

1. Definitions

- 1.1 “BYL Limited” means BYL Limited, its successors and assigns or any person acting on behalf of and with the authority of BYL Limited.
- 1.2 “Vendor” means the person/s selling the Livestock as specified in any invoice, document or order, and if there is more than one Vendor is a reference to each Vendor jointly and severally.
- 1.3 “Purchaser” means buying the Livestock as specified in any invoice, document or order, and if there is more than one Purchaser is a reference to each Purchaser jointly and severally.
- 1.4 “Contract” means these terms and conditions together with any quotation, record, certificate, invoice and/or any other associated or related documentation. The Contract may constitute physical and/or electronic written documents.
- 1.5 “Livestock” means all beasts supplied by the Vendor to the Purchaser, as facilitated by BYL Limited at the Vendor’s/Purchaser’s request from time to time.
- 1.6 “Services” means all services provided by BYL Limited to the Vendor and/or Purchaser for the facilitation of the sale and purchase of the Livestock at the Vendor’s and/or Purchaser’s request from time to time
- 1.7 “Purchase Price” means the price payable for the Livestock as agreed between the parties in accordance with this Contract. Unless otherwise stated the Purchase Price does not include GST.

2. Acceptance

- 2.1 The Vendor and/or Purchaser are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions where both parties sign their acceptance of this Contract.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the parties.
- 2.3 The Vendor and/or Purchaser, upon signing this Contract, give their irrevocable authorities to BYL Limited to approach The Livestock Improvement Corporation in order to obtain and/or uplift:
 - (a) Animal Transfer Certificates;
 - (b) any information on the Vendor’s and/or Purchaser’s records of animals pertaining to this Contract, before or after Delivery and/or Settlement. Both parties acknowledge that this term specially waives any obligations under the Privacy Act 1993.
- 2.4 The Vendor and Purchaser acknowledge and agree that their obligations under this Contract shall not cease until:
 - (a) all amounts owing for the Livestock and/or Services have been paid in accordance with this Contract; and
 - (b) all other obligations due by them to BYL Limited in respect of all contracts between the parties have been met.
- 2.5 Receipt of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then:
 - (a) the Vendor’s ownership or rights in respect of the Livestock shall continue; and
 - (b) BYL Limited’s ownership or rights in respect of the Services shall continue.
- 2.6 Should the need arise, all parties to this contract acknowledge their execution of facsimile copy of this contract, and the transmission by facsimile back to the others (or their agents or solicitors), shall be sufficient to constitute offer and acceptance and to satisfy the requirements of section 2 of the Contracts Enforcement Act 1956.

3. Agency

- 3.1 The Vendor and/or Purchaser acknowledge that BYL Limited is appointed as their agent in respect of the sale of Livestock in terms of this Contract.
- 3.2 The BYL Limited is acting solely as an agent of the Vendor and/or Purchaser. Should the Vendor and/or Purchaser fail to comply with any of the terms and conditions of this Contract, or fail to complete the sale and purchase for any reason whatsoever, or if a dispute arises in respect of these matters, BYL Limited shall be under no liability to either party (whether in contract, tort, negligence or otherwise), and in particular will not be responsible for any loss or damages sustained by either party, or both.
- 3.3 The Vendor and the Purchaser indemnify BYL Limited against any claims or losses incurred by BYL Limited (whether or not resulting from the negligence of BYL Limited) in connection with BYL Limited.

4. Change in Control

- 4.1 The Vendor and/or Purchaser shall give BYL Limited not less than fourteen (14) days prior written notice of any proposed change of ownership and/or any other change in their details (including but not limited to, changes in their name, address, contact phone or fax number/s, or business practice). The Vendor and/or Purchaser shall be liable for any loss incurred by BYL Limited as a result of their failure to comply with this clause.

5. Goods and Services Tax (GST)

- 5.1 The Vendor and/or Purchaser must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as they pay the Commission/Purchase Price. In addition, both parties shall be liable for the payment of any other taxes and duties that may be applicable in addition to the Commission/Purchase Price, except where they are expressly included therein.

6. Lowest Price

- 6.1 For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:
 - (a) the Purchase Price is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of the Livestock, on the date of this Agreement, if payment for the Livestock had been required in full at the time the first right in the contracted property was transferred;
 - (b) the Purchase Price is the value of the Livestock; and
 - (c) they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and they will file their tax returns accordingly.

7. Purchaser Information

- 7.1 The Purchaser may inspect the Livestock for soundness and condition at monthly intervals from the date of this Contract, and shall carry out a final inspection prior to Delivery (“**Inspection Day**”). The Purchaser may on the date of final inspection, or on Delivery, reject any Livestock which do not comply with the terms of this Contract, or any Livestock which has tested positive for T.B, Brucellosis or EBL (“**Stock Rejection**”). Except as specifically provided for in this Contract, the Purchaser shall have no claim in respect of any Livestock of which Delivery has been taken.

