

Terms of Trade

1 INTERPRETATION

Account means any monthly credit account you hold with RLL to purchase or sell Goods through us pursuant to these Terms.

CCLA means the Contract and Commercial Law Act 2017 and any amendments to that Act.

Credit Application means your application to open an Account.

Client or you means you as the purchaser or vendor (or both) of Goods through RLL as agent.

RLL, we or us means Rural Livestock Limited and includes any subsidiaries, successors or assigns and where applicable includes us acting as your agent.

PPSA means the Personal Property Securities Act 1999 and any amendments to that Act.

purchaser means the purchaser of the Goods.

vendor means the vendor of the Goods.

Goods means all goods, livestock, merchandise and services (including services provided for no fee) supplied or to be supplied by or through RLL to you, including:

- (a) the goods, merchandise, livestock or services described or referred to (whether by item, product class, make, label, kind or otherwise) in the delivery docket, invoice, credit note or like equivalent document that we give you; and
- (b) solely for the purposes of the application of the PPSA:
 - (i) in the case of livestock includes all unborn young and the natural increase of such livestock, all antlers, horns, other appendages, wool and hair (in each case, whether removed from the livestock or not) of such livestock, and all other produce and meat of such livestock; and
 - (ii) when you purchase any Good from us that are your inventory (as per the definition in the PPSA), then also inventory for the period you hold it as such; and
 - (iii) any objects, products, goods or mass which the goods or merchandise subsequently become a part of or an accession or accessory to; and
 - (iv) in the case of goods which are used up or consumed:
 - A. all resulting crops and plant product, whether harvested or not; and
 - B. all livestock, which are grown or improved by the use or consumption of such goods.

Terms means these terms of trade as amended from time to time.

2 APPLICATION

- 2.1 Receipt of these Terms by the Client shall be deemed to be acceptance of these Terms unless otherwise stated by us in writing. If you hold an account with us you are deemed to have received a copy of these Terms.
- 2.2 A provision of these Terms shall not apply only when determined so by us (for the avoidance of doubt, such determination by us shall in no way effect the enforceability of any other provision).
- 2.3 All transactions between the Client and RLL are governed by these Terms of Trade and any variation must be in writing to be valid. When you transact with us it is always on the terms set out in these Terms of Trade.
- 2.4 You confirm to us that we are able to receive and act on instructions from any employee, contractor, agent, director or office holder of a client company, trust or other non-personal entity where there is reasonable belief that that person is acting with the authority of the entity. You agree that we shall have no liability in respect of disputes that exist within a client organisation and that it is your obligation to notify us of any change in authorities or the manner in which we are authorised to receive instructions from you.

3 ACCOUNT

- 3.1 When setting up your Account you must inform us of all your contact details in full and also any information we would reasonably consider to be relevant to your credit worthiness or your ability to comply with your obligations under these Terms. You must thereon immediately inform us of any change to this information.
- 3.2 We may place a credit limit on your Account and, without giving notice to you, alter that credit limit. We shall have no liability (whether in contract, tort or otherwise) to you as a result of any credit limit placed on your Account.
- 3.3 We may without notice and for whatever reason freeze, close or suspend any or all of your Accounts, at which time all of your obligations to us under these Terms and any related contract continue to be in effect until we state otherwise in writing.
- 3.4 In addition to the above, we may at any time and on terms we consider appropriate:
 - (a) require you to provide a personal guarantee or procure you to have another person act as your guarantor in respect of your obligations to us; and/or
 - (b) without your prior consent, procure another person to provide a bond or other surety in an amount we specify to secure your obligations to us.

