

ELDERS RURAL SERVICES AUSTRALIA LIMITED LIVESTOCK-IN-TRANSIT DELIVERY WARRANTY

1. Definitions and interpretation

In these terms and conditions, the following terms have the following meanings.

- 1.1 "Beneficiary" means a person who holds a Trading Account and who has indicated that they wish to receive from Elders a LIT Delivery Warranty as part of each Transaction. For the avoidance of doubt, a Beneficiary may either be a vendor of livestock or a purchaser of livestock.
- 1.2 "Chain of Responsibility Laws" means the *Road Traffic (Vehicles) Act 2012* (WA), the "Heavy Vehicle National Law" set out in the schedule to the *Heavy Vehicle National Law Act 2012* (Qld), and laws that are substantively modelled on the "Heavy Vehicle National Law".
- 1.3 "Delivery Date", in relation to a Transaction, means:
- if the Transaction is a private sale, and the Beneficiary is the vendor, the delivery date specified in the terms of the Transaction;
 - if the Transaction is a private sale, and the Beneficiary is the purchaser, the delivery date agreed between the relevant parties;
 - if the Transaction is an auction, and the Beneficiary is the vendor, the date on which the livestock must be delivered to be included in the auction; or
 - if the Transaction is an auction, and the Beneficiary is the purchaser, the delivery date agreed between the relevant parties.
- 1.4 "Delivery Location", in relation to a Transaction, means:
- if the Transaction is a private sale, and the Beneficiary is the vendor, the delivery location specified in the terms of the Transaction;
 - if the Transaction is a private sale, and the Beneficiary is the purchaser, the delivery location agreed between the relevant parties;
 - if the Transaction is an auction, and the Beneficiary is the vendor, the site of the auction; or
 - if the Transaction is an auction, and the Beneficiary is the purchaser, the delivery location agreed between the relevant parties.

1.5 "Elders" means Elders Rural Services Australia Limited ACN 004 045 121 of Level 10, 80 Grenfell Street, Adelaide, SA 5000.

- 1.6 "Fee" means the percentage of the sales price of a Transaction that Elders charges for the provision of the LIT Delivery Warranty, as published from time to time on www.elders.com.au.
- 1.7 "LIT Delivery Warranty" means the warranty in favour of the Beneficiary provided by Elders upon the assumption of a contractual delivery obligation in clause 4.1 as limited by clause 6.
- 1.8 "Trading Account" means an Elders Commercial Credit Account.
- 1.9 "Transaction" means an agreement to buy and sell livestock (other than registered breeding stock), whether by way of private sale or auction, to which the Beneficiary is a party, and which Elders has affected or in connection with which Elders has extended credit.

1.10 "Transport Documentation" means the relevant documents relating to the transport of the livestock and includes the National Vendor Declaration and Animal Health Declaration.

2. Application

- 2.1 These terms and conditions apply to each Transaction. To the extent that these terms and conditions are inconsistent with any other terms and conditions of a Transaction, these terms and conditions prevail.
- 2.2 Elders will cease to provide the LIT Delivery Warranty as part of each Transaction upon receipt of a notice in writing to that effect from the Beneficiary ("Cancellation Notice"). Elders may recommence providing the LIT Delivery Warranty as part of each Transaction 10 days after the receipt of a written request to that effect from the Beneficiary.

3. Fee and payment

- 3.1 In consideration of Elders agreeing to provide the LIT Delivery Warranty in accordance with clause 4.1 the Beneficiary agrees to pay the Fee to Elders in accordance with this clause 3.
- 3.2 The Beneficiary directs Elders:
- where the Beneficiary is the vendor in a Transaction, to deduct the Fee from the sales proceeds payable to the Beneficiary as part of the Transaction prior to disbursing those proceeds to the Beneficiary; and
 - where the Beneficiary is the purchaser in the Transaction, to add the Fee to the sales price to be paid to Elders by the Beneficiary.
- 3.3 The Fee is exclusive of GST (unless expressly stated otherwise) and the Beneficiary will pay GST in addition to the Fee (where applicable) and will pay GST with respect to any other taxable supply in accordance with these terms and conditions.

