

General Terms of Sale

1. Definitions
 - a) "Delivery Date" means the date the Goods are delivered to the Purchaser.
 - b) "Goods" shall have the meaning given to it in the Personal Property Securities Act 1999
 - c) "Purchaser" means the purchaser of the Goods
 - d) "This Contract" means these General Terms of Sale read in conjunction with the specific delivery docket or Purchase Agreement
 - e) "Vendor" means the seller of the Goods.
2. AGENT OR PRINCIPAL - The parties agree that:
 - a) Progressive Livestock Limited may act as Agent for both the Vendor and the Purchaser under this contract and/or as a principal buying and selling livestock on its own account.
 - b) Progressive Livestock Limited, notwithstanding any conflict of interest, may deal with the Vendor and the Purchaser in whatever capacity it considers fit. Progressive Livestock Limited 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 in respect of the contract.

Each of the Vendor's and the Purchaser's obligations in this contract are also for the benefit of Progressive Livestock Limited, and are intended to be enforceable by Progressive Livestock Limited.
3. DEPOSIT - We may require you to pay a deposit, being an advanced payment for Goods supplied before those Goods are delivered.
4. PAYMENT – On the Due Date the Purchaser must pay to Progressive Livestock Limited the purchase price, commission, GST and any other charges without set off, counter claim or deduction of any kind. Unless otherwise agreed the Due Date is as within 12 days of the Delivery Date for all livestock;
5. INTEREST – Should the Purchaser fail to make payment on the Due Date, they are in default and must pay default interest at the rate of 18% per annum, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
6. COSTS – Either the Vendor or Purchaser must pay Progressive Livestock Limited's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these General Terms of Sale.
7. AGENCY – COMMISSION – The party which is identified in Purchase Agreement as being liable to pay the commission acknowledges that Progressive Livestock Limited is appointed as its agent in respect of the purchase or sale of livestock in terms of this contract. Progressive Livestock Limited shall be entitled to retain from funds monies received the commission payable to it at the rate specified together with the GST on such commission and any other charges properly payable to Progressive Livestock Limited by the party responsible for paying commission. Progressive Livestock Limited shall be entitled on all the conditions precedent (if any) having been waived or satisfied, to request any other party that may hold any deposit to deduct from the deposit moneys the commission payable to Progressive Livestock Limited together with the GST on such commission together with any charges properly payable by the Vendor and the Vendor hereby irrevocably authorise and direct any such third party to make payment accordingly.
8. DELIVERY – Unless the Vendor and Purchaser shall make some or other agreement, the Vendor shall deliver the livestock to the Purchaser or the Purchaser's agent on the Date of Delivery and at the place specified. The livestock shall be at the risk of the Purchaser from the time of delivery by the Vendor to the Purchaser
Delivery shall be deemed to take place when the livestock either:
 - i) Cross the tailgate of the Purchaser's nominated carrier, or
 - ii) If driven on foot, leave the Vendor's property.
9. PURCHASER – Acknowledges that they have made their own enquiries as to the health and wellbeing of the Livestock and that accepting the Livestock at the Date of Delivery will deem the Purchaser to be satisfied and accept the Livestock as being in an acceptable condition.
10. TITLE – RETENTION OF TITLE
 - a) Title in the stock shall remain with the Vendor and shall not pass to the Purchaser until the purchase price has been paid in full in cleared funds in accordance with this contract.
 - b) At the time specified in clause 9, the Vendor will provide to the Purchaser full equitable, beneficial and legal title in the stock free and clear of all encumbrances and adverse interests.
 - c) The Purchaser:
 - i) agrees that the Vendor's retention of title in the stock:
 - secures all payments and the performance by the Purchaser of its obligations under this contract; and
 - is a security interest in favour of the Vendor for the purposes of the Personal Property Securities Act 1999 ("PPSA")
 - ii) will, on request, provide to the Vendor and Progressive Livestock Limited all information and do all things necessary for the Vendor or Progressive Livestock Limited to register a financing statement relating to that security interest in the stock, and will ensure that the security interest is a first ranking perfected security interest over the stock and their proceeds;
