

## **Standard Terms & Conditions for Sale of Livestock**

### **1. APPLICABILITY OF TERMS & CONDITIONS**

These terms and conditions apply to each offer and each agreement in respect of the sale of livestock, from **Shipleigh International (Loughnavalley) Limited T/A David Clarke Livestock** and/or **David Clarke**, hereinafter referred to as: Seller, and a buyer to which Seller has declared these Terms and Conditions applicable, insofar as these Terms and Conditions have not been explicitly deviated from by agreement between the parties.

### **2. OBLIGATIONS & CONCLUSION OF AGREEMENT FOR SALES**

2.1. All quotations for the sale of livestock are free of obligation, unless these contain a term for acceptance. If a quotation contains an offer that is free of obligation and this is accepted, the seller has the right to revoke the offer within two working days after receipt of the acceptance.

2.2. The agreement for purchase of livestock by the Buyer is concluded as soon as Buyer and Seller have reached an agreement either verbally or in writing on that which is to be sold, the price and any special terms of delivery. Any additional arrangements or changes made later, as well as any written or verbal arrangements and/or promises by employees of Seller or third parties / intermediaries, shall bind the Seller only if these have been explicitly confirmed or are being carried out by Seller. With respect to activities for which, given their nature and scope, no quotation or order confirmation is sent, the invoice will also be considered an order confirmation, which is also deemed to reflect the agreement correctly and fully, unless the Buyer protests the contents of the invoice in writing within 5 working days.

### **3. CUSTOMER INFORMATION**

3.1. Prior to entering into any commercial transaction the Buyer must complete the Seller's new customer information form in full and provide the Seller with their Herd number and VAT number. The Seller also reserves the right to request two trade references from any new Buyer.

### **4. PRICE & PAYMENT**

4.1. The prices referred to in the quotation are explicitly stated in EURO'S OR STERLING POUNDS. Where the price is stated in STERLING POUNDS the Seller reserves the right to alter the price to reflect exchange rate variances that become applicable between the date of quotation and the date of payment.

4.2. The prices stated in the quotation are based on cost factors applicable at the time of the quotation. The Seller reserves the right to pass on cost increases in the purchase price before delivery has taken place. If the price increase exceeds 10%, the buyer shall have the right to dissolve the agreement. Unless otherwise agreed, the prices referred to in the quotation are carriage paid at the address designated the Buyer.

4.3. Seller's deliveries are subject to the applicable VAT regulations.

4.4. Unless otherwise agreed, payment is to be made without any discount by means of deposit or credit to a bank or giro account designated by Seller. Livestock will

not be scheduled for delivery in the absence of full payment unless otherwise agreed.

4.5. Payment is to be made in the currency of the invoice unless otherwise agreed.

4.6. Where credit terms have been agreed the Seller shall be entitled to charge interest on any overdue payments from the date the payment was due at a rate of 3% per annum above the prevailing Euribor rate.

4.7. If credit terms have been agreed and subsequently one of the situation mentioned below should occur, the Buyer shall be deemed to be in default and thus in breach of contract on the basis of which the Seller shall be entitled to dissolve the agreement:

- Buyer is declared insolvent, files a petition for suspension of payment, or a part or all of his property is attached.

- Buyer dies or is placed under guardianship, In said cases Seller shall also be entitled to fully claim any amounts, which Buyer still owes and immediately to retrieve or have retrieved the Livestock sold to Buyer, the costs of any retrieval to be borne by the Buyer's legal representatives.

4.7.1. Payment made by Buyer or their legal representatives always serve first to settle all interest and costs due, and secondly payable invoices that have been outstanding for the longest time, even if Buyer's representatives state that the settlement relates to a subsequent invoice.

### **5. SELECTION OF LIVESTOCK**

5.1. Prior to delivery, the animals shall be selected, in the Buyers presence or not. The selected animals shall be identified by ear number on a selection list. If the Buyer is present at the selection, the selection list shall be signed by both the Buyer and the Seller.

5.2. Animals which appear on the selection list but are taken off of it after a veterinary examination or an accident, or because of other reasons which are beyond the Seller's control, shall not be delivered. The Seller reserves the right to deliver fewer animals in such cases than agreed on. The parties may, however, agree that the Seller shall supplement the number of animals up to the original number, taking into account the agreed specifications.

