

## TERMS OF SALE

These Terms of Sale and any additional terms on any applicable Livestock Sale Docket, sale or delivery note, receipt, invoice or other relevant document prepared by Focus in relation to any sale apply to the supply of Goods by Focus, whether such sale is completed by written agreement, electronic record or oral communication unless stated otherwise by Focus.

### 1. DEFINITIONS

- 1.1 "Focus" means Focus Genetics Limited Partnership and includes each of its subsidiaries.
- 1.2 "Goods" means all goods, livestock and services, and is deemed to include all goods, livestock and services described or referred to in any invoices, statements or other records prepared by Focus (and the description or details set out or referred to in any such records).
- 1.3 "Purchaser" means the Purchaser, any person acting on behalf of the Purchaser, or any person purchasing Goods from Focus.

### 2. APPLICATION

- 2.1 Terms of Sale: By placing an order for the purchase of Goods from Focus, the Purchaser acknowledges and accepts these Terms of sale.
- 2.2 The Purchaser cannot cancel any purchase order for Goods accepted by Focus and is bound to pay the quoted price.

### 3. TERMS OF PAYMENT

- 3.1 Unless Focus specifies otherwise, the purchase price and any commission and associated charges, plus GST, must be paid by the Purchaser to Focus as follows:
  - a. Livestock and grazing; within 14 days of purchase;
  - b. Other Goods; within 14 days of invoice date.
- 3.2 All amounts payable to Focus shall be paid in full without any set-off or deduction.
- 3.3 Any "Buy Now" price will be forfeited to the list price if the Goods purchased at the "Buy Now" price are not paid for by the due date.
- 3.4 Interest on overdue payments may be charged from the time of purchase on a daily basis at the rate of 1.5% (one and one half percent) per calendar month.
- 3.5 Focus may in its discretion allocate any payment received from the Purchaser towards any invoice that focus determines and may do so at the time of receipt or at any time afterwards and on default by the Purchaser may reallocate any payments previously received and allocated by Focus. In the absence of any express allocation by Focus, payment shall be deemed to be allocated in such manner as best preserves the maximum value of focus' security interests in goods supplied by it to the Purchaser.

### 4. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 4.1 If the Purchaser is a company or trust, then in consideration of Focus entering into this agreement at the request of the directors of the company or the trustees who sign this agreement ("the Signatories"), the request for which the Signatories acknowledge, the Signatories also enter into this agreement in their personal capacity and jointly and severally personally undertake as principal debtors to Focus the payment of all monies now or hereafter owed by the Purchaser to Focus and indemnify Focus against non-payment by the Purchaser. To avoid doubt, the Purchaser and the Signatories are jointly and severally liable as principal debtors under the terms of the agreement and for payment of all sums due hereunder.

### 5. RISK AND DELIVERY

- 5.1 All Goods are at the Purchaser's sole risk in all respects:
  - a. In the case of livestock, upon crossing the tailgate of the Purchaser's carrier; and
  - b. In the case of other Goods, from the point of loading on to the carrier or Purchaser's vehicle.
- 5.2 Focus shall be in no way liable for any delay in the date of delivery of any Goods. Where the Purchaser does not take delivery of the Goods by the delivery date specified, the Purchaser shall pay reasonable grazing or storage costs until such time as the Purchaser uplifts the Goods.

### 6. SUPPLY FOR BUSINESS PURPOSES

- 6.1 The Purchaser agrees that where any Goods are acquired for the purposes of a business the Consumer Guarantees Act 1993 will not apply.

### 7. FOCUS' LIABILITY

- 7.1 Breeding rams are fully guaranteed to remain alive until the earlier of three months post-delivery or the date on which the ram first mates with one of the Purchaser's ewes. Breeding rams are fully guaranteed against any Genetic faults that are discovered within twelve months of delivery.
- 7.2 If a ram dies or displays a genetic fault within the guarantee periods outlined in clause 7.1 then, upon provision by the Purchaser of evidence that the ram has died, or in the case of genetic fault sent to slaughter, Focus will replace it with a ram of the same value.
- 7.3 Breeding bulls are fully guaranteed to remain alive for three breeding seasons and also against any faults in the bull's disposition or Genetics that are discovered within three breeding seasons. If a bull has a Genetic fault then compensation by way of credit against the Purchaser's next purchase from Focus will be given. The quantum of compensation will be reasonable, taking into account the number of seasons it has done less the salvage value of the bull.
- 7.4 Any compensatory credits issued pursuant to clause 7.3 will be at dollar values as opposed to unit value. Once a credit has been approved it will sit in Focus' system to be offset by the Purchaser's next purchase.