 - iii) waives its right to receive a copy of any verification statement in respect of any financing statement relating to that security interest in the stock; and
 - iv) agrees that, to the extent permitted by law, sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA and the Purchaser's rights under sections 116, 119, 120(2), 121, 125 to 127, 129, 131 and 132 of the PPSA do not apply.
- d) If the Purchaser fails to comply with any term of this contract, the Vendor or Progressive Livestock Limited may exercise any and all remedies afforded to a secured party of the Personal Property Securities Act 1999 and enter any building or premises owned, occupied, or used by the Purchaser, to search for and re-take possession of the stock.
11. T.B. AND EBL WARRANTY – The Vendor must ensure that all Livestock will have a TB "Clear" and an EBL "Clear" status before delivery.
12. NAIT COMPLIANCE – All parties will comply with their respective NAIT requirements.
13. PROGRESSIVE LIVESTOCK LIMITED'S LIABILITY –
 - a) Progressive Livestock Limited will not be liable in any way for any action, inaction, omission, failure, breach, statement or other matter or thing (each an "Action") of the Vendor, the Purchaser or any independent expert under or in respect of this contract or otherwise in relation to any stock (or animals from which the stock are selected). Progressive Livestock Limited shall, to the maximum extent permitted by law, have no liability for any Action of Progressive Livestock Limited in respect of this contract or otherwise in relation to any stock (or animals from which the stock are selected).
 - b) Progressive Livestock Limited is not in any circumstances liable to the Vendor, the Purchaser or any other person in contract, tort, negligence, equity or in any other way for any loss or damage of any kind, arising from or in relation to this contract. If for any reason Progressive Livestock Limited cannot rely on the above exclusion of liability, its liability will be limited to direct physical loss suffered to a maximum of \$100 per transaction. In no event will Progressive Livestock Limited be liable for any loss of profit, savings, goodwill or business opportunity or for any indirect or consequential loss or for general or special damages.
 - c) The Vendor and the Purchaser agree to indemnify Progressive Livestock Limited on demand against all claims, costs (including full legal costs), losses, liabilities and demands that Progressive Livestock Limited incurs directly or indirectly as a result of that party's failure to comply with this contract.
 - d) This clause applies even where Progressive Livestock Limited has entered into the contract as vendor or Purchaser.
 - e) Both the Vendor and the Purchaser dealing with Progressive Livestock Limited acting as agent agrees that it will not make or support any claim or proceeding against Progressive Livestock Limited.
14. TRANSPORTATION – Any drover, transport operator or other person into whose care the livestock are delivered whether such person is nominated or appointed by the Purchaser, or by Progressive Livestock Limited shall be deemed to be contracting directly with the Purchaser and Progressive Livestock Limited shall not in any way be liable or responsible for any act or omission or such drover, transport operator or other person.
15. MISCELLANEOUS
 - a) Entire Agreement: These General Terms of Sale (and any incorporated document) are the entire agreement between the parties and replace all representation, agreements and other communications made by Progressive Livestock Limited.
 - b) Joint and several liability: If the Vendor or the Purchaser is more than one person, the obligations of the Vendor and/or the Purchaser (as the case may be) under this contract bind all those persons jointly and severally.
 - c) Variation: This contract can only be varied by agreement in writing.
 - d) No merger: The Vendor's and Purchaser's obligations and liabilities in this contract will not merge on the transfer of title to any stock or with the delivery of any stock.
 - e) Supply for Business Purpose. The Purchaser agrees that the purchase of Livestock under this contract is for business purposes and the Consumer Guarantees Act 1993 does not apply.
 - f) Consumer Finance: The Due Date is the earliest date on which the parties would in any circumstances have agreed that the balance of the Purchase Price was to be payable. There is no deferment of the Purchaser's obligation to pay the purchase price for the purposes of Section 6 of the Credit Contracts and Consumer Finance Act 2003 and this contract is not a "credit contract" for the purposes of or within the meaning of that Act