies corporate (as defined in the *Corporations Act 2001*(Cth));
- b) **AuctionsPlus Transaction** means the sale or purchase of Livestock that is conducted on the AuctionsPlus platform and subject to the AuctionsPlus terms and conditions;
- c) **Aus-Meat Code** means the code of practice for over-the-hooks trading to Aus-Meat accredited abattoirs;
- d) **Aus-Meat Language** means the current Aus-Meat Language published by Aus-Meat from time to time;
- e) **Business Day** means a day that is not a Saturday, Sunday or public holiday or bank holiday in Victoria;
- f) **Commencement Date** means the date of commencement of this Agreement;
- g) **Commission** means the commission set out in the schedules to this Agreement, if no commission rate is specified then commission will be charged at 5.7% unless otherwise agreed by the Agent and Vendor;
- h) **Delivery Date** means the agreed delivery date set out in the schedules to this Agreement;
- i) **Delivery Point** means the agreed delivery address set out in the schedules to this Agreement where the risk in the Livestock passes from the Vendor to the Buyer;
- j) **Due Date** means the date 7 days from the date on the invoice issued to the Buyer under this Agreement or such other date as mutually agreed between the parties in writing;
- k) **Fees** means all levies, charges, fees, costs and other expenses incurred or relating to this Agreement and the sale and purchase of Livestock including, without limitation, transaction levies, yard and weigh dues, cartage, advertising and rebates, and whether paid for, or incurred, by the Agent on behalf of the Vendor or Buyer;
- l) **Insolvency Event** means:
 - (i) in relation to a body corporate, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events;
 - (ii) in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events; or
 - (iii) in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control or the occurrence of any event that has a substantially similar effect to any of these events;
- m) **Laws** includes (without limitation) common law and any Commonwealth, State, Territory or local standards, guidelines, code, constitution, decree, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure applicable to the Livestock transaction under this Agreement.
- n) **Livestock** means the animals the subject of this Agreement;
- o) **Loss** means any loss including any liability, cost, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage;
- p) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- q) **Purchase Price** means the sum set out in the invoice issued under this Agreement which reflects the sum set out in this Agreement as adjusted (if necessary) in accordance with this Agreement;
- r) **Buyer** means the buyer of the Livestock as specified in schedule 1;
- s) **Taxable Supply** has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- t) **Vendor** means the party consigning the Livestock for sale as specified in schedule 2.

1.2 In this Agreement, unless otherwise indicated by the context:

- a) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- b) the word 'including' is not an exhaustive or exclusive list and is without limitation;
- c) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- d) a capitalised word or phrase used in reference to legislation has the meaning given to it in that legislation; and
- e) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally.

2. APPLICATION OF THE AUS-MEAT CODE

2.1 In addition to this Agreement, the requirements of the Aus-Meat Code apply to the Livestock sale unless expressly excluded.

2.2 If the Buyer is a non-accredited Aus-Meat entity, then the Aus-Meat Code does not apply, unless and to the extent that:

- a) the Aus-Meat Code can and does apply to non-accredited Aus-Meat entities; and
- b) application of the Aus-Meat Code is usual practice in the industry.

2.3 In the event of any inconsistency or conflict between this Agreement and the Aus-Meat Code, this Agreement prevails to the extent of the inconsistency or conflict.

