Customer Account Terms of Trade

These terms of trade as amended from time to time (Terms) apply to all Products transactions with us; where you have agreed to be bound by these Terms; and/or where you use your PGG Wrightson Account. For online or cash purchases from us please refer instead to our separate Website and In-Store Cash/Card Terms of Sale.

1. DEFINITIONS

Account means an account to buy and/or sell Products from or through PGG Wrightson Ltd and its trading divisions and/or subsidiary companies, including a charge account with with deferred payment.

Application means your application to open an Account.


Customer or you means you as the Purchaser or Vendor of Products from PGG Wrightson. In the case of services and advice provided for no fee, including agency products and services means PGG Wrightson Limited and each of its subsidiaries and trading entities, both separately and all together as part of the PGG Wrightson Limited Group.

PPSA means the Personal Property Securities Act 1999.

PPSR means the Personal Property Securities Register.

Prime livestock means livestock sold to a meat processor for slaughter.

Products means all products, merchandise, livestock and services (including services and advice provided for no fee, and including agency products and services) supplied or to be supplied by or through us to you from time to time, including:

a. the products, merchandise, livestock or services described or referred to (whether by item, product category, brand, kind or otherwise) in the delivery docket, invoice or like equivalent document that we give you; and

b. solely for the purposes of the application of clauses 5 and 6:

i. where any products, merchandise or livestock purchased by you from us are your inventory (as defined in the PPSA), then also inventory for so long as you hold it as such; and

ii. any objects, products or mass which the products or merchandise subsequently become a part of or an accession or accessory to; and

iii. in the case of products 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 products; and

iv. in the case of livestock, including all progeny, unborn young and the natural increase of such livestock, all horns, antlers, other appendages, hair and wool (in each case, whether removed from the livestock or not) of such livestock, and all other produce and meat of such livestock.

Purchaser means the Purchaser of Products (being PGG's principal if it is acting as agent).

Sale means any sale of Products where PGG is either the Purchaser or Vendor or is acting as agent for either or both of the Purchaser or Vendor.

Vendor means the seller of the Products (being PGG or PGW's principal if it is acting as agent).

Warranty/Warranties means warranties, representations, conditions, guarantees, duties or liabilities, or customer rights.

2. APPLICATION AND ACCOUNT

2.1 You must tell us of any changes to your contact details or to any of the other information given to us on your Application. We will assign a Customer number to your Application. Invoices, statements and other information directly relating to your dealings with us will be sent to you electronically unless you request otherwise. We may impose a credit limit on your Account and alter that credit limit without notice to you. If you exceed your credit limit we may refuse to supply Products to you. Once you have opened an Account with us, on your request we may agree to open a further Account in your Customer name and details with one of our subsidiary companies.

2.2 On request by you we will:

a. arrange for a personal guarantee to be provided in respect of your obligations to us by a person or entity satisfactory to us in our sole discretion.

All personal guarantees provided cover obligations owed to PGW under any Account or separate contract between PGW and the Customer; and

b. provide, or arrange for another person or entity satisfactory to us in our sole discretion to provide, a bond or other surety in an amount we specify to secure your obligations to us.

Any such guarantee, bond or other surety must be on such terms as we consider appropriate.

2.3 We may close or suspend your Account at any time. On closure of your Account:

a. all your rights under these Terms terminate, except for any rights that have accrued to you prior to the closure of your Account; and

b. all your obligations to us continue under these Terms until all of your obligations to us have been satisfied in full to our satisfaction.

3. ORDERS

3.1 A contract will come into existence between us once your Order has been accepted by us. We will accept your order by giving you a delivery docket or invoice, or electronic confirmation for online purchases. Any additional terms we include on a delivery docket, invoice or electronic confirmation will form part of the contract between us for the relevant Product. You cannot cancel an order for Product after we accept it.

3.2 We will use our reasonable endeavours to source all Products ordered by you and quoted by us. You acknowledge that your placing an order with us and/or our acceptance of your order does not guarantee our supply of the Products. If the Vendor cannot provide the agreed quantity of Products for any reason, the Vendor will not be liable for that shortfall and the Purchaser must take delivery of and pay for such lesser quantity as the Vendor is able to supply.

4. TERMS OF PAYMENT

4.1 You will pay us the price plus GST for the Products stated in the delivery docket or invoice plus any applicable commission, freight or incidental charges. Unless we specify otherwise, the price must be paid to you by us:

a. for Products sold at auction and livestock, grazing and feed sold by PGW, including as agent, within 14 days of purchase; and

b. for all other Products, by the 20th day of the month following purchase.

We may choose to pass on to you external and internal legal costs of payment processing such as bank cheque processing fees and credit card surcharges for payments you make to us and we make to you. PGW may in its sole discretion write off small credit balances on your Account for administration efficiency.

