

TERMS OF TRADE

The following Terms of Trade apply to all purchases of Goods or services by the Applicant from the Company (including purchases on credit) whether such purchases are completed by written, electronic or oral communication.

Definitions

- 1.1 *Applicant* means any purchaser of Goods or services from the Company.
- 1.2 *Application* means an application to open a monthly charge account ("Account") pursuant to these Terms of Trade with the Company.
- 1.3 *Company* means PGG Wrightson Limited and includes each of its subsidiaries.
- 1.4 *Goods* means all Goods and services purchased from the Company, 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).
- 1.5 *Vendor* means the Company or another seller of the Goods (being the Company's principal if the Company is acting as agent).

Application

- 2.1 The Applicant acknowledges that the Application and these Terms of Trade apply to every purchase of Goods made by or on behalf of the Applicant from the Company.
- 2.2 The Applicant shall immediately notify the Company in writing of any change to its name or to any of the other information given on this application.
- 2.3 The Applicant cannot cancel any purchase order for Goods accepted by the Company and is bound to pay the quoted price.

Limits

- 3.1 The Company may impose a credit limit on the Account and may change that limit from time to time without prior notice.

Terms of payment

- 4.1 Unless the Company specifies otherwise, the purchase price for any Goods and any associated charges, plus GST, must be paid by the Applicant to the Company (subject to clause 14.4) for:
 - (a) livestock, grazing and Goods sold at auction, within 14 days of purchase; and
 - (b) other Goods, by the 20th day of the month following purchase.
- 4.2 Interest on overdue payments will be charged on a daily basis at the rate then charged by the Company.
- 4.3 All amounts payable to the Company shall be paid in full without any set-off or deduction.

Title, risk and delivery

- 5.1 All Goods are at the Applicant's risk:
 - (a) in the case of livestock, upon crossing the tailgate of the carrier. The Vendor will load the livestock on their 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 Applicant until they are paid for in full.
- 5.3 Until title passes to the Applicant:
 - (a) the Applicant 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 and take whatever action may be required to repossess the Goods. The Applicant indemnifies the Company and its agents for all costs and liabilities in connection with the repossession, storage and/or resale of the Goods (including any shortfall arising 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 Applicant does not take delivery of the Goods by the delivery date specified the Applicant shall pay reasonable storage costs until such time as the Applicant accepts the Goods.

Personal Property Securities Act 1999

- 6.1 The Applicant 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 Trade. 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).
- 6.2 Nothing in sections 114(1)(a), 117(1)(c), 120, 122, 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.

Supply for business purposes

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

Privacy

- 8.1 The Applicant and each Guarantor acknowledge that the Company is the collector and holder of the information provided in the Application form or obtained pursuant to the authorisation in clause 2.2 ("the Applicant's Information").
- 8.2 The Company may use and disclose the Applicant's Information and any other information collected by the Company about the Applicant for any purpose relating to:
 - (a) the provision of credit by the Company to the Applicant including the administration and management of the Applicant's accounts with the Company;
 - (b) market research conducted by or on behalf of the Company; and
 - (c) direct marketing and the offering to the Applicant of additional credit facilities or the Goods of the Company.

Applicant's right to compensation

- 9.1 Subject to clause 15, 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 Applicant's sole right for compensation from the Company.

Warranties and the Company's liability

- 10.1 All statutory and other implied warranties (other than title to the Goods) are excluded to the extent lawful.
- 10.2 Other than as required by law, the Company gives no representation or warranty concerning any Goods' condition, quality or fitness for any purpose.
- 10.3 Except as set out in clause 9, the Company (and its agents) shall not be liable in any way (including negligence, tort and equity) to the Applicant or any other person in connection with Goods supplied or not supplied or the purported exercise of the Company's rights under these Terms of Trade.
- 10.4 Notwithstanding anything in these Terms of Trade, 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 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.
- 10.5 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 Applicant must take delivery of and pay for such lesser quantity as the Vendor is able to supply.

Applicant's liability

- 11.1 The Applicant is deemed to be bound by all transactions undertaken with the Company, whether or not any person undertaking a transaction has actual or ostensible authority to do so. This clause 11.1 does not apply if the Applicant has notified the Company in writing that only named persons may undertake transactions for the Applicant.
- 11.2 If the Applicant includes two or more persons, those persons' liability is joint and several.
- 11.3 If the Applicant is a trust, these Terms bind each trustee in his or her capacity as trustee and personally. The Company's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who may have a right to or interest in any of the assets of the trust other than as trustee) that has not guaranteed the Applicant's obligations. Such a trustee's liability to the Company will be limited to the assets of the trust.
- 11.4 All obligations bind the Applicant and the Applicant's administrators, successors and permitted assigns.