- 7.2 The Vendor will present to the Purchaser on the Inspection Day, all current relevant data in relation to the Livestock including where applicable individual calving dates, depasturing dates, artificial breeding records, factory production records, herd testing records and other such documentation required as specified herein.
- 7.3 The Purchaser, upon signing this Contract acknowledges both the authenticity and accuracy of all animal records supplied by either the Vendor and/or BYL Limited. The Purchaser acknowledges that the Livestock is purchased relying solely upon their personal skill and judgement, and that they do not rely upon any assurances or statements provided by the Vendor and/or BYL Limited.
- 8. Rejection Date**
- 8.1 Only on a day to be mutually agreed to between the Vendor and the Purchaser ("Selection Date"), the Vendor will present for the Purchaser's inspection the Livestock referred to in this Contract. Such Livestock will be sound in all respects. On the Selection Date, the Purchaser will have the right to reject Livestock in accordance with the allowable Rejection Rate referred to in this Contract. No Livestock that form part of the Contract are to be removed from the property where they were depastured at the date of this Contract without the Purchaser's consent.
- 9. Purchaser's Obligations**
- Finance Condition*
- 9.1 If applicable, this Contract is subject to the Purchaser arranging finance. If finance is not arranged by the Last Day For Arranging Finance, then this Contract shall be void and any Deposit paid by the Purchaser, plus any interest earned (less any withholding tax properly deducted by BYL Limited), shall be refunded to the Purchaser in full forthwith, and neither the Vendor nor the Purchaser shall have any right or claim against the other, or BYL Limited.
- Deposit*
- 9.2 The Purchaser shall pay the Deposit to BYL Limited immediately upon the signing of this Contract by both the Vendor and the Purchaser, time being of the essence. The Deposit shall be lodged at interest by BYL Limited as a stakeholder until the sale of the Livestock becomes unconditional, or avoided, or cancelled in accordance with the provisions of this Contract. The Deposit and any interest earned (less any withholding tax properly deducted by BYL Limited) shall be in part payment of the Purchase Price.
- 9.3 Payment of the Deposit may be made by cash, cheque, bank cheque, electronic/on-line banking, direct debit agreement, or by any other method as agreed to between all the parties.
- 10. Commission**
- 10.1 BYL Limited shall be entitled to deduct or charge on the Purchase Price the Commission for the Services, together with GST and any other charges.
- 10.2 At BYL Limited's sole discretion, the Commission (which is calculated as a percentage of the Purchase Price) is either:
- (a) as specified herein;
 - (b) as indicated on any invoice provided by BYL Limited.
- 11. Settlement**
- 11.1 The balance of the Purchase Price shall be paid to BYL Limited by bankers cheque or solicitors trust account cheque on the Settlement Date, and the ownership of the Livestock shall pass to the Purchaser on payment of such balance. The Vendor warrants and undertakes that the Livestock is free from any mortgage, lease, charge, lien or encumbrance whatsoever on the Settlement Date, and BYL Limited has no obligation to the Vendor to clear any charge or encumbrance in regards to this Contract. Except as specifically provided for in this Contract, the Purchaser shall have no claim in respect of the Livestock of which Delivery is taken.
- 11.2 If Settlement is not completed on the Settlement Date, the Vendor may cancel this Contract and pursue any of the following remedies, namely:
- (a) to retain the Deposit paid by the Purchaser and any accrued interest, less commission due to BYL Limited; and
 - (b) to resell the Livestock and sue the Purchaser for any accrued damages resulting from such resale. The damages claimable by the Vendor shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss suffered by the Vendor on any bona fide resale. The amount of loss may also include interest on the unpaid portion of the Purchase Price at the interest rate for late Settlement from the due date to the settlement of such resale, all costs and expenses reasonably incurred in any resale or attempted resale, all out-goings on or maintenance expenses in respect of the Livestock from the Settlement Date to the settlement of such resale. Any surplus money arising from the resale shall be retained by the Vendor;
 - (c) to immediately take repossession of the Livestock with which the Vendor has parted possession and for that purpose the Purchaser hereby irrevocably grants the Vendor full leave and license to enter into or upon any premises controlled by the Purchaser upon which the Livestock may or may not reasonably be believed to be, and to use such reasonable force as may be necessary for the purpose of repossessing the Livestock, without notice to the Purchaser and without liability to the Purchaser or to any person claiming under the Purchaser.
- 12. Delivery of the Livestock**
- 12.1 Unless both parties make other arrangements, the Vendor shall deliver the Livestock to the Purchaser, or the Purchaser's agent, by the Delivery Date, and to the Delivery Address, as specified herein.
- 12.2 Delivery of the Livestock is taken to occur at the time that the Livestock either:
- (a) cross the tailgate of the Purchaser's nominated carrier; or
 - (b) if driven on foot, leave the Vendor's property.
- 12.3 If the Vendor fails to deliver the Livestock to the Purchase by the Delivery Date, the Purchaser may without prejudice to any other rights or remedies available to them at or in equity:
- (a) sue the Vendor for specific performance; or
 - (b) cancel this Contract and require the Vendor forthwith to repay to the Purchaser the Deposit and any other monies paid on account of the Purchase Price, together with any interest on such sums at the interest rate for the late settlement from the date of payment, by the Purchase until repayment.
- 13. Risk and Care of the Livestock**
- 13.1 Risk of damage to or loss of the Livestock passes to the Purchaser at the earlier of:
- (a) 12:00pm on the Delivery Date of the Livestock; or
 - (b) the time of actual Delivery of the Livestock by the Vendor to the Purchaser.