4 TERMS OF PAYMENT

- 4.1 Unless RLL specifies otherwise in writing you shall pay us the purchase price for any Goods, including any commission and associated charges (including GST), in full and without any set off or deduction within fourteen (14) days of the date of purchase as shown on the delivery docket, invoice or like document or as otherwise communicated by us to you. If you do not pay within 14 days then it is a breach of our agreement with you.
- 4.2 If you are the purchaser you may only make payment to RLL by way of credit if RLL has authorised your account for credit payments in writing.
- 4.3 RLL may charge interest on a daily basis on any overdue accounts or late payments for any Goods at RLL's current default rate as amended from time-to-time and published on our website, rurallivestock.co.nz, from time to time.
- 4.4 All amounts payable by you to us shall be paid in cleared funds and free from any set-off, counterclaim, deduction or security interest in those funds.
- 4.5 RLL may without prior notice deduct any or all amounts that you owe to us and off-set that amount against what we owe to you or the balance of any account you hold with us. RLL may at any time and without prior notice apply or appropriate any funds received from you in any manner RLL considers to be appropriate in the circumstances (including when amounts are owing by you in respect of more than one transaction and despite receiving any instructions from you to the contrary).
- 4.7 Where RLL acts as agent for both the purchaser and the vendor, we may sell the Goods to the purchaser for a price greater or less than that paid to the vendor and, without obtaining consent from either party, carry the loss or take the profit arising from such sale.
- 4.8 If you are the purchaser and we agree to credit the vendor and/or debit your account for any amount payable for the purchase price, you agree that there will be no reduction of the purchase price payable under the contract of sale between RLL and you and such purchase price will remain owing pursuant to these Terms.

- 4.9 If you are the vendor and we elect to credit your account for any amount payable of the purchase price, you agree that all of your rights under that contract of sale (including all rights in relation to amounts owing and any security interest in the goods sold) are deemed to be transferred to us in consideration of us crediting your account.