3. THE KEY TERMS OF THE LIVESTOCK SALE

- 3.1 The Vendor must sell and the Buyer must purchase the Livestock for the Purchase Price.
- 3.2 Unless otherwise stated, the Vendor appoints the Agent as its agent and authorises the Agent to negotiate and enter into this Agreement for the sale of the Livestock and agrees to pay the Agent the Commission in accordance with this Agreement.
- 3.3 Subject to prior written agreement with the Agent, the Vendor may appoint another agent (Conjunctional Agent) to also act on its behalf in relation to the sale of the Livestock. In such circumstances the commission payable by the Vendor to each of the Agent and the Conjunctional Agent upon sale of the Livestock shall be determined in accordance with schedule 7. The Vendor agrees to reimburse, indemnify and keep the Agent harmless in connection with any claims, actions, suits, liabilities or losses arising from the Conjunctional Agent's conduct or representations relating to the Livestock. If the Agent is acting as a del credere agent, the Conjunctional Agent's share of the commission shall only become due and payable once the Buyer has fully paid all monies due and owing under this Agreement to the Agent.
- 3.4 The Vendor agrees and acknowledges that the Agent may also be acting as agent for the Buyer under this Agreement.
- 3.5 Where the Agent acts as agent for the Buyer, it must disclose to the Buyer any buying rebates that will apply in respect of the completion of the livestock sale before the Buyer enters into that sale transaction.
- 3.6 Where the Agent acts as agent for the Buyer or Vendor and becomes aware that another person from the Agent's company is acting for the other party to the same sale transaction (Vendor or Buyer as the case may be), then the Agent becoming so aware must disclose this to the party they are acting for prior to that person's entry into that transaction.
- 3.7 Where the Agent has received a referral or a request to act for the Vendor or Buyer in respect of a livestock transaction from a customer of the Agent or a third party, and that customer or third party will receive a referral commission or payment or benefit of any kind for the completion of the sale transaction by the Agent, the Agent shall disclose the fact and relevant percentage of the potential commission to the party they are acting for in the sale transaction.
- 3.8 The Agent will issue an invoice to the Buyer setting out the Purchase Price and the Buyer must pay to the Agent the Purchase Price in full in immediate funds or such other payment method as agreed by the Agent on or before the Due Date.
- 3.9 This Agreement does not render the Agent liable to the Buyer as Vendor nor entitle the Buyer to set off against money or obligation owed to the Agent any right that the Buyer may have against the Vendor or otherwise.

4. VENDOR – KEY TERMS

- 4.1 Until delivery the Vendor must upon receipt of reasonable notice by the Buyer allow the Buyer to inspect the Livestock on the date and at the address set out in the schedules to this Agreement and must hold the Livestock at the address set out in the schedules to this Agreement.
- 4.2 The Vendor must deliver the Livestock to the Delivery Point on the Delivery Date.
- 4.3 The Vendor must provide the Buyer with all relevant industry and statutory declarations relevant to the Livestock.
- 4.4 The Vendor must take all reasonable care in the production of the Livestock having regard to relevant Laws concerning animal health, care, welfare, transport and the prevention of cruelty to animals as applicable from time to time.
- 4.5 The Agent enters into this Agreement in reliance of the following Buyer representations and warranties by the parties respectively to the Agent:
 - a) in the case of the Vendor, that it has complied with all relevant Laws concerning animal health, care, welfare, transport, and the prevention of cruelty to animals in connection with the Livestock; and
 - b) in the case of the Buyer, that it will comply with all applicable Laws in connection with the transportation of the Livestock from the Delivery Point (or where the risk in the Livestock first passes to the Buyer, including its employees, agents and contractors) including without limitation animal health, care, welfare, transport, management during transit and the prevention of cruelty to animals.
- 4.6 The Buyer may request in writing that additional action be taken by the Vendor in relation to the Livestock. The Buyer agrees that it will reimburse the Vendor's reasonable costs of taking such additional action, which must be agreed to in writing between the parties prior to any action being taken.
- 4.7 The Buyer will only be entitled to reject an animal under this Agreement where:
 - a) the animal is blind or diseased provided that the condition existed prior to the Delivery Date;
 - b) the animal fails to meet a requirement set out in this Agreement, including a failure by a Vendor to meet any requirements and terms and conditions specified by the Buyer where the Livestock is purchased for slaughter purposes;
 - c) the animal is lame or unfit to travel or load as determined at the Delivery Date and at the Delivery Point;
 - d) the animal does not meet the livestock movement or health requirements of any relevant Law; and/or

