

WELLARD RURAL EXPORTS PTY LTD
LIVESTOCK EXPORT TERMS AND CONDITIONS
Version 1.1 May 2013

1. **Definitions:**

"Approved Export Program" means an export program relating to the supply of Livestock to the Destination Country which complies with all relevant laws and has been approved by DAFF or any other relevant government agency.

"Buyer" means the buyer named in the Proforma Invoice.

"Confidential Information" of the Seller or its related bodies corporate including information, in any form or media, about the business, systems or affairs of the Seller and the fact that the Parties are Parties to this Contract which is or has been:

- (a) disclosed to the Buyer under or in connection with this Contract, whether orally, electronically, in writing or otherwise; or
- (b) learnt or acquired by the Buyer in the performance of this Contract other than any such information which:
 - (i) was in the public domain at the time of its provision;
 - (ii) became part of the public domain after its provision, otherwise than through a disclosure by the Buyer or any person to whom the Buyer has disclosed that information;
 - (iii) is or came lawfully into the possession of the Buyer otherwise than as a result of a disclosure in breach of an obligation of confidence;
 - (iv) is legally required by the Buyer to be disclosed.

"Contract" has the meaning set out in clause 2 of these terms and conditions.

"DAFF" means the Department of Agriculture, Fisheries and Forestry

"Demurrage Fees" means the fees payable by the Buyer in accordance with clause 7(g) of these terms and conditions nominated in the Proforma Invoice.

"Destination Country" means the country into which the Livestock will be delivered nominated in the Proforma Invoice.

"ESCAS" means an export supply chain assurance system

"Livestock" means the livestock to be supplied by the Seller to the Buyer pursuant to the Contract described in the Proforma Invoice.

"Loss" means any and all losses (including loss of profit and loss of expected profit), claims, actions, liabilities, damages, expenses, diminutions in value or deficiencies of any kind or character, whether or not asserted on or before the expiration or termination of this Contract including, without limitation, all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid on settlement of claims or actions;

"Parties" means the Seller and Buyer and **"Party"** means either Seller or Buyer as the context requires.

"Port of Discharge" means the port of discharge nominated in the Proforma Invoice.

"Price" means the price of the Livestock payable by the Buyer to the Seller described in the Proforma Invoice.

"Proforma Invoice" means the document issued by the Seller to the Buyer containing the particulars of the Contract including (without limitation) the details of the Seller and the Buyer, the Livestock, Delivery Dates and the Price, signed by both Parties.

"Quarantine Period" means the period required for the Livestock to be in quarantine after discharge from the vessel by the law of the Destination Country.

"Seller" means Wellard Rural Export Pty Ltd (ACN 109 866 328) its nominated agents, successors and assigns.

"Special Conditions" means special conditions of the Contract contained in the Proforma Invoice.

"terms and conditions" means these terms and conditions as amended from time to time.

2. **Legal Contract:** These terms and conditions together with the Proforma Invoice, the Special Conditions (if any) shall be the legal Contract between Buyer and Seller (the **Contract**). The Contract shall not include any terms and conditions of Buyer including (without limitation) the Buyer's purchase order even if received by the Seller after this Contract is delivered to the Buyer.
3. **Amendment:** These terms and conditions may be amended by the Seller from time to time by the Seller giving notice of the amendment to the Buyer. Notice is deemed given (whether or not actually received) when the Seller publishes the amended terms on its website at www.wellard.com.au ("Website"). The amended terms and conditions shall apply to all future supplies of Livestock from the Seller to the Buyer from the date on which they are published on the Website. It is the responsibility of the Buyer to ensure it has obtained a copy of the most recent version of the terms and conditions from the Website.
4. **Contract to Sell and Purchase:** The Seller agrees to sell to Buyer and Buyer agrees to purchase the Livestock for the Price in accordance with the Contract.
5. **Conditions of Sale:** The Parties acknowledge and agree that this Contract is conditional upon:
 - (a) the Seller being granted and maintaining all government licences, certificates, approvals and authorities including (without limitation) an export licence, as may be required from time to time in order for the Seller to export the Livestock to the Destination Country; and
 - (b) The Seller having and maintaining an Approved Export Program.
 - (c) Any other conditions noted in the Proforma Invoice.
6. **Varying Quantity of Livestock:** The Seller reserves the right to vary the quantity of Livestock to be delivered by the amount nominated in the Proforma Invoice and if no amount is nominated then by 10% more or less.
7. **Delivery Terms:**
 - (a) Subject to these terms and conditions and availability of shipping space, and provided that the Buyer has complied with its obligations under the Contract the Seller shall endeavour to deliver the Livestock to Buyer at the times nominated in the Proforma Invoice.
 - (b) The Buyer acknowledges that the delivery times in the Proforma Invoice are approximate times only and the Seller reserves the right to change these delivery times as well as any vessel, or shipping line nominated in the Proforma Invoice and shall not be liable to the Buyer for any Loss incurred by the Buyer as a result of such change.
 - (c) The Seller will notify the Buyer of any changes to delivery within a reasonable time after loading.
 - (e) Buyer must take delivery of the Livestock delivered in accordance with the Contract or as otherwise agreed by the Parties. If the Buyer does not do so then in addition to any other rights or remedies available to the Seller the Buyer must indemnify the Seller against all Loss suffered by the Seller as a result of the Buyer's failure to take delivery.
 - (f) The Buyer must ensure Livestock are unloaded from the vessel within the time for discharge specified in the Proforma Invoice and if no time is specified then within 24 hours of arrival.

