

# TERMS OF TRADE

The Customer/Guarantors agrees to HRL's Terms of Trade available at [www.hazlett.co.nz](http://www.hazlett.co.nz)

## 1 Interpretation

1.1 In these Terms of Trade unless the context otherwise requires the following terms shall have the following meanings:

- (a) "Application" means the application by customer to open a trading account;
- (b) "Customer" means the customer specified in the Application and in the case of a partnership or trust includes jointly and severally each partner of the partnership or trustee of the trust as the case may be in their personal capacity;
- (c) "Default" means any of the events specified in clause 7.1;
- (d) "Default Interest Rate" means the per annum rate of 10% plus the per annum overdraft rate charged to HRL by its banker;
- (e) "Equipment" means any vehicle, machinery, apparatus, device, bin, vat, structure and any other like or associated equipment ordered, sold or acquired under these Terms of Trade;
- (f) "Guarantor" means each of the persons named as guarantors in the Application;
- (g) "HRL" means Hazlett Rural Limited and any assign or subsidiary company or related company of Hazlett Rural Limited;
- (h) "Livestock" means any livestock to be acquired under these Terms of Trade;
- (i) "PPSA" means the Personal Property Securities Act 1999 and includes any applicable regulations and any successor enactment or enactments;
- (j) "PPSR" means the Personal Property Securities Register;
- (k) "Rural Supplies" means any agricultural product (including crops, feed, chemicals and organic or inorganic matter) or general merchandise or any other item specified in an order or instruction which is ordered, sold or acquired under these Terms of Trade; and
- (l) "Secured Property" means that property stipulated in clause 5.1.

## 2 General

2.1 The Customer shall be deemed to have accepted these Terms of Trade by signing the Application or instructing HRL in respect of Livestock, Equipment or Rural Supplies, or placing an order for Equipment or Rural Supplies.

2.2 No instruction by the Customer to HRL or order by the Customer may be cancelled, varied or suspended without the written approval of HRL.

2.3 HRL may amend these Terms of Trade from time to time. The prevailing version of the Terms of Trade shall be available at [www.hazlett.nz](http://www.hazlett.nz) and HRL shall not be obliged to provide any further notification to the Customer of the Terms of Trade or any amendment to the same.

2.4 The Customer acknowledges and agrees that:

- (a) HRL may act as agent and/or broker for either or both of a vendor or purchaser of Livestock, Equipment or Rural Supplies;
- (b) HRL may charge commission and/or fees for its agency and/or brokerage services;
- (c) HRL may deduct commission and/or fees from monies owed to a vendor or purchaser of Livestock, Equipment or Rural Supplies;
- (d) HRL may sell Livestock, Equipment or Rural Supplies to a purchaser for a different price than paid to the vendor; and
- (e) HRL shall not be liable in any way for any act done or not done by HRL as agent and/or broker for the Customer and the Customer shall indemnify HRL as agent/broker for any liability howsoever arising;
- (f) HRL shall not be obliged to pay or credit any amount on account of a purchase price until the full purchase price has been received from the purchaser;
- (g) All information supplied to HRL by a vendor Customer concerning Livestock, Equipment or Rural Supplies is accurate and complete and HRL is not obliged to verify that information; and
- (h) All Livestock, Equipment or Rural Supplies offered for sale (by any means whatsoever) by a vendor Customer is free of any security interest, charge, mortgage or other encumbrance.

2.5 The Customer authorises HRL to collect, retain, use and disclose any information about the Customer for the purposes of assessing credit worthiness, enforcing any rights under these Terms of Trade or marketing, and any necessary authorities shall hereby be deemed to have been given for the purposes of the Privacy Act 1993 where the Customer is a natural person.

2.6 The Customer hereby consents to receiving from HRL by any medium commercial electronic messages for the purposes of the Unsolicited Electronic Messages Act 2007.

## 3 Payment and Accounts

3.1 The Customer shall make payment to HRL in full (including all commission, fees, delivery costs, charges, takes and the like, plus GST) within the time specified in the invoice or if no time is specified the Customer shall make payment within:

- (a) 14 days of the date of the invoice in the case of payment for Livestock; or

(b) the 20<sup>th</sup> day of the month following the month of the invoice in the case of payment for Equipment and/or Rural Supplies.

3.2 The Customer shall make payment to HRL in full without deduction, set-off or counterclaim.

3.3 The Customer authorises HRL to without prior notice apply any monies held by HRL for or on behalf of the Customer towards any amounts owing by the Customer.

3.4 In the event that the Customer considers that there is an error in an invoice the Customer must within 3 working days of the date of the invoice give a notice in writing to HRL specifying full details of the error and if no such notice is provided the invoice shall be treated as correct.

3.5 In the event that the substance of a notice given under clause 3.4 is not immediately resolved such that a dispute arises:

- (a) the Customer must make payment to HRL of the undisputed amount in accordance with clause 3.1;
- (b) HRL may withhold delivery of any Livestock, Equipment or Rural Supplies pending resolution of the dispute; and
- (c) the Customer must within 3 working days of the determination of the dispute make payment to HRL of any amounts still owing.

