

LIVESTOCKPLUS TERMS AND CONDITIONS

1. Facility

1.1 The Facility Holder has applied for, and Elders has agreed to make available, a Facility through which:

- (a) Elders may settle the Purchase Price of Livestock acquired by the Facility Holder; or
- (b) Elders may make cash advances to the Facility Holder referable to the value of, and secured by, Livestock that the Facility Holder owns, on the terms and conditions set out in this Agreement.

1.2 The Facility will be available from the date this Agreement is executed until the Termination Date. Any portion of the Facility not used within this period will be cancelled and will no longer be available to be drawn by the Facility Holder.

1.3 The maximum principal amount available at any time is the Facility Limit less the Amounts Owing at that time.

1.4 The Facility may only be used for the purposes described in clause 1.1.

1.5 The Facility Holder may use the Facility:

- (a) subject to the conditions in clause 2 being met, by requesting Elders pay an amount representing the Purchase Price to the relevant Vendor in relation to an acquisition of Livestock; or
- (b) subject to the conditions in clause 3 being met, by requesting Elders pay to it an amount as determined by Elders from time to time and which is less than or equal to the expected future value of particular Livestock that the Facility Holder owns.

2. Using the Facility to settle the Purchase Price of Livestock

2.1 Elders may settle the Purchase Price for the acquisition of Livestock pursuant to the Facility, if the following conditions are satisfied:

- (a) the Settlement Date for the relevant Livestock occurs whilst the Facility remains available;
- (b) the aggregate of the Purchase Price for the relevant Livestock and the Amounts Owing immediately prior to the Settlement Date does not exceed the Facility Limit;
- (c) Elders is satisfied that no Default or Potential Default subsists or will result from the acquisition of the Livestock or the provision of funds under the Facility;
- (d) in relation to an Acquisition pursuant to a Private Sale or Auction which is not an Elders Private Sale or Elders Auction, the Settlement Date for that Acquisition is a date no earlier than 10 days after the date Elders receives the relevant tax invoice;
- (e) the Facility Holder:
 - (i) has an active Trading Account; and
 - (ii) has at all times complied with the terms and conditions of that Trading Account, and Elders has no reason to think that the Facility Holder will breach the terms and conditions of that Trading Account in the future;
- (f) the Facility Holder has complied with all relevant regulatory requirements (including by providing Elders with sufficient information to satisfy any 'know your customer' requirements);
- (g) Elders has not given the Facility Holder notice that Elders intends to cease settling the Purchase Price for acquisitions of Livestock pursuant to the Facility; and
- (h) the Facility Holder is registered for GST.

2.2 The conditions in clause 2.1 are for Elders' sole benefit and may only be waived by notice from Elders to the Facility Holder.

2.3 Provided the conditions in clause 2.1 are satisfied:

- (a) for Livestock acquired pursuant to an Elders Private Sale or Elders Auction where Elders has acted as del credere agent for the Vendor, Elders may (in the capacity of del credere agent of the Vendor) pay the Purchase Price to the Vendor or Vendor's agent (as applicable) for the relevant Livestock on or before the Settlement Date; and
- (b) for Livestock acquired other than pursuant to an Elders Private Sale or Elders Auction, Elders may, on behalf of the Facility Holder, pay the Purchase Price directly to the Vendor or the Vendor's agent (as applicable) for the relevant Livestock within 10 days from the date Elders receives the tax invoice for that Acquisition.