- 7.5 No cash refunds are given.
- 7.6 Focus' maximum liability under this clause 7 shall never exceed \$25,000.00 in relation to any one animal.
- 7.7 Focus does not warrant that it will provide the requested quantity of Goods. The acceptance by Focus of an offer to purchase a quantity of goods is an agreement to provide such quantity not exceeding the requested quantity as Focus can reasonably supply. Focus is not liable for any shortfall and the Purchaser must take delivery of and pay for the lesser quantity that Focus is able to supply.
- 7.8 Focus shall not be liable for any direct or indirect loss or damage (including, without limitation, loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods by Focus, except as is set out in clause 7.
- 7.9 No action, including but not being limited to a claim for compensation under clause 7, arising out of the supply of Goods by Focus, may be brought more than six months after the Purchaser becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the claim, regardless of the form of the action or claim.

### 8. INTELLECTUAL PROPERTY

- 8.1 The Purchaser agrees and acknowledges that Focus owns all intellectual property associated with the Goods sold under this agreement. The Purchaser will not do anything which may prejudice or infringe Focus' intellectual property in the Goods.
- 8.2 The Purchaser acknowledges that all goodwill resulting from the Purchaser's use of Focus' intellectual property in the Goods and/or any of Focus' trademarks shall accrue solely for the benefit of Focus.

### 9. RETENTION OF TITLE AND THE PERSONAL PROPERTY SECURITIES ACT 1999

- 9.1 Ownership of and title to all Goods shall remain with Focus and not pass to the Purchaser until they are paid for in full in cleared funds.
- 9.2 Until title passes to the Purchaser the Purchaser shall hold the Goods as bailee of Focus.
- 9.3 The Purchaser grants to Focus a security interest in all Goods supplied or to be supplied by Focus to secure all payments under these Terms of Sale. The Purchaser will do all things necessary for Focus to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the Goods and their proceeds. Focus may at its sole discretion register a security interest on behalf of Focus (where it is acting as agent).
- 9.4 Nothing in sections 114(1)(a), 117(1)(c), 133 or 134 of the Personal Property Securities Act 1999 (PPSA) applies. The Purchaser's rights in sections 116, 119, 120(2), 121, 125 to 127, 129, 131 and 132 of the PPSA do not apply.
- 9.5 The Purchaser gives irrevocable authority to focus to enter any property occupied, in whole or in part, by the Purchaser, or on which any Goods supplied by Focus to the Purchaser are situated, at any reasonable time after default by the Purchaser, or before default if Focus believes a default is likely, and to remove and repossess any Goods. Focus shall not be liable for any costs, damages, expenses or losses incurred or assumed by the Purchaser to any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Purchaser indemnifies Focus and its agents for all costs and liabilities incurred in connection with the repossession, grazing, storage and/or resale of the Goods (including any shortfall from resale at a lower price).
- 9.6 The following shall constitute defaults by the Purchaser:
  - a. Non-payment of any sum by the due date.
  - b. The Purchaser intimating or threatening that the Purchaser will not pay any sum by the due date.
  - c. Any Goods are seized or the seizing of them is threatened by any other person.
  - d. The Purchaser is bankrupted, put into receivership or liquidation, enters into voluntary administration, or makes a composition with the Purchaser's creditors.
- 9.7 Any material adverse change in the Purchaser's circumstances.

### 10. MISCELLANEOUS

- 10.1 Enforcement: The Purchaser will pay Focus on demand all costs (including legal costs on a solicitor/client basis) incurred by Focus in connection with any default by the Purchaser.
- 10.2 Entire agreement: These Terms of Sale (and any incorporated document including any formal credit arrangements) are the entire agreement between the parties, and replace all representations, agreements and other communication made by Focus.
- 10.3 No waiver: Focus shall be deemed not to have waived any right to do anything unless that waiver is in writing and signed by an authorised manager in Focus.
- 10.4 Severability: If any part of these Terms of Sale is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms of Sale are not affected.
- 10.5 Variation: Focus may vary these Terms of Sale by disclosing such varied terms to the principal Vendor or Purchaser at any time.
- 10.6 The Purchaser may not assign any or all of its rights or obligations under any agreement with focus without the prior written consent of Focus.
- 10.7 Focus is not bound by any error or omission on any invoice, order form or other document or statement issued by Focus or its agents.