4.2 Interest on overdue payments not made within the period set out in clause 4.1 will be charged on a daily basis at our current default rate as published on our website, www.pggwrightson.co.nz. Any prompt payment or other discounts may be reversed for overdue payments at our discretion.

4.3 All amounts payable by you to us will be paid in full in cleared funds, without any set-off, counterclaim or deduction. PGW may deduct (without prior notice) any money that you owe to PGW from the money that we owe to you or that PGW owes on your behalf. You authorise PGW to apply (without prior notice) any moneys:

a. held by PGW or any subsidiary or related company on your behalf on any account in or towards payment of any amount owing to PGW; and

b. received by PGW from you or on your account in payment of any amount owing to PGW.

4.4 PGW may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from you in any manner (and in any order and to any amounts owing to PGW or any Vendor) PGW thinks fits (despite any directions or contrary and whether before or after any default by you).

5. DELIVERY, TITLE AND RISK

5.1 We will not be liable for any delay in delivery of any Products to you. If you do not take delivery by the delivery date specified, you will pay reasonable storage costs until you take delivery.

5.2 All Products 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 all other Products, from the point of loading onto the carrier or being made available for uplifting by the Purchaser, whether or not the Purchaser takes delivery of the Products at that time.

5.3 Ownership of and title to all Products remains with us or the Vendor, as the case may be, and only passes to the Purchaser once:

a. where we are the Vendor, all money the Purchaser owes us, on any account, is paid for in full, or

b. where we are not the Vendor of the Products, the Purchaser has paid for those Products;

(even if the Purchaser incorporates the Products with other items, including without limitation those items described in the definition of Products in clause 1.)

You acknowledge and agree that the retention of title is a security interest for the purposes of the PPSA.

5.4 Until title in the Products passes to the Purchaser:

a. the Purchaser holds the Products as its bailee, or the bailee of the Vendor, as the case may be;

b. the Purchaser must store the Products in a manner which will protect them against damage or deterioration, and separately from your own goods or otherwise ensure that the Products are separately identified or identifiable. Where we are the Vendor we authorise the Purchaser, or if you are the Vendor you authorise the Purchaser, in the ordinary course of the Purchaser's business, to use the Products or sell them for full consideration. This authority is revoked immediately and automatically on the occurrence of a Default Event and may also be revoked by notice in writing to the Purchaser at any time in our sole discretion;

c. the Purchaser must insure the Products for their full insurable value and, if we or the Vendor require(s), have or our or the Vendor's interest in the Products noted on your insurance policy; and

d. regardless of section 109 of the PPSA, we or the Vendor may repossess the Products and dispose of them for our own or the Vendor's benefit, as the case may be, if a Default Event occurs. For this purpose, we, the Vendor and/or our respective agents may at any time without prior notice to the Purchaser, enter any place where we or the Vendor believe the Products may be kept and remain there to take whatever action may be required to
repossess the Products. The Purchaser indemnifies us, the Vendor and our respective 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 Products (including any shortfall arising from resale at a lower price).

5. If the Purchaser sells any Products offered for sale at auction or for private sale are free of any security interests, liens, charges or other encumbrances. The Vendor must at the request of the Purchaser or PGW within 3 working days provide written confirmation of the release of any security noted on the PPSR that applies to the Product.

6. PERSONAL PROPERTY SECURITIES ACT 1999

6.1 Where your Account with us is in a charge account with deferred payment, you and each guarantor hereby charge in favour of us all your present and after-acquired property on the terms contained in the Auckland District Law Society form of General Security Agreement current at the time of signing the Application. For all accounts you also grant to us a specific security interest in all Products (and all proceeds) supplied to or by supplied by or through us and in any products, products or mass which the Products subsequently become a part of or an accession or accessory to, so as to secure all payments under these Terms and all moneys owing by you to us from time to time. You will do all things necessary so as to enable us to register financing statements on the PPSR, and to ensure the specific security interest is a first ranking perfected security interest over the Products and any proceeds. We may register a security interest under the PPSA in our name as secured party even where we are acting as an agent for a Vendor.

6.2 If the Products the subject of the security interest subsequently become part of some other product or mass, then nothing in these Terms can be construed as limiting the application of sections 82 to 86 of the PPSA. Nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPAs applies. Your rights in sections 116, 120(2), 121, 125 to 127,129 and 131 of the PPAs do not apply.

6.3 You waive your right under section 148 of the PPAs to be given a copy of any verification statement in relation to any financing statement or any change statement that we or the Vendor may register. The security interests granted by you take effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Products.