3. Using the Facility to receive an Advance Amount

3.1 Elders may pay an Advance Amount to the Facility Holder, if the following conditions are satisfied:

- (a) the proposed Advance Date will occur whilst the Facility is available;
- (b) the aggregate of the Advance Amount and the Amounts Owing immediately prior to the proposed Advance Date does not exceed the Facility Limit;
- (c) the Facility Holder has identified to Elders the Livestock against which the Advance Amount is being advanced and Elders has satisfied itself that the relevant Livestock are owned by the Facility Holder and are kept at a location acceptable to Elders in its sole discretion;
- (d) Elders is satisfied that no Default or Potential Default subsists or will result from the provision of funds under the Facility; and
- (e) the Facility Holder:
 - (i) has an active Trading Account; and
 - (ii) has at all times complied with the terms and conditions of that Trading Account, and Elders has no reason to think that the Facility Holder will breach the terms and conditions of that Trading Account in the future;
- (f) the Facility Holder has complied with all relevant regulatory requirements (including by providing Elders with sufficient information to satisfy any 'know your customer' requirements);
- (g) Elders has not given the Facility Holder notice that Elders intends to cease paying Advance Amounts pursuant to the Facility; and
- (h) the Facility Holder is registered for GST.

3.2 The conditions in clause 3.1 are for Elders' sole benefit and may only be waived by notice from Elders to the Facility Holder.

3.3 Provided the conditions in clause 3.1 are satisfied, Elders may pay the Advance Amount into the Facility Holder's Trading Account.

4. Interest

4.1 Interest on the Amounts Owing will accrue at the Interest Rate on a daily basis and a 365 day year. Accrued interest may be paid by the Facility Holder at any time. Interest that is unpaid will be compounded on the last day of each calendar month during the Term and will be payable in accordance with clause 5 below.

4.2 Elders may vary the Interest Rate at any time and from time to time in accordance with clause 22.6.

5. Repayment

5.1 In relation to an Acquisition, the Facility Holder must repay the Purchase Price and any accrued but unpaid Interest in full to Elders by the earlier of:

- (a) the day on which the Facility Livestock that are the subject of the Acquisition are subsequently sold or disposed of; and
- (b) the first anniversary of the date of the invoice relevant to the Acquisition.

5.2 In relation to an Advance Amount, the Facility Holder must repay that Advance Amount and any accrued but unpaid Interest in full to Elders by the earlier of:

- (a) the day on which the Facility Livestock that are the subject of the Advance Amount are subsequently sold or disposed of; and
- (b) the date that is 4 months from the Advance Date.

5.3 The Facility Holder must repay Amounts Owing in full (together with any accrued but unpaid Interest and outstanding costs, expenses and indemnity amounts) to Elders on the Termination Date.

6. Early Repayment

The Facility Holder may repay all or part of the Amounts Owing at any time.

7. Subsequent sale of Livestock

7.1 The Facility Holder may not sell or dispose of all or part of Facility Livestock other than through an Elders Private Sale or an Elders Auction.

7.2 The Facility Holder is responsible for all Sale Costs in connection with a sale or disposal permitted by clause 7.1 above.

7.3 The Facility Holder agrees that Elders may deduct an amount equal to the Elders Payment Amount from the proceeds of any sale or disposal permitted by clause 7.1 above for the purposes of repaying Amounts Owing in relation to the sold Livestock and reimbursing related Sale Costs.

7.4 In the event that the proceeds of a sale or disposal permitted by clause 7.1 above:

- (a) are less than the Elders Payment Amount, the Facility Holder agrees to pay the shortfall to Elders within 5 Business Days; or
- (b) are greater than the Elders Payment Amount, Elders will pay the surplus to the Facility Holder, following the sale or disposal of the Livestock and otherwise in a manner consistent with the standard settlement terms as prescribed by the relevant Sale Terms.

7.5 The Facility Holder indemnifies and will keep indemnified as a continuing obligation, Elders against any cost, loss or liability or expense whatsoever incurred by Elders in connection with the Facility Holder's failure to act in strict accord with the above provisions. This clause survives any termination or full or partial discharge or release of any Transaction Document.