- e) the number of animals delivered is more than 10% of the number the Buyer had agreed to purchase under this Agreement as specified on the front page, and in such case the Buyer will only be entitled to reject the extra number of animals.
- 4.8 Where the Buyer rejects an animal in accordance with clause 4.7, title to the animal remains with the Vendor and the Vendor must either:
- within 2 Business Days negotiate a sale of the animal with the Buyer; if a sale can be successfully negotiated such animals will constitute Livestock the subject of this Agreement and the Price shall be adjusted to reflect the terms of the agreement between the Vendor and the Buyer; or
 - if the Delivery Point is not at the Vendor's premises, promptly remove the animal from the Delivery Point.
- 4.9 In consideration for the Agent acting as the Vendor's agent under this Agreement, the Vendor irrevocably appoints the Agent as the Vendor's attorney to do, in the name of the Vendor, at any time and in any manner as the Agent thinks fit all acts necessary to give effect to or exercising any of the Vendor's rights or powers to give effect to this Agreement. All acts by the Agent as the Vendor's attorney will be ratified by the Vendor and the Vendor agrees to indemnify and hold harmless the Agent for any loss or damage incurred in connection with such acts.
- 4.10 The Vendor must promptly advise the Agent of any change in the Vendor's GST registration. Inter alia, and for the avoidance of doubt, the Vendor must promptly advise the Agent if either:
- The Vendor becomes registered for GST within the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*; or
 - The Vendor ceases to be registered for GST under that Act.

5. BUYER - KEY TERMS

- 5.1 The Buyer must take delivery of the Livestock at the Delivery Point on the Delivery Date. If the Buyer does not do so it must, in addition to any other rights or remedies available to the Agent or the Vendor, indemnify the Vendor and the Agent against all Loss suffered or incurred by them as a result of the Buyer's failure to take delivery.
- 5.2 The Buyer must pay all amounts payable to the Vendor or the Agent under this Agreement without any deduction, withholding, set off or counterclaim whatsoever.
- 5.3 If the Buyer does not pay the Purchase Price in full by the Due Date then, in addition to the Purchase Price, the Buyer must pay interest on the Purchase Price (or the unpaid portion of the Purchase Price) at the agreed rate of 18% from the Due Date until payment is made in full. The Buyer must indemnify the Vendor and the Agent against all Loss suffered by either of them and arising from the Buyer's failure to pay the Purchase Price in full by the Due Date.
- 5.4 If the Buyer fails or refuses to accept delivery of the Livestock or if either the Vendor or the Agent retakes possession of the Livestock under this Agreement, the Vendor or the Agent may resell the Livestock as they see fit and the Buyer must indemnify the Vendor and the Agent against all Loss suffered by either of them as a result. In addition, the Buyer must promptly pay, and the Vendor and/or the Agent may recover, any shortfall in Purchase Price (including costs) arising from such resale as liquidated damages from the Buyer.
- 5.5 If the Buyer has rejected an animal in accordance with this Agreement:
- where the Delivery Point is a third party premises, the Buyer must immediately notify the Vendor or the Agent; or
 - in all other circumstances, before the Buyer accepts delivery of the Livestock. If the animals have not been rejected in accordance with the foregoing, they are deemed to have been accepted by the Buyer.
- 5.6 The Buyer agrees that the Agent may at its discretion debit any unpaid amounts due and payable by the Buyer under this Agreement to the Buyer's trading account with the Agent (if applicable).

6. AGENT - KEY TERMS

- 6.1 The Agent will pay the Vendor the Purchase Price for the Livestock by the Due Date. The Agent is not obliged to pay the Vendor if the Buyer has paid the Vendor the Purchase Price or if any of the parties have given the other party written notice of a dispute in accordance with clause 14 of this Agreement.
- 6.2 If the Buyer pays the Purchase Price or part of the Purchase Price direct to the Vendor then the Agent has no liability to the Vendor for that amount. If the Agent pays the Vendor any amount which the Buyer also pays direct to the Vendor in respect of the same Livestock, then the Vendor must promptly repay the Agent that amount.
- 6.3 The Agent is entitled to debit the amount of the Commission and the Fees to an account held by the Vendor with the Agent and/or to deduct the amount of the Commission and the Fees from any amount payable by the Agent to the Vendor under this Agreement.
- 6.4 The Agent may at any time, assign, transfer, securitise or otherwise dispose of all or any of its rights under this Agreement and any debts created pursuant to it.

