

## TERMS OF SALE

These Terms of Sale and any additional terms on any applicable Livestock Sale Docket, sale or delivery note, receipt, invoice or other relevant document prepared by the Company in relation to any Sale apply to the purchases of Goods or services by or from the Company, whether such Sale is completed by written agreement, electronic record or oral communication unless stated otherwise by the Company.

### Definitions

- 1.1 *Company* means PGG Wrightson Limited and includes each of its subsidiaries.
- 1.2 *Goods* means all goods and services, and is deemed to include all goods and services described or referred to in any invoices, statements or other records prepared by the Company (and the description or details set out or referred to in any such records).
- 1.3 *Prime livestock* means livestock sold to a meat processor for slaughter.
- 1.4 *Purchaser* means the purchaser of Goods (being the Company's Principal if it is acting as agent).
- 1.5 *Sale* means any sale of Goods where the Company is either the Purchaser or Vendor or is acting as agent for either or both of the Purchaser or Vendor.
- 1.6 *Vendor* means the seller of the Goods (being the Company's Principal if it is acting as agent).

### Application

- 2.1 *Terms of Sale:* Receipt of these Terms of Sale by the principal Vendor or Purchaser shall be deemed to be acknowledgement of such Terms of Sale.
- 2.2 *Finance account holders:* Clauses 3, 5.2, 5.3 and 9 do not apply to any purchase by a Purchaser with formal credit arrangements with the Company. Those arrangements supplement the balance of these Terms of Sale.
- 2.3 *Prime livestock sales:* These Terms of Sale (other than clause 10) do not apply to any sale of prime livestock if the Purchaser has procurement conditions. Subject to clause 10, those conditions will apply instead.
- 2.4 The Purchaser cannot cancel any purchase order for Goods accepted by the Company and is bound to pay the quoted price.

### Terms of payment

- 3.1 Unless the Company specifies otherwise, the purchase price and any commission and associated charges, plus GST, must be paid by the Purchaser to the Company (subject to clause 10.4) for:
  - (a) livestock (other than for prime livestock) and grazing, within 14 days of purchase;
  - (b) prime livestock, within 14 days of slaughter; and
  - (c) other Goods, by the 20th of the month following purchase.
- 3.2 Interest on overdue payments may be charged from the time of purchase on a daily basis at the rate then charged by the Company.
- 3.3 All amounts payable to the Company shall be paid in full without any set-off or deduction.

### Terms specific to seed, plant stock & sprays

- 4.1 The Company understands all seeds, plants, bulbs and tubers have been taken from reliable stocks, but does not guarantee that they are described accurately or uncontaminated and accepts no liability in relation to any planting or crop.
- 4.2 As the composition, use and effect of sprays and hormone chemicals is outside the Company's control, the Purchaser agrees that it will not rely on any representation by the Company, or make or support any claim against the Company, concerning any sprays or hormone chemicals supplied by the Company.
- 4.3 If this invoice/statement or any relevant document refers to Royalty Conditions for seed, that seed is a PROTECTED SEED VARIETY and may not be used for seed production or re-sold without the Plant Breeder's written consent. If this is unacceptable, the seed may be returned unopened within 7 days for a full refund.

### Title, risk and delivery

- 5.1 All Goods are at the Purchaser's risk:
  - (a) in the case of livestock, upon crossing the tailgate of the carrier. The Vendor will load the livestock on the carrier and will adequately care for them until then; and
  - (b) for other Goods, from the point of loading onto the carrier or being made available for uplifting by the Purchaser.
- 5.2 Ownership of and title to all Goods shall remain with the Vendor and not pass to the Purchaser until they are paid for in full.
- 5.3 Until title passes to the Purchaser:
  - (a) the Purchaser shall hold the Goods as bailee of the Vendor; and
  - (b) regardless of s109 of the PPSA, the Vendor may repossess the Goods and dispose of them for its own benefit. For that purpose the Vendor (and its agents) may at any time without notice enter any place where it believes the Goods may be kept to inspect the Goods and/or take whatever action may be required to repossess the Goods. The Purchaser indemnifies the Vendor and its agents for all costs and liabilities incurred in connection with the repossession, storage and/or resale of the Goods (including any shortfall from resale at a lower price).
- 5.4 The Company shall be in no way liable for any delay in the date of delivery of any Goods. Where the Purchaser does not take delivery of the Goods by the delivery date specified, the Purchaser shall pay reasonable storage costs until such time as the Purchaser accepts the Goods.

### Supply for business purposes

- 6.1 The Purchaser agrees that where all Goods are acquired for the purposes of a business the Consumer Guarantees Act 1993 will not apply.