8. Representations and Warranties

The Facility Holder represents and warrants to Elders, except as to matters disclosed by it to Elders and accepted by Elders in writing, that:

- (a) it is duly organized and validly existing under the laws of its jurisdiction of incorporation;
- (b) it has the power, right and necessary corporate, trust and other authority to own its assets, carry on its current and contemplated business, and to enter into, and exercise its rights and observe and perform its obligations under the Transaction Documents;
- (c) neither it nor any of its assets are immune from suit or execution;
- (d) its execution and performance of each Transaction Document does not and will not:
 - (i) conflict with or contravene any law or judgment, ruling, order, document or agreement applying to it or its assets; or
 - (ii) result in a default, acceleration of date of payment, cancellation event, prepayment event or similar event (however described) under any agreement relating to any of its financing obligations;
- (e) it and its business is solvent (not bankrupt);
- (f) all financial information and documentation provided by it or on its behalf to Elders are true and complete copies of the originals, and the original documents are in full force and effect and are accurate in all material respects and not deficient, misleading or deceptive in any material respect (whether by its inclusion or by omission of other information);
- (g) there is no agreement, obligation or arrangement (other than this Agreement) that restricts it from undertaking, or entitles another person to rights of pre-emption or refusal for, a sale, transfer or other dealing with any Facility Livestock or any Livestock which the Facility Holder wishes to become Facility Livestock;
- (h) it will ensure that all its Livestock:
 - (i) are treated in a manner consistent with all relevant animal welfare legislation;
 - (ii) have access to water and suitable pasture and feed necessary for their proper development and growth; and
 - (iii) will be cared for in accordance with the standard of a competent commercial grazer of livestock; and
- (i) it is registered for GST.

9. Acknowledgement

The Facility Holder acknowledges that:

- (a) it has relied on its own advice, investigations and enquiries regarding the transactions contemplated by the Transaction Documents and has not relied on any information, advice or opinion (including business, financial and taxation assessments) given or offered by or on Elders' behalf even if in answer to any enquiry by or for it; and
- (b) Elders has made no express or implied warranties regarding any Livestock except those required by law.

10. Repetition

The Facility Holder repeats each representation and warranty in clause 8 with reference to the facts and circumstances at the time on each acquisition of Livestock, each Settlement Date, each Advance Date and at monthly intervals during the Term.

11. Notice to Elders

The Facility Holder must ensure that Elders is notified, with reasonable details, on becoming aware of any of the following:

- (a) any representation or warranty made, repeated or taken to be made or repeated by it or on its behalf under a Transaction Document

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becoming untrue, incorrect or misleading (whether by omission or otherwise) in any material respect when so made, repeated or taken to be made or repeated;

- (b) a Default or Potential Default occurring, and (if applicable) the steps taken or proposed to be taken to remedy it;
- (c) any notice of a material nature given or received under, default or dispute of a material nature under or termination or rescission of, or event or circumstance which might entitle a party to terminate or rescind under a material document to which the Facility Holder is a party or document relating to the Facility Holder's financing arrangements.
- (d) the occurrence of any event or circumstance which has or is likely to have a material adverse effect on the Facility Holder or the Facility Holder's ability to observe and perform its obligations under the Transaction Documents;
- (e) any notice of a material nature to or from, or correspondence of a material nature with, a Government Agency in relation to it or any of its assets or any Livestock including any proposal by a Government Agency to compulsorily acquire or resume any of the Facility Holder's Livestock or other property;
- (f) promptly, whatever other information Elders reasonably requests from time to time about the assets, financial condition or state of affairs of the Facility Holder;
- (g) the address of any property other than the Relevant Property to which Facility Livestock are to be moved or on which Facility Livestock are to be held; and
- (h) 5 per cent or more of Facility Livestock die, are stolen, or disappear.

12. Restricted Dealings

- 12.1 The Facility Holder must not, without first obtaining Elders' consent, create or permit to exist a Security Interest over Facility Livestock.
- 12.2 The Facility Holder must not use Facility Livestock as security for any loans or credit or sell or part with possession of Facility Livestock otherwise than in accordance with this Agreement and will not register, attempt to register or allow to be registered any agreement on any register of interests or encumbrances of any government authority, including any security interest on the personal property securities register established under section 147 of the PPSA in respect of Facility Livestock (other than by Elders).