5.3. The Seller shall ensure any livestock which are sold as "in-calf" are scanned prior to delivery.

### **6. DELIVERY**

6.1. Delivery terms shall be agreed for each individual transaction. All delivery terms shall be subject to the most recent Incoterms.

6.2. Delivery periods shall be set per transaction. The delivery period shall commence at the time the agreement is formed in accordance with section 2 and all records, data, permits and the like which are necessary to execute the agreement have been provided by the Buyer to the Seller, and payment has been received in accordance with section 4.

6.3. The Seller reserves the right to deliver in more than one consignment. Subject to the provisions in Sections 4, each consignment shall be considered a separate agreement, the performance or non-performance of which

shall not affect the overall agreement.

6.4. Stated delivery periods shall never be regarded as strict deadlines.

6.5. Each delivery shall be accompanied by an official veterinary certificate, signed by an authorised veterinary official on behalf of the government of the country of origin. This veterinary certificate's contacts may differ by country. With regard to delivery to countries within the European Community only the mandatory certificate for intra-Community transport may be used. With regard to delivery to countries outside the European Community, the technical content of the certificate shall be determined based on the wishes of the country and/or recipient concerned. Unless additional agreements have been made in this regard in the purchase agreement, the animals shall only be free from the illnesses stated in the officially signed certificate accompanying the shipment, and the recipient shall not be able to assert claims in any case whatsoever if, after delivery, other illnesses are discovered, serologically or clinically. If the receiving party is unsure of the potential consequences of introducing new animals into an existing stock or an entirely new company, it is recommended that this party consult with its own veterinary surgeon before shipment.

6.6. The Buyer is obliged to take delivery of the animals purchased at the time at which these are supplied to Buyer. If the Buyer refuses delivery, the animals will be kept at the Buyer's disposal by Seller and Buyer's expense and risk for a week at most. After expiry of this term Seller has the right of sale to a third party, whereby any loss of profits and expenses will be for the Buyer's account.

## **7. TRANSPORT**

7.1. The carrier shall be determined by the Seller. If the price mentioned includes transport, the Seller may not be held liable for loss or direct, indirect or consequential damage arising during the transport, unless it would be liable under the agreed delivery term (incoterm). If the prices include transport, they shall be based on one location for unloading. If there are multiple locations for unloading, the Seller reserves the right to increase the price.

## **8. INSURANCE**

8.1. The insurance shall be subject to the Terms and Conditions stated in the order confirmation. Which risks are to be insured against and for which percentage of the agreed basis shall be indicated. In principle, policies shall be in the Buyer's name, unless otherwise agreed.

8.2. If the delivery is insured, the Buyer must, in the event of damage, report the nature of the damage claim within 48 hours. This may be done by telephone, fax or e-mail to the Seller. No later than 30 days after the insured period expires, a written veterinary statement must be submitted, showing which damage claims occurred within the insured period.

8.3. The insurance company's decisions concerning amount claimed shall be binding, and are completely beyond the Seller's control. The Seller cannot therefore be held liable in any manner whatsoever for the insurance company denial of an insurance claim.

## **9. CHARGES FOR DEFAULT.**

9.1. If the Buyer is in default or fails to meet one or more of its obligations, all reasonable out-of-court costs to obtain settlement shall be borne by Buyer. In any case, the Buyer shall owe an amount of 15% of the invoice amount, with a minimum of EURO 300. If Seller demonstrates that higher costs, which were reasonably necessary, were incurred, these too shall qualify for compensation.

9.2. The Buyer shall owe the Seller the legal costs incurred by Seller in all instances.

## **10. RETENTION OF TITLE.**

10.1. All livestock delivered and still to be delivered shall remain the exclusive property of the Seller until all claims that the Seller has or will have on Buyer have been fully paid;

10.2. For as long as the ownership of the livestock has not passed to the Buyer, the Buyer cannot pledge the livestock or grant third parties any other right thereto, save within the normal operations of its business..

10.3. The Buyer will undertake to maintain the livestock which have been delivered under retention of title with due care, adequate feed & water and as recognisable property of the Seller;

10.4. The Seller is entitled to retrieve the Livestock delivered under retention of title and still present at the Buyer's premises if the Buyer fails to meet its obligation to pay or has current or impending financial difficulties. The Buyer will at all times grant the Seller free access to its grounds and/or buildings to inspect the livestock and/or to exercise the Seller's rights.