7. TITLE TO AND RISK IN THE LIVESTOCK

- 7.1 The Vendor warrants it is, and will be at the Delivery Date, the legal and beneficial owner of the Livestock and that the Livestock are not and will not at the Delivery Date be subject to any lien, charge, mortgage or other encumbrance whatsoever. Property and title in and to the Livestock only passes to the Buyer upon payment by the Buyer of the Purchase Price in full by the Due Date. If the Buyer obtains possession of any Livestock

before full payment of the Purchase Price then, until full payment of the Purchase Price is received, the Buyer:

- does not acquire title to any Livestock;
 - holds the Livestock as bailee only for the Vendor;
 - must act in a fiduciary capacity in its relationship with the Vendor;
 - must store the Livestock separately or so that they are readily distinguishable from other livestock owned by the Buyer; and
 - is responsible for the safety and wellbeing of the Livestock at its risk and cost.
- 7.2 Risk in the Livestock passes to the Buyer on delivery at the Delivery Point, unless otherwise agreed in writing. The Buyer must after delivery at its own expense keep and maintain the Livestock in the condition they were in on delivery, run the Livestock according to good husbandry practices ensuring adequate feed and water supply, promptly treat or have treated by a veterinary surgeon all animals affected by illness or disease, remove all diseased animals and promptly dispose of the carcasses of all animals that die until payment in full of the Purchase Price.
- 7.3 When the Agent pays the Vendor the Purchase Price, title to the Livestock passes to the Agent or a nominee of the Agent upon payment.

8. PPSA

- 8.1 If a term used in this clause has a particular meaning in the PPSA, the term has the same meaning in this clause.
- 8.2 The Buyer acknowledges and agrees that the Agent (only where it acts as del credere) and/or Vendor may apply to register one or more security interests in the personal property of the Buyer, including the Livestock supplied by the Vendor to the Buyer or any product or mass that the Livestock may be or become part of (collectively the Collateral) at any time.
- 8.3 The Buyer agrees:
- to promptly execute any documents and do such further acts as may be required by the Agent and/or Vendor to ensure that the Agent and/or Vendor's Security Interest is a perfected Security Interest and take all reasonable steps to ensure that it has priority over any other security interests granted by the Buyer to other parties;
 - to give at least 30 days' prior written notice to the Agent and/or Vendor (as applicable) before anything happens in respect of the Buyer or any Collateral that would cause any information in a financing statement registered by the Agent or Vendor in relation to any Security Interest provided for by this Agreement to be different if it were re-registered, including prior notice of any change to the name, ACN or ABN of the Buyer together with details of the proposed new name, ACN or ABN and deregistration;
 - to give to the Agent and/or Vendor all information that they need in order to ensure that any registration of any Security Interest provided for by this Agreement on the Personal Property Securities Register or any other register that the Agent or Vendor chooses is, and remains, fully effective or perfected (or both), and that those Security Interests have the priority required by the Agent or Vendor;
 - that each transaction by the Buyer with the Agent and Vendor constituting the Agreement and associated invoice will constitute the entering into of a new Security Agreement by the Buyer in respect of the transaction as at the date of the invoice for the purposes of this clause and the PPSA;
 - until all monies owing to the Agent and Vendor on any account are paid in full, not to sell or grant any other security interest in the Collateral unless it is granted to the Agent and/or Vendor (as applicable), or unless the Agent and Vendor has given its prior written consent;
 - that the Agent may, at its absolute discretion, apply any amounts received from the Buyer or any other person on account of the Buyer toward amounts owing to the Agent under this clause in such order as the Agent may determine. Amounts received by the Buyer may be applied first against interest, charges and expenses;
 - the occurrence of an Insolvency Event or an 'Event of Default' in respect of the Buyer under the Trading Account Terms and Conditions entitles the Agent to exercise all the rights granted or vested in the Agent under the Trading Account Terms and Conditions and this Agreement; and
 - that if the Buyer defaults in the payment of any monies owing to the Agent and Vendor under this Agreement or any other agreement with the Agent and Vendor, the Agent or Vendor may:
 - enforce their security interest over the Collateral by exercising all or any of its rights under this Agreement or the PPSA; and/or
 - appoint a receiver or receiver and manager to do anything the law allows an owner or a receiver or receiver and manager to do; and/or
 - exercise any of the powers that might be exercised by a receiver even if a receiver has not been appointed.
- 8.4 To the extent that the law permits:
- for the purposes of sections 115(1) and 115(7) of the PPSA:
 - the Agent or Vendor need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4);
 - sections 142 and 143 are excluded;
 - for the purposes of section 115(7) of the PPSA, the Agent or Vendor need not comply with sections 132 and 137(3);
 - the Buyer waives its rights to receive any notice that is required by:

(i) any provision of the PPSA including under the following provisions of Part 4 of the PPSA:

- A. to receive a notice of intention of removal of an accession (section 95);
- B. to receive a notice that the Agent or Vendor decides to enforce their security interest in accordance with land law (section 118);
- C. to receive a notice of enforcement action against liquid assets (section 121(4));
- D. to receive a notice of disposal of goods by the Agent or Vendor purchasing the Livestock (section 129);
- E. to receive a notice to dispose of Livestock (section 130);
- F. to receive a statement of account following disposal of Livestock (section 132(3)(d));
- G. to receive a statement of account if no disposal of Livestock for each 6-month period (section 132(4));
- H. to receive notice of any proposal of the Buyer to retain Livestock (section 135);
- I. to reinstate the security agreement (section 143); and
- J. to receive a notice of any verification statement (section 157(1) and section 157(3)); or

(ii) any other law before the Agent and Vendor exercises a power, right, discretion or remedy; and

d) the Buyer waives any time period that must otherwise lapse under any law before the Agent or Vendor exercises a power, right, discretion or remedy.

If the laws which require a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause 8.4 prohibits the Agent or Vendor from giving a notice under the PPSA or any other law.

8.5 To the maximum extent permitted by law, the Agent and Vendor need not comply with, and the Buyer may not exercise rights under, any provisions of chapter 4 of the PPSA that may be contracted out of.

8.6 The Buyer further agrees that where the Agent and Vendor have rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

8.7 The Buyer acknowledges that it has received value as at the date of first delivery of the Livestock and has not agreed to postpone the time for attachment of the Security Interest granted to the Agent and Vendor under the Agreement.

8.8 The Buyer undertakes, if it disposes (including without limitation through use and application on or for any produce or other mass) of any Collateral (as defined in clause 8.2 above) that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Agent and/or Vendor's security interest. If such a security interest could rank ahead of the Agent and/or Vendor's security interest, the Buyer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and agrees to hold such proceeds on trust for the Agent first (if the Agent is acting as del credere) and then the Vendor and must immediately pay those proceeds to the Agent first (if the Agent is acting as del credere) and then Vendor in reduction of the amount owing:

- a) the Buyer fails to make payment of monies due in accordance with the Agreement;
- b) fails to perform any other obligation owed to the Agent and/or Vendor;
- c) becomes subject to an Insolvency Event; or

d) the Agent and/or Vendor otherwise has cause to exercise any of the Agent's or Vendor's rights under sections 123 or 128 of the PPSA or otherwise provided at law, the Agent (if acting as del credere) or Vendor (if the Agent is not acting as del credere) may repossess the Collateral and otherwise enforce its Security Interest under this Agreement. The Buyer, for those purposes, irrevocably grants to the Agent or Vendor (as applicable) the right to, acting reasonably, enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, and remove the Collateral. The Buyer shall hold harmless and indemnify the Agent and/or Vendor from any claims made by any third party as a result of such exercise. The Agent and/or Vendor may exercise any of its rights, privileges or powers by itself or through any agent. The fees charged by any agent of the Agent and/or Vendor in exercising the rights under this clause 8 must be paid by the Buyer.