13. Default

- 13.1 A Default occurs if any one or more of the following occurs (whether or not within the Facility Holder's control):
 - (a) the Facility Holder fails to pay any of the Amounts Owing payable by it when due in accordance with this Agreement;
 - (b) the Facility Holder fails to comply with any obligation under a Transaction Document and, if the failure is capable of remedy within five Business Days, it continues unremedied for five Business Days (or such longer period agreed by Elders);
 - (c) a statement, representation or warranty made or repeated by or on behalf of the Facility Holder in a Transaction Document, or in a document provided in connection with a Transaction Document, is incorrect or misleading in a material respect when made or repeated;
 - (d) any of the following occurs or is alleged by the Facility Holder to have occurred:
 - (i) all or a provision of any Transaction Document is terminated or is or becomes void, avoided, illegal, invalid, unenforceable or limited in its effect;
 - (ii) it becomes impossible or unlawful for the Facility Holder to perform a material obligation under a Transaction Document; or
 - (iii) any party has the right to terminate or give a notice of termination due to breach or to rescind, treat as repudiated or avoid all or a provision of any Transaction Document;
 - (e) the Facility Holder or any other party attempts to sublease, encumber, part with possession or create a Security Interest in Facility Livestock except in accordance with this Agreement;
 - (f) the Facility Holder changes its name without first notifying Elders of the new name at least 21 days before the change takes effect;
 - (g) the Facility Holder becomes insolvent or enters receivership, liquidation, external administration or becomes subject to any arrangement or composition of creditors;
 - (h) an event or series of events (whether related or not) occurs which, in Elders' reasonable opinion, would have or be likely to have a material adverse effect on the Facility Holder's ability to observe and perform its obligations under the Transaction Documents.
- 13.2 If a Default subsists, Elders may do one or more of the following:
 - (a) declare by notice to the Facility Holder that the Amounts Owing are immediately due and payable, in which case the Facility Holder must immediately pay to Elders the Amounts Owing;
 - (b) as a right without prior notice, enter any property on which it reasonably believes Facility Livestock are held, including the Relevant Property, and:
 - (i) serve documents on the Facility Holder; and/or
 - (ii) repossess, or require immediate delivery of, Facility Livestock and any items derived from Facility Livestock and deal with these items in any manner it sees fit, including slaughter, resale or disposal;
 - (c) by notice to the Facility Holder terminate Elders' obligations specified in the notice with immediate effect; and
 - (d) by notice to the Facility Holder cancel all or any part of the Facility Limit with immediate effect.

14. Elders' protection

- 14.1 The Facility Holder acknowledges that this Agreement creates a security interest in Facility Livestock in favour of Elders for the purposes of the PPSA. In addition, the Facility Holder grants Elders a charge in any products derived from Facility Livestock including all carcasses, meat and any other products or by-products which includes commingled goods, which charge secures the performance by the Facility Holder of its obligations to Elders.
- 14.2 Nothing in this Agreement may be construed as an agreement or consent by Elders to:
 - (a) subordinate any Security Interest granted in favour of Elders in favour of any person; or
 - (b) defer or postpone the date of attachment of any Security Interest granted in favour of Elders.
- 14.3 The Facility Holder must not create or cause to be created a Security Interest over, or in respect of its rights in, Facility Livestock, other than a Security Interest arising under these terms and conditions and other than a Security Interest granted by the Facility Holder in all of its assets in favour of a bank or similar financial institution.
- 14.4 The Facility Holder must do all things and provide all information necessary to enable Elders to perfect its security interest in Facility

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Livestock, including:

- (a) ensuring that the security interest is enforceable against third parties, or otherwise effective; and
 - (b) assisting Elders to complete the registration of any financing statement or financing change statement (each as defined in the PPSA).
- 14.5 The Facility Holder must immediately notify Elders if any other person attempts to enforce a security interest in Facility Livestock.
- 14.6 The Facility Holder undertakes not to change any of its details recorded in a financing statement registered by Elders (including changing its ACN, or any ABN allocated to a trust of which it is trustee, or becoming the trustee of a trust) without giving Elders 10 Business Days' prior notice.
- 14.7 Elders may apply or appropriate all money received from the Facility Holder as Elders sees fit (including so as to enable Elders to preserve any purchase money security interest (as defined in the PPSA)). An application or appropriation by Elders will override any appropriation made by the Facility Holder. For the purposes of section 14(6)(a) of the PPSA, this paragraph constitutes the method of payment application agreed by the parties.
- 14.8 To the extent permitted by law, the Facility Holder irrevocably waives its right to receive notice of a verification statement in respect of each Security Interest granted in favour of Elders.
- 14.9 To the extent permitted by law, the Facility Holder and Elders contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA. The Facility Holder irrevocably waives any rights under sections 95, 118, 121(4), 130 and 132(4) of the PPSA.
- 14.10 Where Elders has rights or powers in addition to, or existing separately from, those in Chapter 4 of the PPSA, those rights and powers will continue to apply and are not limited or excluded (or otherwise adversely affected) by the PPSA.
- 14.11 In this clause 14, the following words and expressions have the same meanings given to them in the PPSA: 'control', 'financing change statement', 'financing statement', 'personal property', 'purchase money security interest', 'security agreement' and 'verification statement'.
- 14.12 Elders need not exercise any rights or power, give a consent or make a decision under a Transaction Document unless the Transaction Document expressly provides otherwise.
- 14.13 To the extent permitted by law, Elders and any of its representatives will not be liable to anyone for any loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred in relation to an exercise or attempted exercise of a right or power under a Transaction Document, or a failure or delay in exercising a right or power under a Transaction Document.
- 14.14 Elders may, without any demand or notice, set off and apply indebtedness it owes to the Facility Holder against any money owing to it by the Facility Holder under any Transaction Document, whether or not the amount owed by Elders or the Facility Holder is immediately payable or is owed alone or with any other person. The Facility Holder irrevocably authorises Elders to do anything necessary (including to sign any document) for that purpose.
- 14.15 Except where Elders has provided prior written consent, the Facility Holder may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against Elders (whether its or any other person's right) or any other right which might have the effect of reducing the Amounts Owing.
- 14.16 The Facility Holder agrees that if a payment or other transaction relating to the Amounts Owing is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an '**Avoidance**'), then even though Elders knew or should have known of the Avoidance:
 - (a) each power and the Facility Holder's liability under each Transaction Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
 - (b) it will immediately execute and do anything necessary or required by Elders to restore Elders to its position immediately before the Avoidance (including reinstating any Transaction Document).
- This clause survives any termination or full or partial discharge or release of any Transaction Document.
- 14.17 If Elders exercises a power or right in connection with a Transaction Document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless Elders states otherwise at the time of exercise. However, this clause does not apply to a right or power which can only be exercised under the PPSA.
- 15. Costs, taxes and general indemnity**
- 15.1 The Facility Holder indemnifies, and will keep indemnified as a continuing obligation, Elders against all expenses, losses, damages and costs that Elders may sustain or incur as a result of, or in connection with, (whether directly or indirectly) any breach of the Transaction Documents by the Facility Holder including a breach in respect of which Elders exercises an express right pursuant to a Default. This clause survives any termination or full or partial discharge or release of any Transaction Document.
- 15.2 The Facility Holder must pay all:
 - (a) Taxes, levies and duties, fees and charges in connection with any Transaction Document or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, any Transaction Document, including Taxes passed onto Elders by another counterparty to the sale or purchase of Livestock; and
 - (b) fines and penalties for late payment or non-payment of those amounts, except where the Facility Holder places Elders in cleared funds to make the payment not less than five Business Days before the due date and Elders fails to make the payment.
- 16. Further action**
- Upon request from Elders, the Facility Holder agrees to do anything Elders reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):
 - (a) to bind it and any other person intended to be bound under the Transaction Documents; and
 - (b) to enable Elders or an attorney (and any of their respective officers, employees and agents) to exercise its rights or any powers in connection with Facility Livestock.
- 17. Privacy**
- 17.1 The Facility Holder authorises Elders to collect and use information about the Facility Holder for the purposes of Elders' business, and to disclose information about it to any person.
- 17.2 The *Privacy Act 1988* (Cth) may entitle the Facility Holder to have access to and, if necessary, to request the correction of any personal information about the Facility Holder held by Elders.