- 13.2 Subject to any special conditions contained herein, the Vendor shall, from the date this Contract is signed, to the Delivery Date of the Livestock, properly feed and attend to the Livestock as a prudent farmer would having regard to the nature and quality of the Livestock at the time of signing this Contract, the nature of the Vendor's farm, the district in which the Vendor is situated, and the prevailing climatic conditions, and will if necessary obtain suitable off-farm grazing or additional supplementary feed to ensure that the Livestock are presented to the Purchaser on Delivery in a state consistent with the fulfilment of the Vendor's obligations under this Contract.
- 13.3 If the Purchaser requests the Vendor to leave the Livestock outside the Vendor's premises for collection, or to deliver the Livestock to an unattended location, then such Livestock shall be left at the Purchaser's sole risk.

14. Vendor's Guarantees and Warranties

- 14.1 The Vendor guarantees that each beast will be in-calf, as specified in this Contract.
- 14.2 Subject to the provisions of this Contract, the Vendor guarantees that all milking cattle will be dried-off by the date specified herein, or such earlier date as is mutually in the event of adverse climatic conditions affecting normal seasonal management.
- 14.3 Any Livestock calving (full gestation period) before or after the stated Duration of Calving period may be subject to a claim against the Vendor by the Purchaser. Calving tolerance shall be ten (10) days prior to, or ten (10) days after, the dates as stated herein. The Purchaser, if required, can either instruct the Vendor to remove the beast(s), plus calf, at the Vendor's expense, and refund the Purchaser either on a pro-rata basis, or twenty-five percent (25%) of, the Purchase Price.
- 14.4 All Livestock must have a T.B status prior to Delivery. If required by Biosecurity New Zealand or relevant government agency, dairy stock in relation to this Contract are subject to a T.B test, which shall be carried out within thirty (30) days of Delivery, and shall be the sole responsibility, and at the cost, of the Vendor. A T.B certificate card must be provided to the Purchaser (or their nominated carrier) on Delivery.
- 14.5 It is the responsibility of the Vendor to ensure that any Livestock that are yearling heifers, rising 2yr heifers or cows not milk tested with have an EBLU status prior to Delivery.
- 14.6 The Purchaser has the right to blood test, prior to Delivery and at their own cost, any Livestock suspected of eczema. The tests must be completed by "an independent recognised testing laboratory", and any Livestock with a result of S.G.G.T test being over 500 will be deemed positive and unsound (at the discretion of the Purchaser), and therefore not included in the tally for selection. No further claim for eczema shall be made against the Vendor after Delivery.

15. Consumer Guarantees Act 1993

- 15.1 The Vendor and/or Purchaser acknowledge that the provisions of the Consumer Guarantees Act 1993 do not apply to this Contract if the Purchaser is acquiring Livestock for the purposes of a trade or business.

16. Limitation of Liability

- 16.1 Despite anything else contained in these terms:
- (a) the parties agree and acknowledge that if the Livestock supplied by BYL Limited and acquired by the Vendor and/or Purchaser are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to the agreement with BYL Limited, and that it is fair and reasonable to exclude their application;
 - (b) the parties agree and acknowledge that the provisions of the Sale of Goods Act 1908 will not apply; and
 - (c) unless these terms expressly provide otherwise, to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
- 16.2 These terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.