4. LIT Delivery Warranty

- 4.1 Subject to clause 4.2, and in consideration of the Beneficiary agreeing to pay the Fee in accordance with

clause 3.1 and otherwise to abide by the Beneficiary's obligations under these terms and conditions, Elders:

- assumes a contractual obligation to have the livestock delivered alive to the Delivery Location on the Delivery Date; and
- warrants in favour of the Beneficiary that the livestock will be delivered alive to the Delivery Location and will not need to be destroyed because of circumstances arising during transit immediately after delivery (in the case of private sales) or before the fall of the hammer (in the case of auctions).

4.2 Elders' obligations to a Beneficiary in clause 4.1 only apply where:

- the terms of the Transaction have conferred risk in the livestock on the Beneficiary;
- if the livestock are being transported on foot, the total journey is less than 10 kilometres; and
- as outlined in the following table:

Sale type	Transport Mode	Beneficiary	Commence on	Ends on
i Private sale	Road or rail	Vendor	The livestock entering the loading ramp	The livestock exiting the unloading ramp at the Delivery Location
ii Private sale	Road or rail	Purchaser	The livestock entering the loading ramp	The livestock exiting the unloading ramp at the Delivery Location
iii Auction	Road or rail	Vendor	The livestock entering the loading ramp	The fall of the hammer
iv Auction	Road or rail	Purchaser	The fall of the hammer	The livestock exiting the unloading ramp at the Delivery Location
v Private sale	On foot	Vendor	The livestock exiting the vendor's property	The livestock entering the Delivery Location
vi Private sale	On foot	Purchaser	The livestock exiting the vendor's property	The livestock entering the Delivery Location
vii Auction	On foot	Vendor	The livestock exiting the vendor's property	The fall of the hammer
viii Auction	On foot	Purchaser	The fall of the hammer	The livestock entering the Delivery Location

5. Consequences of deaths of livestock

- 5.1 If, contrary to the LIT Delivery Warranty, any livestock are not delivered alive to the Delivery Location, or need to be destroyed immediately after delivery, Elders will, subject to the Beneficiary having strictly complied with its obligations under these terms and conditions, pay to the Beneficiary damages equal to:
- the value of the dead livestock, as calculated under clause 5.3;
 - the amount of reasonable costs incurred by the Beneficiary for the cost to round up, agist and provide emergency transport of the livestock following a fire, collision or overturning of the carrying vehicle, up to a maximum of an amount equal to 50% of the value of the livestock being transported; and
 - the amount of reasonable costs incurred by the Beneficiary in relation to the removal and disposal of carcases and veterinary expenses, up to a maximum of \$20,000.
- 5.2 In circumstances where the livestock travelled, or were due to travel, greater than 1,500 km, the value of the livestock as calculated in clause 5.3 will be reduced by 25%.
- 5.3 Subject to clauses 5.1 and 5.2, Elders will calculate the value of the dead livestock as follows:
- where the Transaction is a private sale, the value of the dead livestock will be calculated having regard to the relevant prices specified in the Transaction;
 - where the Transaction will be effected by auction and the livestock die while being delivered to the auction site, the value of the dead livestock will be calculated having regard to the prices that comparable livestock achieved at the relevant auction;
 - where the Transaction was effected by auction and the livestock die while being delivered from the auction, the value of the dead livestock will be calculated having regard to the actual prices that the dead livestock achieved at the auction, less, in each case, any levies, commissions, cartage and other charges ordinarily payable in transactions similar to the Transaction on a pro rata basis.
- 5.4 Elders' calculation of the value of the dead livestock under clause 5.3 is final and binding.
- 5.5 The Beneficiary acknowledges and agrees that the payment of damages in accordance with this clause 5 is the sole and exclusive remedy available to the Beneficiary in connection with any breach by Elders of these terms and conditions, and Elders is not liable for any loss or damage arising in connection with these terms and conditions and is not obliged to indemnify the Beneficiary for its loss other than for any liability that it may have to pay damages to the Beneficiary under this clause 5.