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- 17.3 In accordance with the *Privacy Act 1988* (Cth), Elders' privacy policy provides information about the types of personal information Elders collect, the ways in which Elders uses personal information and the circumstances in which Elders may disclose the Facility Holder's information to third parties. Elders' privacy policy is available at <https://elders.com.au/privacy-policy/>. Elders' statement of notifiable matters includes information about credit reporting bodies Elders may use and individual's opt-out and other privacy rights regarding Elders and credit reporting bodies. Elders' statement of notifiable matters is available at <https://elders.com.au/privacy-policy/statement-of-notifiable-matters/>. The Facility Holder acknowledges and agrees that it has accessed and reviewed these documents.
- 18. Anti-money laundering and sanctions**
- 18.1 The Facility Holder agrees that Elders may delay, block or refuse to process any transaction without incurring any liability if it suspects that:
- (a) the transaction may breach any law in the Relevant State or any other state, territory or country; or
 - (b) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.
- 18.2 The Facility Holder must provide all information to Elders which Elders reasonably requires in order to manage money-laundering or terrorism-financing risk or to comply with any laws in Australia and the Facility Holder agrees that Elders may disclose any information concerning the Facility Holder to any law enforcement, regulatory agency or court where required by any such law, in the Relevant State or elsewhere.
- 18.3 The Facility Holder warrants that it is acting on its own behalf in entering into the Transaction Documents and declares and undertakes to Elders that the payment of money in accordance with the Facility Holder's instructions or at the Facility Holder's request will not breach any laws in the Relevant State or elsewhere.
- 19. Consumer protection**
- The Facility Holder acknowledges that it is acquiring the supply under this Agreement for the purpose of a business and not wholly or predominantly:
- (a) for personal, domestic or household purposes;
 - (b) to purchase, renovate or improve residential property for investment purposes; or
 - (c) to refinance credit that has been provided wholly or predominantly for personal, domestic or household purposes, or to purchase, renovate or improve residential property for investment purposes.
- Further, the Facility Holder acknowledges that this means that it may not have any protection afforded to consumers under the National Credit Code.
- 20. Assignment**
- 20.1 The Facility Holder must not assign or otherwise deal with this Agreement, the Facility Livestock or any other right or property under or the subject of this Agreement without the prior written consent of Elders.
- 20.2 Elders may at any time assign or otherwise deal with this Agreement or any right under this Agreement without giving the Facility Holder notice or obtaining the Facility Holder's consent. Notwithstanding any privacy laws or other requirement of confidentiality, the Facility Holder consents to Elders disclosing information about the Facility Holder and otherwise in connection with this Agreement and any related document for this purpose.
- 21. Notices and other communications**
- 21.1 A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:
- (a) in writing and in English; and
 - (b) hand delivered or sent by prepaid post or email:
 - (i) in the case of a Notice to the Facility Holder, to the address associated with the Facility Holder's Trading Account; and
 - (ii) in the case of a Notice to Elders, to financialservices@elders.com.au or Level 10, 80 Grenfell Street, Adelaide, South Australia 5000,
- as varied by any Notice given by the recipient to the sender.
- 21.2 A Notice takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the fifth Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
 - (c) if sent by email, the time the email enters the recipient's mail server,
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- 22. General**
- 22.1 All payments by the Facility Holder must be made in immediately available funds without set-off, counterclaim or any deduction. If the Facility Holder is required by law to make any deduction from any payment due to Elders, it must make that deduction as required by law, and pay additional amounts to Elders which will result in Elders receiving at the time the payment is due (after the deduction is made) the full amount which Elders would have received if no deduction had been required.
- 22.2 If there is any inconsistency between any of the provisions of this Agreement and the provisions of any Private Sale or Auction arrangements in connection with the sale or purchase of Livestock, the parties agree that the provisions of this Agreement will prevail.
- 22.3 Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.
- 22.4 This Agreement may be executed in any number of counterparts.
- 22.5 This Agreement is governed by the laws of South Australia, and any court within the Commonwealth of Australia in which Elders commences proceedings has non-exclusive jurisdiction to entertain any claims Elders or the Facility Holder may have against each other in connection with the provision of goods or services in accordance with this Agreement.
- 22.6 Elders may vary the terms and conditions of this Agreement at any time from time to time. Where such a variation is to the detriment of the Facility Holder, Elders will only make the change where Elders has a valid reason for doing so and will provide at least 30 days' prior notice before the variation takes effect. During this notice period, if the Facility Holder does not wish to be bound by the variation, the Facility Holder may exit the Facility by notifying Elders of its wish to exit the Facility and paying to Elders all Amounts Owing following which the Facility will terminate. Where such a variation is neutral or to the benefit of the Facility Holder, Elders may make the variation immediately and without prior notice to the Facility Holder. By continuing to use the Facility following a variation the Facility Holder is deemed to have agreed to the