5 TITLE, RISK AND DELIVERY OF GOODS

- 5.1 Title to and ownership of the Goods passes to RLL at such time when, pursuant to clause 6.1, a contract has come into force between us and vendor (despite the fact that the vendor has retained possession of the Goods and/or may not have received any consideration for the Goods at that time or that the purchaser has already obtained possession of the Goods).
 - 5.2 Ownership of and title to all Goods remains with us and only passes to the purchaser once all moneys owed by the purchaser to us (including under any other account or money owing by you to us for any reason) is paid for in full (even if the purchaser mixes the Goods with other items, including (without limitation) those items described in the definition of Goods in clause 1).
 - 5.3 All Goods are at the purchaser's risk from the point they cross the tailgate onto the transporting vehicle or the point they are made readily available for collecting whether by the purchaser personally or by the purchaser's agent (including us) regardless of whether or not the purchaser takes possession at that time.
 - 5.4 RLL shall have no liability to the purchaser or vendor for delivery. Any delay in the delivery of any Goods for whatever reason. By the agreed delivery date means that the purchaser shall be liable for any reasonable storage costs incurred (including agistment fees) until delivery is able to be made at such time we consider to be reasonable in the circumstances.
 - 5.5 Until such time as title in the Goods has passed to the purchaser:
 - (a) the purchaser must hold the Goods in good order as our bailee and fiduciary agent; and
 - (b) the purchaser must ensure the Goods are stored in a way that avoids any damage or deterioration and so the Goods are identifiable from your own or anyone else's goods; and
 - (c) the purchaser must insure the Goods for their full insurable value and, if we require, have our interest in the Goods noted on your insurance policy; and
 - (d) notwithstanding section 109 of the PPSA, if a Default Event occurs we may repossess the Goods and dispose of them for our own benefit. In such case, we and/or our agents may at any time without prior notice to the vendor or purchaser, enter any place where we believe the Goods may be kept and remain there to take whatever action may be required to repossess the Goods. In such case the purchaser indemnifies us and our agents for all costs and liabilities (including our legal costs on a solicitor/client basis) in connection with the repossession, storage or resale of the Goods (including any shortfall arising from resale at a lower price).
 - 5.6 Before such time as title in the Goods has passed to the purchaser we authorise the purchaser to use the Goods in the ordinary course of business or sell them for full and fair consideration. Such authority is automatically revoked if a Default Event occurs or we revoke that authority by notice to the purchaser.
 - 5.7 If the purchaser uses or sells any or all of the Goods you agree that the proceeds of such sale or use (in whatever form) are our property and you must pay or transfer any or all of such proceeds to us on demand and any legal costs that we have incurred in relation to making such demand. Nothing in this clause limits any claim we may have against the purchaser for dealing with the Goods and we may sue the purchaser for the purchase price, any default interest owing by the purchaser and any legal costs that we have incurred in relation to enforcing our rights under this clause 5.7, even where ownership of and title to the Goods has not passed to the purchaser.
- ## 6 CONTRACT FOR SALE, PURCHASE AND CANCELLATION
- 6.1 If you are the vendor you agree that by communicating your decision to sell any specific Goods through us for an agreed purchase price (whether verbally or in writing) this brings a contract into force and such contract will be accepted by us, where we will subsequently provide you with a copy of the invoice, credit note, delivery docket or electronic confirmation. Any further terms or conditions on such document will form part of the contract (in addition to these Terms).
 - 6.2 If you are the purchaser you agree that by communicating an order to us to purchase any specific Goods (whether verbally or in writing) this brings a contract into force and such contract will be accepted by us where we will subsequently provide you with a delivery docket, invoice or electronic confirmation. Any further terms or conditions on such document will form part of the contract (in addition to these Terms).
 - 6.3 You acknowledge that by placing an order with us and our acceptance of your order does not guarantee our supply of any Goods. If we are unable to supply Goods at the stated quantity for any reason beyond our control, you acknowledge that we have no liability to you whatsoever.
 - 6.4 You may not cancel any order for Goods unless agreed otherwise by us in writing.
 - 6.5 If you are the vendor, without limiting any provisions of these Terms or any warranties given under any law, you give to RLL the following warranties in relation to the sale of any Goods:
 - (a) that all information you provide to us in respect of the Goods is complete and accurate in all material respects;
 - (b) that all livestock are tagged with NAIT complaint ear tags and the livestock are registered on the NAIT database;
 - (c) that the livestock are healthy and free from disease, pests, unwanted organisms and notifiable organisms as defined under the Biosecurity Act 1993, and that the livestock and any property on which the livestock has been depastured are not subject to any order or notice of direction (such as movement or control order) made by any regulatory authority (including the Ministry of Primary Industries).
- ## 7 DEFAULT EVENT
- 7.1 A Default Event means any of the following that occurs without our prior written consent:
 - (a) you fail to comply with these Terms, including failing to pay us on time or exceeding your approved credit limit
 - (b) we reasonably believe that you are unlikely to be able to immediately pay any sums owing to us; or
 - (c) anything you have told or tell us or any information you have given or give us, or which is given to us on your behalf, is untrue, misleading or deceptive in a material respect; or
 - (d) you no longer carry on business or threaten to cease carrying on business; or
 - (e) where you are a company, trust or other organisation, your ownership or effective control is transferred; or
 - (f) the nature of your business is materially altered; or
 - (g) any guarantor or other grantor of surety of your obligations under these Terms is in default with us, or the events in this clause apply to them.