The Customer acknowledges that all prices, commission amounts, fees, delivery costs, charges, takes and the like are plus GST unless otherwise indicated.

## 4 Title, Delivery and Risk

4.1 Title to any Livestock, Equipment or Rural Supplies shall remain with HRL (or the vendor as the case may be) until payment in full by the Customer for the same and all other sums due on any account whatsoever.

4.2 The risk in any Livestock shall pass to the Customer on crossing the tailgate of the carrier and the risk in any Equipment or Rural Supplies shall pass to the Customer on delivery of the same to the Customer's address specified in the Application or such other agreed address.

4.3 The time for delivery of Livestock, Equipment or Rural Supplies shall not be of the essence and HRL shall not be liable for any direct or consequential loss resulting from:

- (a) a delay in delivery, a failure to deliver, or a change in the location or method of delivery due to circumstances beyond the reasonable control of HRL; or
- (b) part or multiple deliveries.

4.4 HRL may cancel any instruction or order or any part thereof where some or all of the Livestock, Equipment or Rural Supplies cannot be delivered due to circumstances beyond the reasonable control of HRL and HRL shall not be liable in any way whatsoever for such cancellation.

4.5 In the event that the Customer does not for any reason take delivery of Livestock, Equipment or Rural Supplies:

- (a) HRL may in its sole discretion resell or resupply to a third party and the Customer shall be liable for any loss on the resale or the resupply;
- (b) the Customer shall be liable for any additional costs incurred by HRL including any additional delivery, transportation, storage, disposal and logistical costs; and
- (c) the Customer shall be liable for any perishing or deterioration in the condition of the Livestock, Equipment or Rural Supplies.

4.6 The Customer shall be deemed to have accepted the condition and suitability of the Livestock, Equipment or Rural Supplies unless the Customer gives a notice in writing to HRL within 5 working days of delivery specifying full details.

## 5 Security

5.1 The Customer hereby grants to HRL under the PPSA a security interest over all present and after-acquired property of the Customer including any Livestock, Equipment or Rural Supplies as security for any amounts the Customer may become liable to pay in connection with these Terms of Trade or on any account whatsoever.

5.2 The Customer and HRL intend that the security interest granted in the Livestock, Equipment or Rural Supplies under these Terms of Trade constitutes a purchase money security interest as defined under the PPSA and shall have priority over any other security interest in the same.

5.3 In relation to the security interest granted under these Terms of Trade HRL may register a financing statement or financing statements on the PPSR and the Customer shall do all things necessary for HRL to perfect its security interest.

5.4 The Customer hereby waives any rights it may have under ss 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.

## 6 Additional Customer Obligations and Restrictions

- 6.1 The Customer shall:
- permit HRL or any person designated by HRL access at all times to any premises for the purposes of inspecting, removing or taking possession of the Secured Property;
  - not charge, mortgage or encumber any Livestock, Equipment or Rural Supplies until payment is made in full for the same;
  - not change its name without giving at least 15 days written notice to HRL before the name change takes effect;
  - not where the Customer is a company change its registered office without giving at least 15 days written notice to HRL before the change of registered office takes effect; and
  - not assign any of the rights of the Customer under these Terms of Trade without the prior written consent of HRL.

## 7 Default and Enforcement

- 7.1 There shall be in default where:
- the Customer breaches any provision of these Terms of Trade including any obligation to make payment or in the sole discretion of HRL the Customer will in the future breach any provision of these Terms of Trade;
  - any representation made by the Customer or supplied by the Customer to HRL is untrue; or
  - the Customer is insolvent, adjudicated bankrupt, placed in liquidation, dissolved, struck-off or a receiver or administrator is appointed in respect of the Customer.
- 7.2 In the event of a Default:
- all amounts payable or to become payable under these Terms of Trade shall become immediately due;
  - HRL may in its sole discretion refuse to deliver Livestock, Equipment or Rural Supplies;
  - HRL may in its sole discretion require the Customer to cease selling or disposing of the Secured Property; and
  - HRL shall without prejudice to its rights at law be entitled to enter any property or premises and take possession of and sell any of the Secured Property or take possession of any proceeds of sale of the Secured Property and may apply any proceeds of sale towards repayment of any amounts outstanding under these Terms of Trade.
- 7.3 The Customer shall be liable to pay any cost, loss, liability or expense incurred by HRL in enforcing or attempting to enforce these Terms of Trade or resolving any dispute under clause 3.5 including without limitation full solicitor/client costs, disbursements and agency fees, debt collection costs, and transportation and storage costs.
- 7.4 The Customer shall be liable to pay interest at the Default Interest Rate from the date of Default down to the date of repayment in full on all amounts owing under these Terms of Trade which interest shall capitalise monthly and be calculated daily on the unpaid total of all amounts owing and capitalised interest.
- 7.5 All payments received by HRL shall be applied first in payment of interest and any costs or expenses incurred by HRL.
- 7.6 Time is of the essence in respect of the performance of the obligations of the Customer to HRL under these Terms of Trade.