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variation.

23. Definitions and interpretation

23.1 Definitions

In this document:

Acquisition means the purchase of Livestock by the Facility Holder where the Purchase Price is settled by Elders pursuant to the Facility.

Advance Amount means the amount referred to in clause 1.5(b).

Advance Date means, in connection with an Advance Amount, the date on which Elders pays that Advance Amount to the Facility Holder.

Agreement means the application form and these terms and conditions.

Amounts Owing means all money and amounts that the Facility Holder is or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of Elders (whether alone or not and in any capacity) under or in connection with a Transaction Document.

Auction means any auction for the sale and purchase of Livestock.

Business Day means a week day on which banks are open for general banking business in Adelaide and in the capital city of the Relevant State.

Default means an event or circumstance specified in clause 13.

Elders means Elders Rural Services Australia Limited ACN 004 045 121.

Elders Auction means any livestock auction facilitated or managed by Elders or any party expressly authorised by Elders and governed by the 'Elders Livestock Auction Terms and Conditions of Sale'. At the date of this Agreement those terms and conditions are available at: your local Elders branch.

Elders Payment Amount means, in relation to a sale of Livestock by the Facility Holder, an amount determined by Elders which equals the aggregate of: (a) all Amounts Owing; and (b) the Sale Costs, each of which are attributable to the sold Livestock.

Elders Private Sale means a private sale of livestock facilitated by Elders or any party expressly authorised by Elders where Elders has acted as agent for the Vendor subject to the 'Elders Private Sale Terms and Conditions'. At the date of this Agreement those terms and conditions are available at your local Elders branch.

Facility means the financial accommodation provided by Elders to the Facility Holder as set out in this document.

Facility Holder means the party specified as the facility holder in the application form.

Facility Limit means the facility limit specified in the application form.

Facility Livestock means Livestock in relation to which Elders has either settled the Purchase Price in accordance with clause 2 or paid an Advance Amount in accordance with clause 3 (including born or unborn progeny of such Livestock).

Government Agency means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

Interest means amounts accrued in accordance with clause 4.