6. Qualifications and limitations

- 6.1 Elders' obligation to pay damages in connection with these terms and conditions, including in accordance with clause 5, is reduced or extinguished (as the case may be) to the extent that:
- the livestock were not delivered alive to the Delivery Location because of dishonesty or fraud by, or in connection with, the Beneficiary;
 - the livestock died in transit, or were destroyed immediately after delivery, because:
 - the livestock were suffering from an infectious disease;
 - the livestock were poisoned;
 - the livestock were maimed, lame, diseased, blind or emaciated; or
 - the livestock were otherwise not fit to be transported (having regard to the Australian Animal Welfare Standards and Guidelines for the Land Transport of livestock), immediately prior to loading;
 - the transport of the livestock was related to a veterinary movement order;
 - the Beneficiary failed to carry out its obligations in strict accordance with clause 9, including the obligation to complete the Transport Documentation completely and correctly;
 - the livestock were loaded, or transported, otherwise than in compliance with the Chain of Responsibility Laws;
 - the Beneficiary caused, or contributed to, the circumstances giving rise to the obligation (including any failure by the Beneficiary to take reasonable steps to mitigate those circumstances);
 - actions of the Beneficiary increased Elders' costs to investigate the claim.
- 6.2 Each qualification and limitation in this clause 6 is to be construed and applied independently of the others and is not limited by any other qualification or limitation.

7. Notification of claims

- 7.1 If the Beneficiary believes that circumstances exist that would entitle it to a payment under clause 5.1, the Beneficiary must:
- notify Elders of those circumstances within 48 hours of those circumstances occurring; and
 - provide Elders with all information reasonably required by Elders relating to the circumstances giving rise to the claim within 31 days of the relevant circumstances.

8. Engagement of carrier

- 8.1 Subject to any contrary terms in the Transaction, Elders will:
- deliver the livestock; or
 - arrange as agent the method by which the delivery is undertaken; or
 - appoint the Beneficiary as its agent, and the relevant party will then be responsible;
 - to transport the livestock; or
 - to engage a reputable carrier to transport the livestock, to the Delivery Location on the Delivery Date.
- 8.2 If the Beneficiary is appointed as Elders agent pursuant to clause 8.1, the Beneficiary has no authority to bind Elders, and must not represent that it has authority to bind Elders, other than specifically outlined in that clause.
- 8.3 The Beneficiary will be responsible to pay either directly to the carrier providing the relevant transport or to Elders all costs, charges and taxes that arise as a result of delivery obligations undertaken pursuant to clause 8.1.
- 8.4 The Beneficiary indemnifies Elders against all claims, costs, liabilities, losses and expenses incurred by Elders arising from the Beneficiary being appointed as Elders agent except to the extent arising from the wilful or negligent acts or omissions of Elders.

9. Transport documentation

- 9.1 The Beneficiary:
- consents to be, and must ensure that it is, named as the "consignor" (or a similar expression) in all relevant Transport Documentation; and
 - must ensure that all Transport Documentation is complete and correct, failing which these terms and conditions, and Elders' obligations under them, are void in relation to the relevant Transaction.
- 9.2 If these terms and conditions are voided pursuant to clause 9.1, Elders will be entitled to retain any fees paid by the Beneficiary.
- 9.3 Any Fees retained by Elders pursuant to clause 9.2 are considered to be a genuine estimate of Elders' loss as a result of these terms and conditions being voided and the retention of the fees by Elders is not intended to operate as a penalty.
- 9.4 Elders does not consent to be named as consignor (or any similar expression) in any Transport Documentation.