- (g) If the Buyer fails to comply with sub-clause (f) above then in addition to any other rights the Seller may have the Seller shall have the right to charge the Buyer the Demurrage Fee.
- 8. Acceptance and Time limit on claims and action:** Buyer agrees that:
- (a) Seller must be notified in writing of any claim in relation to this Contract within 7 days of discharge of Livestock from the vessel at the Port of Discharge;
- (b) unless notice is given pursuant to sub-clause (a) above, Livestock are deemed to have been delivered in accordance with this Contract.
- (c) in all circumstances, Seller shall be discharged from all liability whatsoever in relation to this Contract unless proceedings as referred to in clauses 17(b) or 17(c) are brought by Buyer within 7 days of discharge of the Livestock from the vessel at the Port of Discharge
- 9. Insurance, Transport etc Costs:** Unless otherwise stated in the Proforma Invoice:
- (a) The Seller shall be responsible for the costs associated with loading, insurance from the loading port to the Port of Discharge, freight and portage.
- (b) Buyer will be responsible for insurance costs from when the Livestock cross the shipboard at the Port of Discharge and all other costs whatsoever from this point relating to the Livestock including (without limitation), unloading costs, taxes, excises and duties.
- 10. Price and Payment for Livestock:**
- (a) Buyer must pay to Seller the Price at the times and in the manner set out in the Proforma Invoice
- (b) payment must be paid in full notwithstanding any counterclaim or set-off Buyer may claim against Seller.
- (c) any payment due and not paid in full and on time will attract interest at the rate of 15% of the overdue amount per annum, calculated daily.
- 11. Withholding of Livestock**
- Without limiting any other rights of the Seller under this Contract if the Buyer fails to pay for Livestock delivered when payment is due the Seller may (at its discretion):
- (a) withhold any further supply of Livestock until all outstanding payments have been received; and
- (b) sell any undelivered Livestock to a third party.
- 12. Risk and title to Livestock:**
- (a) All legal and equitable title to the Livestock remains with the Seller until payment in full is received from the Buyer.
- (b) The Buyer must take all actions necessary to protect and maintain the Seller's title to the Livestock, including storing Livestock separate from other Livestock, always identifying Livestock as property of the Seller and insuring the Livestock.
- (c) Until title in Livestock passes to the Buyer, the Seller or its agent shall be entitled at any time to require the Buyer to deliver up the Livestock to the Seller and the Seller has the right to enter upon any premises where Livestock is located to repossess the Livestock (without being liable for any damage caused by so doing) where payment for the Livestock is overdue by fourteen (14) days. The Buyer must not sell, encumber, pledge or in any way charge by way of security any of the Livestock until all Livestock has been paid for.
- (d) Risk in the Livestock shall pass to the Buyer upon deliver .
- 13. Responsibilities and Warranties of Buyer:** Buyer:
- (a) warrants that it has or will have, prior to delivery, all approvals, licenses, permits, authorisations and/or any other documentation required for the lawful importation of the Livestock into the Destination Country.
- (b) must keep the Seller informed of all relevant laws of the Destination Country relating to the export of the Livestock in accordance with this Contract and any other matter which is or may be material to this Contract.
- (c) must cooperate with and provide all reasonably requested assistance and information to the Seller in order for the Seller to comply with the terms of its export licence or Approved Export Program and with any directions, orders, rules or instructions of a relevant governing body or authority which may be imposed from time to time relating to this Contract or to the Approved Export Program including (without limitation), where necessary, entering a written agreement with the Seller relating to an ESCAS in respect of the supply of the Livestock under this Contract on the terms required by the Seller.
- (d) must comply with all laws of the Destination Country relating to the importation of the Livestock and the performance of this Contract.
- (e) Must ensure that the discharge port is suitable in all respects including (without limitation) berth length and channel depth for draft to accommodate the nominated vessel for discharge
- (f) warrants that all the information provided to the Seller in relation to this Contract is true, and accurate
- (g) warrants that it has the legal capacity and authority to enter into this Contract and to be bound by its terms.
- (h) warrants that the person signing this Contract has authority to do so on behalf of the Buyer and to bind the Buyer in contract.
- (i) must meet of all the conditions to be met on its part contained in the Proforma Invoice.
- 14. Force Majeure:**
- (a) In the event that the Seller is hindered, restricted or prevented from performing any of its obligations under this Contract due to a Force Majeure Event the Parties agree to make all reasonable efforts to find a solution however if the Force Majeure Event continues for a period of 45 days the Seller may (at its discretion) immediately terminate the Contract by written notice to the Buyer without liability.
- (b) "**Force Majeure Event**" means any event beyond the reasonable control of the Parties including (without limitation) any rain, flood, fires, storm, earthquake, act of God or any action or inaction (including laws, regulations, ruling, disapprovals or failure to approve) of any government or agency whether national, municipal or otherwise including (without limitation) the refusal of any relevant government agency to grant or permit the Seller to export the Livestock to the Destination Country.
- 15. Seller Warranties:** To the maximum extent permitted by law and except as expressly provided in this Contract the Seller makes no warranties in respect of the Livestock
- 16. Liability and Indemnity:**
- (a) Except to the extent caused by the gross negligence or fraudulent act or omission or material breach of this Contract by Seller, Seller shall have no liability to Buyer or third parties for any Loss suffered by the Buyer whatsoever:
- (i) in relation, directly or indirectly, to the Livestock or provision or non-provision of the Livestock;
- (ii) for circumstances beyond Seller's control; or
- (iii) in relation to acts or omissions of Buyer or any third party, and Buyer shall indemnify and hold Seller harmless from such liability.
- (b) In all circumstances, damages recoverable by Buyer in connection with this Contract shall not include claims for damages for special, punitive, indirect or consequential loss including (but not limited to) loss of