8.9 This clause 8 will survive the termination of this Agreement for any reason.

9. SUBROGATION TO AND ASSIGNMENT OF VENDOR RIGHTS

9.1 In consideration of the Agent agreeing to pay the Purchase Price to the Vendor under this Agreement subject to clause 6.1 and 14.3, the Vendor assigns to the Agent all its rights, title and interest in the debt owed by the Buyer to the Vendor, and all the benefit of all other rights owed by the Buyer to the Vendor under this Agreement.

9.2 The Buyer acknowledges the assignment in the preceding clause and agrees that the Agent may exercise any of the rights granted to the Agent by the Vendor under this Agreement on behalf of the Vendor including but not limited to the registration and enforcement of any security interest under the PPSA.

9.3 When the Agent pays the Vendor the Purchase Price, in addition to any rights of the Agent that arise by operation of law, the parties agree that the Agent is subrogated to all rights of the Vendor under this Agreement against the Buyer.

9.4 The Vendor acknowledges that the Agent may take enforcement, repossession or other action to recover any Livestock for which the Buyer has not paid in full on the following basis:

- a) where the Vendor has not yet been paid the Purchase Price - as agent of the Vendor (including by reselling the Livestock); and
- b) where the Agent has paid the Vendor the Purchase Price - on the Agent's own exercising the rights of the Vendor by subrogation or assignment under this Agreement (including by selling the Livestock without the Agent having to account to the Vendor for the proceeds of sale).

10. LIVESTOCK FOR SLAUGHTER PURPOSES

10.1 This clause applies only to Livestock delivered under this Agreement for slaughter purposes.

10.2 The Purchase Price payable by the Buyer will be determined by the grading of carcasses, such carcasses to be inspected by the Buyer's representative upon slaughter in accordance with Aus-Meat Language descriptions.

10.3 If at the time of slaughter, one or more animals or carcasses are affected by one or more conditions specified by the Buyer pursuant to clause 4.7(b) (Adjustment Conditions), and the Buyer determines that the aggregate Adjustment Conditions may result in a greater than 5% reduction to the Purchase Price (Price Adjustment), then, the Buyer is only entitled to make the adjustment to the Purchase Price if:

- a) the Buyer issues a written notice to the Purchaser and the Agent immediately upon becoming aware of the Adjustment Conditions giving rise to the Price Adjustment notice to the Vendor of a material issue as to the quality of the Livestock delivered under this Agreement; and
- b) the Buyer in that notice stipulates that the Vendor may attend the Buyer's premises to view the slaughter or to inspect the carcasses within 48 hours of slaughter; and
- c) the Buyer provides the Vendor with Aus-Meat slaughter floor data within 12 hours of slaughter; and
- d) chiller assessment data (if assessed) for every animal delivered pursuant to this Agreement within 24 hours of slaughter (and must provide a hard copy of this data within 7 days of slaughter).

10.4 If a dispute arises between the Vendor and Buyer as to the grading of any carcass the Vendor and Buyer or Agent agree that the provisions of clause 14 will apply to the dispute and the Buyer holds the amount deducted from the Purchase Price on trust for the Vendor until resolution of the dispute.

11. LIVESTOCK SHORTFALL

11.1 Subject to the Buyer's rights to reject Livestock under this Agreement, the Buyer must accept any number of Livestock mustered for delivery except that it is not obliged to accept Livestock if the numbers vary by greater than 10% of the number set out on the front page.

11.2 If there is a shortfall in the number of Livestock delivered and that shortfall is greater than 10%, the Buyer must refer any dispute over the alleged shortfall to the dispute resolution provisions set out in clause 14.