Account closure

- 12.1 The Company may close or suspend the Applicant's account at any time.

Authority to transfer moneys

- 13.1 The Applicant authorises the Company to apply (without prior notice) any moneys:
 - (a) held by the Company (or, for the avoidance of doubt, any subsidiary of the Company) for or on behalf of the Applicant on any account in or towards payment of any amount owing to the Company or any Vendor; and
 - (b) received by the Company from or on account of the Applicant in payment of any amount owing to the Company or any Vendor.
- 13.2 Without limiting clause 13.1, the Company may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from the Applicant in any manner (and in any order and to any amounts owing to the Company or any Vendor) the Company thinks fit (despite any direction to the contrary and whether before or after any default by the Applicant).

The Company as agent

- 14.1 The Company may act for either or both the Vendor and /or the Applicant in respect of the purchase of any Goods.
- 14.2 When acting as an agent for another (*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 or to the Principal. The Company gives no assurance as to the financial ability to supply or other position of the Principal.
- 14.3 Each person dealing with the Company as agent agrees that it will not make or support any claim or proceeding against the Company.
- 14.4 Unless otherwise specified, where the Company acts as agent the Applicant 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 from the Applicant. In such case, the Applicant 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.
- 14.5 The Company may deduct commission owed by the Vendor from the proceeds of sale and by the Applicant from any account that the Applicant has with the Company. The Company may deduct commission from both the Applicant and the Vendor when acting for both Applicant and Vendor.
- 14.6 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.
- 14.7 Where the Company acts as agent for both Applicant and Vendor the Company may sell the Goods to the Applicant for a different price than that paid to the Vendor and in such case the Company may carry the loss or take the profit arising from such difference.

Miscellaneous

- 15.1 *Assignment:* The Applicant may not transfer any right or benefit under these Terms of Trade. The Company may transfer its rights and obligations under these Terms of Trade by notifying the Applicant in writing.
- 15.2 *Enforcement:* The Applicant 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 Applicant or enforcement action taken by the Company.
- 15.3 *Entire agreement:* Together the Application and these Terms of Trade are the entire agreement between the Company, the Applicant and the Guarantor(s), and supersede all representations, agreements and other communications made by the Company. Certain Terms of Sale in respect of specific Goods that may appear on the reverse of any of the Company's invoice/statements or other specific terms the Company may apply in conjunction with or in place of these Terms of Trade if specified.
- 15.4 *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.
- 15.5 *Severability:* If any part of these Terms of Trade 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 Trade are not affected.
- 15.6 *Variation:* The Company may in its absolute discretion change these Terms of Trade at any time by sending notice of the change to the Applicant's last known address or by public notice in *The New Zealand Farmer Weekly* magazine or similar publication or by publication on its website www.pggwrightson.co.nz. The change will take effect from the time specified in the notice.
- 15.7 *Typographical errors:* The Company reserves the right to correct any typographical or clerical errors in any prices quoted or contained in an order or quotation.
- 15.8 *Security Interest:* The Company may use the benefit of any security interest, security agreement, charge or mortgage given in favour of the Company (including any of its subsidiaries) to secure payment and performance of the Applicant's obligations under these Terms of Trade.
- 15.9 *Foreign Currency Charges:* If you make a charge in a currency other than NZ dollars, that charge will be converted into New Zealand dollars. You understand and agree that the American Express Treasury System will use conversion rates based on interbank rates that it selects from customary industry sources on the business day prior to the processing date, increased by a single conversion commission of 2% payable to American Express. If charges are converted by third parties prior to being submitted to us, any conversions made by those third parties will be at rates selected by them.

Guarantee

The Guarantors, in consideration of the Company supplying Goods at their request to the Applicant, jointly and severally, irrevocably and unconditionally guarantee punctual payment of amounts payable by the Applicant to the Company and punctual performance of all of the Applicant's obligations to the Company.

- 1 The Guarantors are deemed to be principal debtors and liable as though they are each the Applicant (even though as between the Guarantors and the Applicant, the Guarantors are only guarantors and sureties).
- 2 None of the Guarantors shall be released from this Guarantee by any matter whatever, the happening of which might release a person liable only as a guarantor or surety.
- 3 This is a continuing guarantee which applies in respect of all Goods to be supplied to the Applicant.
- 4 The Company may release or discharge any of the Guarantors from liability under this Guarantee (or may compromise its claim against any such Guarantors) without prejudicing or affecting the rights of the Company against the others.
- 5 If only one party has signed this Guarantee, then it is a guarantee by only that party and all references to more than one Guarantor are deemed to be amended accordingly.