- 7.2** If a Default Event occurs as defined by these terms then RLL (including our employees or agents) will be entitled to immediately and without your consent:
- suspend, cancel or revoke all or any part of any unperformed contract that we have with you; and
 - suspend or terminate the supply of Goods to you and any of our other obligations to you under these Terms; and
 - all amounts outstanding by you under any contract between us will, whether or not due for payment, immediately become due and payable; and
 - enforce any security interest or other security granted to us which secures your obligations to us; and
 - appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law; and
 - enter into any place where RLL understands or has reasonable cause to believe any Goods are kept and enforce any action RLL regards as appropriate in order to repossess the Goods and you agree to facilitate the repossession and/or removal of the Goods (including procuring any necessary consent or approval from a third party). For the purposes of this clause 7.2(f), you grant RLL (including its employees and agents) an irrevocable consent and an irrevocable licence to, without prior notice, enter any property that you own, lease or licence or otherwise occupy. You indemnify us (including our agents) against any cost or liability in connection with the repossession, storage or resale of the Goods (including any shortfall resulting from resale at a lower price and including our costs on a client/solicitor basis); and
 - sell or dispose any Goods in any manner and on any terms and conditions we consider to be appropriate in the circumstances and apply any proceeds to any debt you owe us under any account; and
 - charge interest on any amount outstanding, whether or not such amount is overdue, on a daily basis at our current default rate as published on our website ruralivestock.co.nz.
- 7.3** For the avoidance of doubt, we shall have no liability to you for any damage or loss due to us exercising our rights under this clause 7 and such rights and remedies are without prejudice any other remedies available to us.
- 8 CONFIDENTIALITY AND DISCLOSURE**
- 8.1** Any personal information we obtain about you relating to your Account or dealings with us (in any capacity) will only be used for any purposes related to your account or dealings with us (including any credit assessments, debt collection or legal proceedings). You authorise us to release your personal information to third parties for these purposes and agree that it will be accessible to and used by RLL employees, agents and contractors in RLL's ordinary course of business.
- 8.2** Both RLL and you agree to keep all information relating to each other's finances, accounts and commercial dealings fully confidential from third parties unless the written consent of the other party is obtained.
- 8.3** If you require us to undertake services for the purpose of complying with the National Animal Identification and Tracing Scheme (NAIT) then by doing so you have authorised RLL to access and use your personal information for purposes required by that scheme.
- 9 YOUR LIABILITY AS CLIENT**
- 9.1** You acknowledge that when we enter in to any transaction or contract as your agent you are bound by that transaction or contract, whether or not we have actual or ostensible authority to do so.
- 9.2** Where the Client is constituted by more than one persons, each persons' liability is joint and several (notwithstanding any individual or groups' willingness to be solely liable.)
- 9.3** Where the Client is a trust, each trustee is bound personally by these Terms. RLL must give prior written consent for any trustee to not be bound personally and note that trustee as an independent trustee. At the time of default the liability of an independent trustee will be limited solely to the Trust's assets but not where that trustee has been fraudulent, wilfully negligent, or acted in breach of trust or where that trustee has given a personal guarantee as to your obligations to us under any account or contract.
- 9.4** Except if RLL is fraudulent or wilfully negligent you indemnify us from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which we incur pursuant to these Terms.
- 10 WARRANTIES AND LIABILITY**
- 10.1** All statutory and other implied warranties are excluded to the greatest extent that it is permitted by law. Other than as required by law, we give no representation or warranty concerning any Goods' description, condition, encumbrance, quality or fitness for any purpose. You acknowledge you are solely responsible for satisfying yourself as to the condition, quality and fitness for purpose of the Goods.
- 10.2** RLL (including our agents) shall have no liability (whether in contract, tort or equity) to you or any other person for any loss, damage, injury, cost or expense suffered or incurred by that person in connection (directly or indirectly) with any contract for the sale or purchase of Goods or the supply or failure to supply any Goods or the purported exercise of our rights under these Terms except as otherwise explicitly stated in these Terms.
- 10.3** Part 3 of the CCLA is expressly contracted out of to the greatest extent possible.
- 10.4** You warrant to RLL each time you transact with RLL that you are solvent and able to meet your obligations as they fall due. Further you warrant on the same basis that you have made full disclosure to us of all and any information that you hold that may influence our willingness to transact with you and that you have specifically not withheld any information from RLL.
- 11 REPRESENTATION AND AGENCY**
- 11.1** RLL may act for either or both the vendor and/or purchaser in respect of the sale and purchase of any Goods. In such case RLL may deduct commission and any other monies owed to it from the proceeds of sale and from any or all of the accounts held by vendor and/or purchaser.
- 11.2** Where RLL agrees to act as agent for a party under a contract of sale of Goods, we have no obligation to pay or credit the amount payable under that contract of sale until we have received the purchase price from the purchaser.
- 11.3** Where RLL is acting as agent any person dealing with RLL in that capacity agrees that it will not make or support any claim or proceeding against RLL.
- 11.4** Where RLL is acting as the vendor's agent the purchaser shall pay all amounts owed to the vendor to RLL who would then hold that money on behalf of the vendor (subject to any right of set-off). RLL may elect to pay or credit the vendor before receiving payment from the purchaser. In such circumstances, the purchaser acknowledges it will not be released from any liability and the vendor's rights under the contract of sale are deemed to be transferred to RLL.
- 11.5** When acting as agent RLL may in its sole discretion register a security interest (including a financing statement) on behalf of a vendor or purchaser but has no obligation to do so. If you are the vendor, you warrant that all livestock offered for sale at auction or for private sale is free of any security interests, liens, charges or other encumbrances. The vendor must at the request of RLL or the purchaser within 3 working days provide written confirmation of the release of any security noted on the PPSR Register that applies to the livestock sold.