11.3 If there is a shortfall in the number of Livestock delivered and that shortfall is equal to or less than 10%, and the Buyer gives notice in writing to the Vendor within 24 hours of the Delivery Date that there is a shortfall in the number of Livestock delivered, the Vendor must within 7 days of receipt of such notice either deliver to the Buyer such number of animals that is equal to the shortfall or the Purchase Price will be adjusted accordingly.

12. FORCE MAJEURE

12.1 If a party is prevented from performing its obligations (other than an obligation to pay money) under this Agreement by circumstances beyond that party's reasonable control, that party will not be in breach of this Agreement for the duration of those circumstances and the time for performance of its obligations will be extended accordingly. The affected party must give prompt written notice of the circumstances beyond its control and must take all necessary and reasonable steps to mitigate or reduce the delay in performing its obligations. If the circumstances persist for 30 days or more, a party may by notice in writing to the other parties terminate this Agreement in which case all obligations under this Agreement are at an end and, other than accrued rights as at the date of termination, no party is liable to any other party under this Agreement and each party must bear its own costs.

13. GST

13.1 Unless otherwise stated, all prices, rates, fees and charges set out in this Agreement are exclusive of GST.

13.2 In addition to the agreed consideration (excluding GST) that is payable for a Taxable Supply made under this Agreement, the Recipient of that Taxable Supply must also pay an amount equal to the GST on the Taxable Supply. It must do so at the same time and in the same way as it is required to pay the consideration for the Taxable Supply, subject to first being issued with a Tax Invoice in accordance with clause 13.3.

13.3 A party making a Taxable Supply to another party under this Agreement must issue a Tax Invoice to the other party, setting out the amount of the GST payable by that other party.

For the avoidance of doubt, where the Taxable Supply involves the sale of Livestock, the

requirement for a Tax Invoice may be satisfied by the Agent issuing that Tax Invoice.

- 13.4 If the amount of GST on a Taxable Supply is or should be different from the amount in respect of GST already recovered under clause 13.2, as appropriate, the supplier:
- a) may recover from the Recipient the amount by which the amount of GST on the Taxable Supply exceeds the amount already recovered within seven days of issuing the Recipient with a Tax Invoice or Adjustment Note, as appropriate; or
 - b) must refund to the Recipient the amount by which the amount already recovered exceeds the amount of GST on the supply within seven days of issuing the Recipient with an Adjustment Note.
- 13.5 For the purposes of this clause "Adjustment Note", "GST", "Recipient", "Taxable Supply" and "Tax Invoice" have the meaning attributed to those terms in the *A New Tax System (Goods and Services Tax) Act 1999*.

14 DISPUTE RESOLUTION

- 14.1 Prior to commencing any action under this Agreement through the courts, any dispute or difference arising out of or in connection with this Agreement or its subject matter will:
- a) upon provision of a written notice of dispute, be resolved by discussion between the representatives of each party named in the schedules to this Agreement; then
 - b) if the dispute is not settled by the representatives of the parties within 14 Business Days of the notice of dispute, by discussion between the managing directors (or people of equivalent position) of each party.
- 14.2 Nothing in this clause prevents or restricts a party from seeking urgent interlocutory or injunctive relief and, subject to termination of this Agreement by a party according to its terms or at law, each party must continue to perform its obligations under this Agreement during and notwithstanding the existence of any dispute.
- 14.3 For the avoidance of doubt, in the event of a dispute under this Agreement or its subject matter, the obligation for the Agent to pay the Vendor the Purchase Price in accordance with clause 6.1 of this Agreement will not apply.