6.4 We may use the benefit of any security interest, security agreement, encumbrance, charge, mortgage given by you or any guarantor or other grantor of security to us to secure payment and performance of your obligations under these Terms. You will not without our prior written consent grant any lien or security interest over the Products to any other party whatsoever nor convey the Products, sell or otherwise dispose of the Products in any manner or way (whether contained in such contract of supply or any statute) provided by that third party supplier in relation to those Products. All other statutory and other implied Warranties to be given, made, performed or met by PGW, including the terms of clauses 10.3 of the Third Party Suppliers Agreement do not apply to the fullest extent that it is lawful for us to do so. Other than as required by law, we give no Warranty concerning any Product’s description, condition, merchantability, quality or fitness for any purpose. In particular, no Warranty is made concerning any спрел, chemicals or plant/seed matter. It is your responsibility to satisfy yourself as to the condition and quality and fitness for purpose of the Products and the Purchaser accepts the Products on this basis.

10. PGW WARRANTIES

10.1 If due solely to PGW’s act, omission or negligence, any Product is defective or does not materially conform to our description, we will at our option: a. repair or replace it; or b. pay compensation to a maximum amount that does not exceed twice the purchase price of the specific Product.

10.2 To the extent permitted by any contract for supply entered into between PGW and a third party supplier of the relevant Products, PGW will pass through or assign to you the rights to and benefit of all warranties, guarantees, indemnities and associated remedies (whether contained in such contract of supply or any statute) provided by that third party supplier in relation to those Products. All other statutory and other implied Warranties to be given, made, performed or met by PGW, including the terms of clauses 10.3 of the Third Party Suppliers Agreement do not apply to the fullest extent that it is lawful for us to do so. Other than as required by law, we give no Warranty concerning any Product’s description, condition, merchantability, quality or fitness for any purpose. In particular, no Warranty is made concerning any спрел, chemicals or plant/seed matter. It is your responsibility to satisfy yourself as to the condition and quality and fitness for purpose of the Products and the Purchaser accepts the Products on this basis.

10.3 For the avoidance of doubt, no clause in these Terms excludes or limits any breach of, any supplier warranties, guarantees, indemnities and associated remedies (whether contained in such contract of supply or any statute) provided by a third party supplier in relation to those Products including under section 12 of the CCLA.

11. LIABILITY

11.1 Clause 10.1 sets out your sole rights to compensation/remedies from us for any matter covered by these Terms. Except as set out in clause 10.1, neither we nor our agents will be liable in any way (including negligence, tort and equity) to you or to any other person in connection with this or any other contract or the supply or failure to supply any Products or the purported exercise of our rights under these Terms for any:
1. PGW CUSTOMER ACCOUNT TERMS OF TRADE

12. CUSTOMER'S LIABILITY
12.1 You are deemed to be bound by all transactions undertaken with us, whether or not any person undertaking a transaction has actual or ostensible authority to do so. If the Customer includes two or more persons, those persons' liability is joint and several. The Customer is a trustee. Those terms bind each trustee in his or her capacity both as trustee and personally in respect of any breach by you of these Terms except if we are fraudulent or negligent.

13. PGW'S ROLE IN TRANSACTIONS BETWEEN YOU AND A THIRD PARTY
13.1 PGW may be a representative advising (and where PGW determines, PGW may act as agent for) either or both the Vendor and/or Purchaser in respect of the sale and purchase of any Products, including livestock, grazing and feed. The CCLA (Clauses 6 and 7) shall apply where PGW acts as agent. Where products are acquired in trade; that your Account is for business/trade purposes; that the Vendor must at the request of the Purchaser or PGW within 3 working days provide written confirmation of the release of any security noted on the PPSR Register that applies to Products sold.

14. GENERAL
14.1 As agent: You may not transfer any right, benefit or obligation under these Terms. We may transfer our rights and obligations under these Terms by notifying you in writing.

14.2 Enforcement: You will pay us on demand all costs (including legal costs on a solicitor/client basis) or claims which we incur or suffer in the course of our dealings with you under these Terms and in respect of any breach by you of these Terms except if we are fraudulent or negligent.

14.3 Entire Agreement: Except as set out in this clause, together the Application and these Terms are the entire agreement between us, you and the guarantor(s), and supersede all representations, agreements and other communications made by us. Certain Terms in respect of PGW Products that appear on the reverse of any of PGW's invoices/terms/statements or other specific terms may apply in conjunction with or in place of these Terms if we specify. For Prime Livestock sales, the Purchaser may have their own procurement conditions that apply between Vendor and Purchaser in addition to these Terms. For Products purchased from our online retail websites or paid in cash, our separate Website and In-Store Cash/Cards/Terms of Sale apply. If you also have a PGG Wrightson Max Rewards Card, then PGG's Max Rewards Card Terms and conditions will apply and prevail over these Terms to the extent that they are inconsistent. If any part of these Terms is inconsistent with the CCLA, that part prevails over the relevant provision of the CCLA.