- profits or expected business opportunity, punitive or exemplary damages
- (c) Buyer must indemnify the Seller against any Loss suffered by the Seller arising from a breach of warranty or other term of this Contract by the Buyer, including (without limitation) Seller's debt collection and legal expenses in recovering or attempting to recover monies owed to Seller.
17. **Dispute Resolution:** Any dispute, controversy or claim arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be resolved in the following order:
- (a) The disputing Party must provide the other Party with written notice outlining the details of the dispute (Notice of Dispute).
- (b) within ten (10) days of a Party receiving a Notice of Dispute a representative nominated in writing by each Party must meet in Australia and attempt to resolve the dispute
- (c) If the dispute has not been settled within fourteen (14) days (or within such period agreed to by the Parties) of the meeting referred to in sub-clause (b) the matter will be referred (by either Party) to the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules for mediation
- (d) if the dispute has not been settled within 60 days following the written invitation to mediate or within such other period as agreed by the Parties in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. Mediations and arbitrations shall be administered by ACICA in Perth, Australia in English.
- (e) The Parties agree to act in good faith towards each other and in the spirit of mutual trust and cooperation in the negotiation of a dispute relating to this Contract.
18. **Termination:** The Seller may, in its sole discretion, immediately terminate this Contract (without any further liability) if any of the following apply:
- (a) the Buyer breaches a warranty provided in this Contract;
- (b) defaults in the performance of this Contract in any respect and the Seller has issued a notice of default requiring the Buyer to rectify the default within the period specified in the default notice and the default remains unrectified within the period specified in the default notice
- (c) the Buyer becomes insolvent, has a receiver, manager, administrator, liquidator or other controller appointed over it or its assets or it makes composition with its creditors.
- (d) In accordance with any other clause of the Contract which allows the Seller to immediately terminate the Contract.
- (e) The Seller's Approved Export Program is cancelled, suspended or revoked.
19. **Miscellaneous:**
- (a) Reference in this Contract to the singular includes the plural, and reference to any party includes the party's successors, administrators, personal representatives and assigns.
- (b) In the event of an inconsistency between the documents that make up the Contract the following order of priority shall apply:
- (i) Special Conditions;
- (ii) Proforma Invoice;
- (iii) terms and conditions
- (c) Unless otherwise specified in these terms and conditions a notice to be served under this Contract shall be deemed to have been duly served. If it is in writing and is sent to the address in the Proforma Invoice for each Party by certified mail, facsimile, personal delivery or email provided there is proof of delivery of the email.
- (c) The Buyer may not assign any obligation under this Contract without the written consent of the Seller.
- (d) If any provision or part provision of this Contract is invalid, unenforceable or illegal then it shall be deemed deleted from this Contract and the remaining provisions and part provisions continue to apply with full force and effect.
- (e) The terms of this Contract may only be waived or varied by writing signed by any executive officer of both Parties or by a person duly authorised by each party to do so.
- (f) Any omission by Seller to enforce a provision of this Contract shall not operate as a waiver by Seller and will not prejudice the rights of Seller to enforce any of the provisions of this Contract.
- (g) All rights and remedies expressly reserved to Seller herein are without prejudice to any other right or remedy available to Seller.
- (h) The Buyer agrees that it will not disclose to any third party any Confidential Information of or relating to the Seller or the Seller's related bodies corporate which has been disclosed to it or which has come into its possession as a result of this Contract including the terms of this Contract or the negotiations preceding this Contract.
- (i) These terms and conditions shall apply to all future contracts between the Seller and the Buyer regarding the sale of Livestock unless expressly excluded.
- (k) The authentic text of this Contract is the English language version. Any translation of this Contract prepared by or on behalf of either party for any purpose does not control the interpretation or construction of this Contract.
- (l) The Contract contains the entire agreement between the Parties concerning its subject matter and excludes all discussions and negotiations between the Parties unless expressly included in the Contract.
- (m) This Contract is governed by the law in force in Western Australia and Buyer submits to Courts of that jurisdiction