15 TERMINATION

- 15.1 Without limiting the parties' rights under this Agreement, the Vendor and/or the Agent may terminate this Agreement with immediate effect by giving written notice to the Buyer if:
- a) an Insolvency Event occurs in respect of the Buyer; or
 - b) the Buyer commits a material breach this Agreement and fails to remedy the breach within 48 hours after notice of that breach from the Vendor and/or the Agent.
 - c) Without limiting the above, the following matters shall constitute a material breach of this Agreement:
 - (i) the Buyer is in breach of its trading terms and/or credit limit with the Agent; or
 - (ii) any warranty or representation given by the Buyer to the Vendor and/or the Agent or the Vendor to the Buyer in connection with the Livestock and/or this Agreement is materially untrue, incomplete or inaccurate, or materially misleading or deceptive or likely to mislead or deceive in a material way.

16 LIABILITY

- 16.1 Except for the statutory guarantees that apply to goods and services purchased by consumers (as defined in the *Competition and Consumer Act 2010* (Cth) (CCA)) and any express warranties set out in this Agreement, to the extent permitted by law, each of the Vendor and the Agent disclaims and excludes all other warranties and representations in relation to the goods or services provided by it under this Agreement.
- 16.2 To the maximum extent permitted by section 64A of the Australian Consumer Law set out in schedule 2 of the CCA, if the goods or services provided under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, each of the Vendor and the Agent limits its liability, at its discretion:
- a) in the case of goods to:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - b) in the case of services to:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

17 AUCTIONSPLUS SALE

- 17.1 If the transaction for the sale of the Livestock is an AuctionsPlus Transaction, the transaction is subject to the terms and conditions of this Agreement, in addition to the AuctionsPlus terms and conditions for the transaction, and the defined terms in this Agreement have the same meaning under the AuctionsPlus terms and conditions.
- 17.2 Notwithstanding any other provision in the AuctionsPlus terms and conditions, these terms and conditions apply in respect of the relationship between the Vendor/Buyer and Agent.

18 GENERAL

- 18.1 If any covenant, undertaking or condition of this Agreement is found to be void or unenforceable at law, that covenant, undertaking or condition will not affect any other term of this Agreement and, as far as is possible, will be read down or severed to the extent required to make it enforceable. If necessary, the parties will, in good faith, negotiate a valid and enforceable replacement term to express their intention.

18.2 This Agreement sets out the entire Agreement between the parties concerning all matters dealt with by it and supersedes any prior Agreement between the parties in regard to those matters.

18.3 Each party agrees that electronic signatures (regardless of the form of electronic signature utilised) can be used instead of physical signatures and will have the same force and effect as physical signatures and that no party can challenge the validity of this Agreement by virtue only of the electronic signing of the document.

- 18.4 To the extent that the description of the Livestock is inconsistent with the details included in the NVD in respect of this transaction, the NVD details prevail.
- Each signatory to this Agreement represents and warrants to each other party that:
- a) it has full power and authority to enter into and perform this Agreement;
 - b) where it is signing on behalf of a party, that it is duly authorised to execute this Agreement on behalf of that party and is operating within the scope of its authority;
 - c) it has been given the opportunity to obtain independent legal advice on the legal effect and consequences of entry into this Agreement, and to discuss it with such other persons as it wishes and it understands the terms of this Agreement and the consequences of signing this Agreement; and
 - d) it has executed this Agreement voluntarily and of its own free will.

18.5 The parties shall comply with all applicable Laws relevant to livestock sales, handling and transport, and meat sales including the Aus-Meat Code.

18.6 Except as stated in this Agreement, the terms of this Agreement can be amended only in writing, signed by the parties.

18.7 The waiver of a breach of any term of this Agreement will not be a waiver of any other breach of that term or the breach of any other term.

18.8 This Agreement is governed by, and will be interpreted in accordance with, the laws of the State of Victoria, Australia, and the parties submit to the jurisdiction of the courts there.

18.9 Other than as expressly provided for in this Agreement, no party may assign any of its rights, benefits or obligations under this Agreement without the written consent of the other party.

18.10 The Agent collects, uses, discloses and handles personal information in accordance with the *Privacy Act 1988* (Cth) and its privacy principles (as amended from time to time). Please see the Agent's Privacy Policy available on the Agent's website for information about the Agent's privacy processes.