14.4 Our Decisions and No Waivers
a. in relation to any claim or series of related claims, any amount exceeding
b. any power or discretion conferred on us by these Terms may be exercised
c. any amount not claimed within 7 days of you becoming aware of the circumstances giving rise to the claim.

12.2 The Purchaser must use all Products strictly in accordance with any directions, instructions, specifications and other information contained on Product labels, packaging and any other product information supplied with the Products.

13.2 Where we are acting for a Vendor, the Vendor warrants that it has provided accurate and complete information concerning the Products to us. We are not required to verify that information and the Vendor indemnifies us in respect of any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which we incur or suffer in respect of any breach of this warranty.

13.3 Where PGW is acting as your agent, you acknowledge that PGW may disclose your name and contact details, and any other details relevant to the transaction to the other party to the transaction.

13.4 PGW may in its sole discretion register a security interest as agent for a Vendor or stockowner but has no obligation to do so. PGW is not liable for the consequences of any defect in that registration or failure to register. Where PGW is acting as your agent, you agree to notify us in writing that PGW has registered a security interest on behalf of a Vendor or stockowner, it is the responsibility of the stockowner or Vendor as the case may be to ensure that security interest, at their own cost.

13.5 Where PGW pays suppliers for Products you have purchased, PGW may receive a rebate, commission or fee from the supplier for providing marketing and credit services.

13.6 If you are the Vendor, you warrant that all Products offered for sale at auction or for private sale are free of any security interests, liens, charges or other encumbrances. The Vendor must at the request of the Purchaser or PGW within 3 working days provide written confirmation of the release of any security noted on the PPSR Register that applies to Products sold.

13.7 Where we are selling Products at auction on your behalf, unless you have notified us of your reserve for those Products, you appoint our auctioneer as your agent to set the reserve for those Products, in their sole discretion. Neither we nor our auctioneer are obliged to set a reserve and neither we nor our auctioneer will be liable in any way for any failure to set a reserve, or if you do not agree with the reserve set.

14.6 Variation: We may in our absolute discretion change these Terms at any time by notifying you in writing or you signify your agreement to the changes.

14.7 Typographical Errors: We reserve the right to correct any typographical or clerical errors in any invoice, statement or communication by or to us or you, these Terms will prevail subject to clause 14.3 and/or unless we specify otherwise.

14.8 Inconsistency: If there is any inconsistency between these Terms and the terms of any order that may be lodged by you or with any delivery docket or invoices or other correspondence by you or to us or you, these Terms will prevail subject to clause 14.3 and/or unless we specify otherwise.

14.9 Consumer Guarantees Act: You agree: that the Products are both supplied and acquired in trade; that your Account is for business/trade purposes; that the Consumer Guarantees Act 1993 does not apply and this clause confutes all other provisions of the Consumer Guarantees Act.

14.10 Disputes: Any dispute between us and you will be discussed between us in the spirit of goodwill.

14.11 Governing Law: New Zealand law governs this agreement and the parties submit to the exclusive jurisdiction of the New Zealand courts.

14.12 Relationship: The relationship between you and PGW is as independent agency relationship unless we specify. An agent or representative of PGW is not authorised to make any representations, warranties or agreements that PGW does not have its prior written consent to a trustee being noted as an independent trustee. Those terms bind each trustee in their capacity as trustee. If PGW has given its prior written consent to a trustee being noted as an independent trustee, the trustee is an agent or representative of PGW.

14.13 Force Majeure: PGW is not liable to you for any inability of PGW to perform any of its obligations under these Terms, or any delay in PGW's performance of such obligations, or any damage, loss or indirect or consequential arising from such failure or delay, where such failure or delay is caused directly or indirectly by an act of God, fraud, electrical failure, fire, armed conflict, labour dispute, civil commotion, Government intervention or inability to obtain labour or materials, awarded transportation or credit services, or any other breach of trust by such trustee or if such trustee has provided a guarantee personally in respect of your obligations pursuant to this or any other contract.

14.14 PGW may be a representative advising (and where PGW determines, PGW may act as agent for) either or both the Vendor and/or Purchaser in respect of the sale and purchase of any Products, including livestock, grazing and feed. Transactions. Clause 13 is for the benefit of any third party Vendor or Purchaser of third party Vendor Products, and may for the purposes of Part 2, subpart 1 of the CCLA be enforced by that Vendor or Purchaser.

14.15 Where PGW acts as agent agrees that it will not make or support any claim or proceeding against PGW.