## 8 Exclusions

- 8.1 The Customer acknowledges that:
- the Livestock, Rural Supplies or Equipment are not intended for personal, domestic or household use or consumption and/or they are acquired for resupply in trade or consumption in the course of production such that the Consumer Guarantees Act 1993 does not apply; or otherwise
  - the Customer is in trade, the Livestock, Rural Supplies or Equipment are both supplied and acquired in trade, the Customer agrees to contract out of the provisions of the Consumer Guarantees Act 1993, and this clause is fair and reasonable such that the provisions of the Consumer Guarantees Act 1993 do not apply; except that the Consumer Guarantees Act 1993 shall apply where its application cannot be lawfully excluded.
- 8.2 The Customer acknowledges that it relies upon its own judgment as to the nature, quality, condition and description of the Livestock, Rural Supplies or Equipment and the suitability of the same for any particular purpose.
- 8.3 The Customer acknowledges that:
- the Customer is in trade, the Livestock, Rural Supplies or Equipment are both supplied and acquired in trade, the Customer agrees to contract out of the provisions of the Fair Trading Act 1986 (including ss 9, 12A, 13 or 14(1)) to the maximum extent permitted by law, and this clause is fair and reasonable such that the relevant provisions of the Fair Trading Act 1986 do not apply (except that those provisions shall apply where they cannot be lawfully excluded); and
  - to the maximum extent permitted by law, any warranties or conditions imposed upon HRL by the Sale of Goods Act 1908, and any other enactment, regulations or by-laws are excluded.

- 8.4 HRL shall not be liable for any loss or damage of any kind whatsoever including loss of profits and consequential loss whether suffered or incurred by the Customer or another person whether in contract or tort or otherwise and irrespective of whether such loss or damage arises directly or indirectly from any defect in the Livestock, Equipment or Rural Supplies or any error or misdescription relating to the same.

- 8.5 In the event that HRL is liable to the Customer in any manner arising out of the provision of Livestock, Equipment or Rural Supplies, the liability of HRL shall not exceed the price paid by the Customer for the same.

- 8.6 The rights of HRL under these Terms of Trade and at law shall not be affected by any neglect, forbearance or delay in enforcement.

## 9 Guarantee

- 9.1 The Guarantor and the Customer shall be jointly and severally liable to HRL for the due payment of all monies payable by the Customer and for the due performance and observance by the Customer of its obligations under these Terms of Trade and each Guarantor shall be so liable jointly and severally.
- 9.2 The Guarantor and the Customer shall be jointly and severally liable to indemnify HRL for any costs, expenses or losses which HRL incurs in consequence of any breach by the Customer under these Terms of Trade and each Guarantor shall be so liable jointly and severally.
- 9.3 The liability of the Guarantor under this clause 9 shall not be affected by:
- the granting of time or any other indulgence to the Customer or another Guarantor;
  - the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the rights of HRL against the Customer or another Guarantor;
  - the neglect or omission by HRL to make any prior demand on the Customer or another Guarantor or to enforce any rights against the Customer or another Guarantor; or
  - the Customer or another Guarantor failing to sign the Application or not being bound by these Terms of Trade.

## 10 NAIT

- 10.1 Where the Customer is a "PICA" or "PICA delegate", as defined under the National Animal Identification and Tracing Act 2012 ("NAIT Act"), the Customer appoints and authorises HRL to perform any of the following functions on behalf of the Customer:
- register the Customer with the "NAIT organisation" as defined under the NAIT Act.
  - register with the NAIT organisation the "NAIT animals", as defined under the NAIT Act, that the Customer is in charge of.
  - ensure that all details required by NAIT Act and any associated legislation and regulations are maintained.
  - make animal movement declarations to the NAIT organisation on behalf of the Customer.
  - notify the NAIT organisation when animals that the Customer is in charge of die, are lost or are exported live.
  - access and manage the Customer's personal information and data required for NAIT purposes.
- 10.2 HRL shall be entitled to act under the authority contained within clause 10.1 but shall not be obliged to do so unless specifically instructed to do so in writing by the Customer.
- 10.3 Nothing within clause 10.1 shall preclude the Customer from itself submitting data for NAIT purposes or appointing an alternate information provider or multiple information providers.
- 10.4 The Customer warrants that it will comply with all NAIT Act obligations and requirements and any obligations and requirements under any associated legislation and regulations.
- 10.5 The Customer warrants that it will provide HRL with accurate and complete information for NAIT purposes as and when necessary or requested by HRL and the Customer acknowledges that HRL shall not be obliged to verify the accuracy of the same.
- 10.6 The Customer hereby indemnifies HRL for any claim against HRL or loss or damage sustained by HRL as a result of any breach of warranty or obligation by the Customer under this clause 10.
- 10.7 HRL shall be entitled to renounce the appointment and authority contained within clause 10.1 at any time.