- 11.6** You acknowledge and agree that RLL may:
- have a pecuniary interest in the sale of any Goods and in relation to any transaction that it acts as agent (whether for you and/or for another party to the transaction);
 - receive and retain from the sale of any Goods or when acting as agent, commissions, rebates, discounts, allowances or fees or other remuneration which have not been disclosed to you; and
 - be paid by a third party an amount which may be retained by RLL as a benefit received from the sale of Goods from time-to-time and you agree that RLL has no obligation to disclose this to you.
- 11.7** You acknowledge and agree that RLL 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, whether as agent, vendor or purchaser.
- 11.8** Without limiting any other provision under these Terms, you acknowledge and agree that in respect to any sale of livestock that is subject to a live export arrangement or contract:
- RLL shall not be a party to the relevant live export arrangement or contract;
 - Any contract or transaction that RLL enters into for the sale of your livestock for live export shall be only in its capacity as your agent and you will be solely bound by that transaction or contract, whether or not we have actual or ostensible authority to enter into that transaction or contract as your agent;
 - In addition to acting for you as agent, RLL may also act for the purchaser of the livestock, and may deduct commission and any other monies owed to it from the proceeds of sale and from any or all of the accounts held by you or the purchaser;
 - That the risk in the livestock is subject to the relevant terms of the live export contract and that this may mean that you take the risk in the livestock being delivered to the relevant destination;
 - We have no obligation to pay or credit the amount payable under the relevant live export contract unless and until we have received the purchase price from the purchaser or its agent and we make no assurances or guarantees that such payment will be made by the purchaser or its agent;
 - It is your sole responsibility to understand that terms of, and ensure compliance with, the vendor obligations and warranties under the live export contract;
 - You are solely responsible for meeting any Government or regulatory requirements that apply in relation to live export of livestock;
 - your livestock may be rejected and not paid for if it does not meet the strict requirements set out in the live export contract or otherwise does not meet the purchaser's specified requirements;
 - You, and not RLL, are responsible for enforcement of the term of the live export contract should you consider it necessary to take steps to enforce the terms of such contract;
 - you indemnify us from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which we incur pursuant to any live contract agreement or transaction that we enter into as your agent; and
 - you will not make or support any claim or proceeding against RLL in relation to any live export contract.
- 12 PERSONAL PROPERTY SECURITIES ACT 1999**
- 12.1** As security for the payment of the purchase price for any Goods supplied or to be supplied by RLL you agree to grant to us a security interest in all Goods (and all proceeds) so as to secure all obligations and monies owing under these Terms to RLL.
- 12.2** You will do all things necessary to enable RLL 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 Goods and any proceeds. Whether acting as an agent for the vendor or purchaser, RLL may at its discretion register a security interest on the PPSR as a secured party.
- 12.3** Unless you obtain written consent from us:
- sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA do not apply; and
 - Your rights in sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA do not apply.
- 12.4** Where any goods become part of another good, product or mass, then nothing in these Terms can be interpreted as restricting the application of sections 82 to 86 of the PPSA.
- 12.5** You waive your right under section 148 of the PPSA to receive a copy of any verification statement relating to any financing statement or financing change statement registered by us.
- 12.6** For the avoidance of doubt, any accounts receivable or chattel paper are subject to our security interest as proceeds of the Goods.
- 12.7** We reserve the right to use the benefit of any security interest, security agreement, charge, mortgage or other encumbrance provided by you or any guarantor or other grantor of surety to us to secure any amount owed to us and your obligations under these Terms.
- 12.8** You shall not, without our prior written consent, grant any third party any security interest or lien over the Goods whatsoever or procure anyone or do anything that would have this effect until such time as payment has been made in full for the Goods.
- 12.9** You acknowledge and agree that RLL 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, whether as agent, vendor or purchaser.
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- 13.6** For the avoidance of doubt, any accounts receivable or chattel paper are subject to our security interest as proceeds of the Goods.
- 13.7** We reserve the right to use the benefit of any security interest, security agreement, charge, mortgage or other encumbrance provided by you or any guarantor or other grantor of surety to us to secure any amount owed to us and your obligations under these Terms.
- 13.8** You shall not, without our prior written consent, grant any third party any security interest or lien over the Goods whatsoever or procure anyone or do anything that would have this effect until such time as payment has been made in full for the Goods.
- 14 GENERAL**
- 14.1** Amendment: RLL reserves the right to amend these Terms at any time at its sole discretion by either giving written notice to you of such amendment or publishing amended Terms on our website, ruralivestock.co.nz. The amended Terms will take effect from the time they are loaded onto our website.
- 14.2** Assignment: You shall not assign or transfer any right or benefit you have under these Terms. We may transfer any rights and obligations under these Terms by notifying you in writing.
- 14.3** Enforcement: You shall pay us on demand all costs (including legal costs on a solicitor/client basis) incurred by us in connection with any default by you or enforcement action taken by us.
- 14.4** Entire Agreement: Together the Credit Application and these Terms constitute the entire agreement between us, you and any Guarantor(s) unless otherwise stated by RLL in writing.
- 14.5** Our Decisions and No Waiver: any right, power or benefit held by us under these Terms is exercisable at our complete discretion. If we delay or communicate to you or anyone else that we will not exercise such right, power or benefit this will in no way restrict us from doing so at a later date at our absolute and unfettered discretion unless we provide an unconditional waiver in writing.
- 14.6** Severability: each provision of these terms and conditions are severable in whole or in part and if any part of these Terms is found to be illegal, unenforceable or invalid, the remaining Terms are not affected.
- 14.7** Typographical Errors: We reserve the right to correct any typographical or clerical errors in any prices quoted or contained in an order or quotation.