17. Default and Consequences of Default

- 17.1 Interest on overdue amounts shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 In the event of any default by the Purchaser and/or Vendor, the defaulting party shall be liable for all costs and disbursements for the recovery of the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies BYL Limited may have under this contract, if a Purchaser and/or Vendor has made payment to BYL Limited, and the transaction is subsequently reversed, the Purchaser and/or Vendor shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by BYL Limited under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Purchaser and/or Vendor's obligations under this agreement.
- 17.4 Without prejudice to other remedies at law:
- (a) if at any time the Vendor and/or Purchaser is in breach of any obligation (including those relating to payment) under these terms and conditions, BYL Limited may (as an agent for the affected party) suspend or terminate the Contract. The BYL Limited and the affected party will not be liable for any loss or damage suffered by the defaulting party due to exercising the right to enforce this clause.
 - (b) BYL Limited shall be entitled to cancel all or any part of the Contract which remains unfulfilled and all amounts owing to BYL Limited shall, whether or not due for payment, become immediately payable if:
 - (i) any money payable becomes overdue, or in BYL Limited's opinion the defaulting party will be unable to make a payment when it falls due;
 - (ii) the defaulting party becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the defaulting party or any asset of the defaulting party.

18. Privacy Act 1993

- 18.1 The Vendor and Purchaser authorise BYL Limited or BYL Limited's agent to:
- (a) access, collect, retain and use any information about them;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing their creditworthiness; or
 - (ii) for the purpose of marketing products and services to them.
 - (b) disclose information about them, whether collected by BYL Limited from them directly or obtained by BYL Limited from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by them.

- 18.2 Where the Vendor and/or Purchaser is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Vendor and/or Purchaser shall have the right to request BYL Limited for a copy of the information about them retained by BYL Limited and the right to request BYL Limited to correct any incorrect information about them held by BYL Limited.
- 19. Personal Property Securities Act 1999 (“PPSA”)**
- 19.1 Upon assenting to these terms and conditions in writing the Vendor and/or Purchaser acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken by BYL Limited in all Livestock (including any offspring of the Livestock) and/or Services previously supplied (if any) and all Livestock and/or Services that will be supplied in the future.
- 19.2 The Vendor and/or Purchaser undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which may reasonably be required to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) be liable for all expenses for the registration of a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA, or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without prior written consent of the other parties.
- 19.3 The Vendor and/or Purchaser agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 19.4 The Vendor and/or Purchaser waive their rights as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 19.5 Unless otherwise agreed to in writing between the parties, the Vendor and/or Purchaser waive their right to receive a verification statement in accordance with section 148 of the PPSA.
- 19.6 The Vendor and/or Purchaser shall unconditionally ratify any actions taken under clauses 19.1 to 19.5.
- 20. Security and Charge**
- 20.1 In consideration of the entry into of this Contract, the Vendor and/or Purchaser charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the them either now or in the future, to secure the performance by them of their obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 20.2 The Vendor and/or Purchaser shall be liable for all costs and disbursements (including legal costs on a solicitor and own client basis) that may be incurred due to the enforcement of this clause.
- 20.3 The Vendor and/or Purchaser irrevocably appoints BYL Limited and each director of BYL Limited as the their true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on their behalf.
- 21. Lien**
- 21.1 Where the Purchaser and/or Vendor has left any item with BYL Limited in relation to this Contract, and BYL Limited has not received or been tendered the whole of any moneys owing to it by them, BYL Limited shall have, until all moneys owing to BYL Limited are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation or common law applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of BYL Limited shall continue despite the commencement of proceedings, or judgment for any moneys owing to BYL Limited having been obtained against the Vendor and/or Purchaser.
- 22. Service of Notices**
- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party’s last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Dispute Resolution**
- 23.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996 and any arbitrator or umpire appointed pursuant to this clause shall be registered a Farm Management Consultant and a member of either the New Zealand Society of Farm Management or the institute of Agricultural Society.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party’s right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
- 24.3 In the event that any of the parties cancels this Contract, the cancelling party shall be liable for any and all loss incurred (whether direct or indirect) by the other parties as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 24.4 None of the parties to this Contract shall be under any liability whatsoever to the other parties for any indirect and/or consequential loss and/or expense (including loss of profit) suffered as a resulting of a breach by any of the parties of these terms and conditions. In the alternative, to the extent that the parties liability is not otherwise excluded or limited, and to the extent permitted by law, any liability

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conditions (whether in contract, tort, negligence or otherwise) is strictly limited to damages which under no circumstances shall exceed the Purchase Price of the Livestock).

- 24.5 The Vendor and/or Purchaser shall not be entitled to set off against, or deduct from the Purchase Price/Commission, any sums owed or claimed to be owed to them, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.6 None of the parties shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond their reasonable control.
- 24.7 The Vendor and/or Purchaser warrant that they have the power to enter into this Contract, has obtained all necessary authorisations to allow them to do so, is not insolvent and that this Contract creates binding and valid legal obligations on it.