## **11. FORCE MAJEURE**

11.1. In these General Terms and Conditions force majeure means: any involuntary or unforeseen circumstances as a result of which the Buyer can no longer reasonably require fulfilment of the agreement by the Seller.

11.2. Force majeure includes among other things walkouts, excessive absenteeism of Seller's staff, transport difficulties, fire, government measures including in any case the fixing of quotas, sales bans and breakdowns at Seller's premises or at those of suppliers of Seller, exceptional weather conditions, catastrophes, war, riots, acts of war, strikes, lockouts, work-to-rule, as well as any unforeseeable stagnation in the regular course of affairs in the Seller's business or in the businesses of Seller's suppliers, as a result of which the Seller cannot meet its obligations to the Buyer.

3. If an incident of force majeure occurs, the Seller will be entitled to suspend the performance of the agreement or to dissolve the agreement definitively. Consultation will be held with the Buyer in regard to this. The Seller is entitled to claim payment of the activities carried out in the execution of the relevant agreement, before the condition of force majeure occurred.

## **12. DEFECTS, PERIOD FOR COMPLAINTS**

12.1. The Buyer is obliged to inspect the animals delivered or to have such animals inspected immediately upon delivery for any visible defects. The Buyer is to indicate or have someone indicate any deficiencies or defects immediately to the delivery driver. Any visible defects are to be reported to the Seller by the Buyer by telephone or email in any case at the latest within 24 hours after the actual delivery stating the nature of the complaints. Such report will be confirmed by Buyer in writing, by email, within 48 hours after the actual delivery, failing which the Buyer is deemed to have approved the animals that have been purchased.

12.2. The Buyer is to report non-visible defects to the Seller in writing within 24 hours after discovery, yet at the latest within 4 weeks after the Buyer could have discovered the defects stating the nature of the complaints, failing which the Buyer can no longer exercise its claims on Seller. For the avoidance of doubt is it the responsibility of the Buyer to scan "in calf" heifers purchased within 4 weeks of delivery.

12.3. The lodging of claims does not release the Buyer from its payment obligations to the Seller.

12.4. Complaints made in another manner or to intermediaries, re-seller, representative and so forth shall be invalid and shall have no effect.

12.5. Insofar as the livestock are consistent with the selection list, rights may not in any event be derived from complaints, given that the livestock were already accepted

at the time of selection by or on behalf of the Buyer in the country of origin.

12.6. If the complaint is found to be justified by Seller, Seller will be entitled to replace the animals delivered or to credit the purchase price without the Buyer being able to exercise any other right to any compensation whatsoever.

12.7. Complaints regarding invoices are to be lodged within 5 days after the date the invoices were sent.

### **13. LIABILITY**

13.1 The Seller shall be liable to the Buyer only in the following circumstances:

13.1.1. In respect of damage as a result of defects only for the liability as set out in Article 9 of these Terms and Conditions;

13.1.2. In respect of damage caused by intention or gross negligence on the part of Seller, its manager or its employees;

13.1.3. Seller's liability is limited to the amount of the payment made by the insurance company insofar as this liability is covered by its insurance policy;

13.4. If the damage is not insured, the liability is limited to the amount of the loss for which the Seller should have been reasonably insured, also in keeping with normal business practices. Seller is not liable for damage caused by Buyer's incompetence. Under no circumstance shall Seller and/or third parties called in by Seller be liable for

loss of profits or other consequential damage. The damage to be compensated by Seller will be mitigated if the price to be paid by Buyer is small in proportion to the extent of the damage sustained by Buyer. In particular, Buyer shall indemnify Seller against all legal liability claims of third parties for damage caused by animals.

### **14. SEVERABILITY**

14.1 If any terms or provisions of these Terms and Conditions are held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions have been agreed with the invalid, illegal or unenforceable provision eliminated.

### **15. APPLICABLE LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws applicable to the Republic of Ireland and the parties hereby submit to the jurisdiction of the Irish Courts. The Seller, however, retains the right to summon Buyer before the court that is competent by law or under applicable international treaty Buyer.