- 14.8** Inconsistency: if there are any inconsistencies between these Terms and the terms of any order that may be understood by you or with any delivery docket or invoices or other communication by or to us or you, these Terms will prevail unless we specify otherwise.
- 14.9** Consumer Guarantees Act and Fair Trading Act: You acknowledge and agree: that the Goods are both supplied and acquired in trade; that your Credit Application is made for business/trade purposes; that the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act; to contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act; that you have not relied on any representations made by RLL in entering into these terms or purchasing the Goods; that this clause is fair and reasonable; and that you had the opportunity to seek legal advice in respect of these terms.
- 14.10** Disputes: you agree that any dispute that arises between you and us will in the first instance be discussed between openly and in the spirit of good faith.
- 14.11** Governing Law: these Terms and any related contract or agreement are governed by the laws of New Zealand.
- 14.12** Relationship: nothing in these terms gives rise to any partnership, joint venture, employment relationship between you and RLL. An agent or representative of RLL is not authorised to make any representations, warranties or agreements that RLL has not confirmed in writing. RLL is not bound by unauthorised statements.
- 14.13** Electronic communications and signatures: You consent to receive communications from us electronically and agree that all agreements, forms, orders notices disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Electronic signatures shall be deemed to be accepted by you and RLL provided that the parties have complied with the relevant provisions of the CCLA.