### Purchaser's right to compensation

- 7.1 Subject to clause 10, if the Company (and not any vendor, manufacturer or other person) is responsible for any Goods being defective or not materially conforming to the Company's description, the Company will at its option:
  - (a) repair or replace the defective Goods or re-perform the service; or

- (b) pay compensation not exceeding the purchase price for the Goods. This is the Purchaser's sole right for compensation from the Company.

### Warranties and the Company's liability

- 8.1 All statutory and other implied warranties (other than title to the Goods) are excluded to the extent lawful.
- 8.2 Other than as required by law, the Company gives no representation or warranty concerning any Goods' condition, quality or fitness for any purpose.
- 8.3 Except as set out in clause 7, the Company (and its agents) will not be liable in any way (including negligence, tort and equity) to any Vendor, Purchaser or other person in connection with Goods supplied or not supplied or the purported exercise of the Company's rights under these terms.
- 8.4 Notwithstanding anything in these Terms of Sale, the Company (and its agents) will never be liable in connection with any Goods supplied or not supplied or the purported exercise of the Company's rights under these Terms of Sale for any:
  - (a) loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages;
  - (b) amount exceeding the purchase price paid for those goods; or
  - (c) amount not claimed within 7 days of the liability arising.
- 8.5 If the Vendor cannot provide the agreed quantity of Goods for any reason outside its reasonable control, the Vendor is not liable for that shortfall and the Purchaser must take delivery of and pay for the lesser quantity the Vendor is able to supply.

### Personal Property Securities Act 1999

- 9.1 The Purchaser grants to the Vendor a security interest in all Goods supplied or to be supplied by the Vendor to secure all payments under these Terms of Sale. The Purchaser will do all things necessary for the Company to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the Goods and their proceeds. The Company may at its sole discretion register a security interest on behalf of the Vendor (where it is acting as agent).
- 9.2 Nothing in sections 114(1)(a), 117(1)(c), 133 or 134 of the Personal Property Securities Act 1999 (PPSA) applies. The Purchaser's rights in sections 116, 119, 120(2), 121, 125 to 127, 129, 131 and 132 of the PPSA do not apply unless the Company is the Purchaser.

### The Company as agent

- 10.1 *Agent:* The Company may act for either or both of the Vendor or Purchaser in respect of any Sale.
- 10.2 *Company not liable as agent:* When acting as an agent for either the Vendor or Purchaser (the Principal), the Company is deemed not to be responsible or liable in any way for anything done or not done by or on behalf of the Principal, including non-payment of any amount owed by the Principal. The Company gives no assurance as to the financial or other position of the Principal.
- 10.3 *Claims against Principal only:* Each Principal dealing with the Company acting as agent agrees that it will not make or support any claim or proceeding against the Company.
- 10.4 *Payment:* Unless otherwise specified, where the Company acts as agent the Purchaser will pay all amounts owed to the Vendor:
  - (a) for prime livestock, direct to the Vendor;
  - (b) for other Goods, to the Company which will then promptly account to the Vendor for that amount subject to any right of set-off. The Company may choose in its sole discretion to pay the Vendor before receiving full payment. In such case the Purchaser will not be released from any liability and the Vendor's rights under the contract of sale are deemed to be transferred to the Company.
- 10.5 *Commission:* The Company may deduct commission owed by the Vendor from the proceeds of Sale and by the Purchaser from any account the Purchaser has with the Company. The Company may deduct commission from both the Purchaser and Vendor if acting as agent for both the Vendor and Purchaser in respect of any Sale.
- 10.6 *Purchase Price:* Where the Company acts as agent for both the Vendor and Purchaser in respect of any Sale, the Company may sell the Goods to the Purchaser for a different purchase price than that paid to the Vendor and in such case the Company shall carry the loss or take the profit arising from such difference.
- 10.7 *Vendor information:* Where the Company is acting as agent for a Vendor, the Vendor warrants that it has provided accurate and complete information concerning the Goods. The Company is not required to verify that information.

### Miscellaneous

- 11.1 *Enforcement:* The Purchaser will pay the Company on demand all costs (including legal costs on a solicitor/client basis) incurred by the Company in connection with any default by the Purchaser.
- 11.2 *Entire agreement:* These Terms of Sale (and any incorporated document including any formal credit arrangements) are the entire agreement between the parties, and replace all representations, agreements and other communications made by the Company.
- 11.3 *No waiver:* The Company shall be deemed not to have waived any right to do anything unless that waiver is in writing and signed by an authorised manager of the Company.
- 11.4 *Severability:* If any part of these Terms of Sale is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms of Sale are not affected.
- 11.5 *Variation:* The Company may vary these Terms of Sale by disclosing such varied terms to the principal Vendor or Purchaser at any time.