Interest Rate means the interest rate specified in the application form.

Invoice Price means the amount for payment shown on an invoice relating to an Acquisition.

Livestock means commercial sheep or cattle, or such other livestock as Elders deems to be 'Livestock' for the purposes of the Agreement.

National Credit Code means the code set out in schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth).

Potential Default means any event, thing or circumstance which likely would become a Default with the giving of notice, the making of a determination under a Transaction Document or the passage of time (or any combination of those things).

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulation made at any time under that Act, including the *Personal Property Securities Regulations 2010* (Cth).

Private Sale means a sale of livestock between a vendor and a purchaser which may or may not involve a third party agent to facilitate the sale.

Purchase Costs means all payments made by Elders on behalf of the Facility Holder in relation to the settlement of the purchase of Livestock other than the Invoice Price, including Vendor Commissions, government taxes, duties and levies and any other associated charges.

Purchase Price means, in relation to any Livestock, the sum of the Invoice Price and any Purchase Costs paid or payable by Elders on behalf of the Facility Holder in relation to those Livestock.

Relevant Property means the property at which the Livestock will be held as specified in the application form.

Relevant State means the State in which the Relevant Property is located.

Sale Costs means the following costs incurred by Elders on behalf of the Facility Holder in connection with the sale by the Facility Holder of any Livestock permitted by clause 7:

- (a) sales commissions and fees;
- (b) slaughter fees and levies;
- (c) transportation costs to and from the place of sale;
- (d) government taxes duties and levies, including any fees levied in respect of the stock failing to meet any requirements of a Government Agency; and
- (e) any other costs incurred by Elders for which the Facility Holder is liable under this Agreement.

Sale Terms means the terms and conditions to which a Private Sale or an Auction are subject.

Security Interest means any:

- (a) 'security interest' as defined in the PPSA;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

LIVESTOCKPLUS TERMS AND CONDITIONS

Settlement Date means, in connection with the Facility Holder's purchase of Livestock, the date on which that Livestock is to be paid for.

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding imposed, levied or assessed by a Government Agency and any related penalty, fine, fee or interest. It includes stamp duty, livestock duty, GST and transaction taxes and duties.

Term means the period commencing on the date of this document and ending on the Termination Date.

Termination Date means the date on which the Facility is terminated or cancelled in full in accordance with this document or on which all Amounts Owing become due and payable under this document.

Trading Account means a trade credit account with Elders.

Transaction Document means:

- (a) this Agreement; and
- (b) the Sale Terms; and
- (c) any document required to be executed in the purchase and sale of Livestock or as required by this Agreement.

Vendor means the seller of Livestock the subject of an Acquisition.

Vendor Commissions means any other commissions or fees payable to the Vendor or the Vendor's agents or representatives which are not included in the Purchase Price.

1.1 Interpretation

In this document:

- (a) a Default or Potential Default subsists until either:
 - (i) remedied to Elders' satisfaction before any rights or powers relating to a Default or Potential Default is exercised; or
 - (ii) waived by Elders in writing in accordance with this document;
- (b) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (c) unless the context requires otherwise, a reference in this document to:
 - (i) a person includes that person's successors and permitted substitutes and assigns;
 - (ii) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
 - (iii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
 - (iv) headings and subheadings are for convenience only and do not affect the interpretation of this agreement;
 - (v) words denoting the singular include the plural and words denoting the plural include the singular;
 - (vi) words denoting any gender include all genders;
 - (vii) the word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency;
 - (viii) a reference to any agreement or document (including this document) includes any amendments to or replacements of that document;
 - (ix) a reference to a law includes:
 - (A) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
 - (B) any constitutional provision, treaty or decree;
 - (C) any judgment;
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts;
- (x) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement;
- (xi) specifying anything in this agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary;
- (xii) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (xiii) references to 'dollars' or '\$' are to the lawful currency of Australia.

