

ELDERS RURAL SERVICES AUSTRALIA LIMITED LIVESTOCK-IN-TRANSIT DELIVERY WARRANTY | TERMS AND CONDITIONS

1. Definitions and interpretation

1.1 Definitions

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

- (a) 'Australian Animal Welfare Standards and Guidelines – Land Transport of Livestock' means the document of that name published from time to time on www.animalwelfarestandards.net.au.
- (b) 'Beneficiary' means a person:
 - (i) who has applied for, and been granted, a Trading Account; or
 - (ii) who has engaged Elders as that person's agent to sell Livestock, and who has not ceased to be a 'Beneficiary' pursuant to clause 2.2.
- (c) 'Cancellation Notice' means the cancellation notice that Elders publishes on the Website from time to time.
- (d) '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'.
- (e) 'Delivery Date', in relation to a Transaction, means:
 - (i) if the Transaction is a private sale, the delivery date agreed between the parties to the Transaction;
 - (ii) if the Transaction is an auction, and:
 - (A) the Beneficiary is the vendor, the date on which the Livestock that are intended to be the subject of the Transaction must be delivered to be included in the auction; or
 - (B) the Beneficiary is the purchaser, the delivery date agreed between the Beneficiary and Elders.
- (f) 'Delivery Location', in relation to a Transaction, means:
 - (i) if the Transaction is a private sale, the delivery location agreed between the parties to the Transaction;
 - (ii) if the Transaction is an auction, and:
 - (A) the Beneficiary is the vendor, the site of the auction; or
 - (B) the Beneficiary is the purchaser, the delivery location agreed between the Beneficiary and Elders.
- (g) 'Elders' means Elders Rural Services Australia Limited ACN 004 045 121 of Level 10, 80 Grenfell Street, Adelaide, SA 5000.
- (h) '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 the Website.
 - (i) 'Freight Costs' means all costs, charges and taxes charged by a carrier in connection with the delivery of Transaction Livestock to a Delivery Location.
 - (j) '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 as limited by clause 6.
- (k) 'Livestock' means cattle or sheep (in each case other than registered breeding stock).
- (l) 'Trading Account' means an Elders Commercial Credit Account.
- (m) 'Transaction' means an agreement to buy and sell Livestock by private sale or auction to which the Beneficiary is or will be a party, and which Elders has effected or will effect as agent of the Beneficiary, or in connection with which Elders has extended or will extend credit to the Beneficiary.
- (n) 'Transaction Livestock' means Livestock that are the subject of a Transaction.
- (o) 'Transport Documentation' means all documentation required in order to transport the Transaction Livestock, including 'National Vendor Declarations' and 'Animal Health Declarations'.
- (p) 'Website' means www.eldersrural.com.au/livestock/livestock-in-transit-delivery-warranty/.

1.2 Interpretation

In these terms and conditions the following rules of interpretation apply.

- (a) Words denoting the singular include the plural and words denoting the plural include the singular.
- (b) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) A reference to any agreement or document includes any amendments to or replacements of that document.
- (d) A reference to a law includes legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them; any judgment; 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.
- (e) Specifying anything in these terms and conditions 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.

2. Application, amendment and cancellation

- 2.1 These terms and conditions apply to each Transaction. Except where stated otherwise, where these terms and conditions are inconsistent with any other terms and conditions of a Transaction, these terms and conditions prevail.
- 2.2 Elders may from time to time vary these terms and conditions provided that, where any such variation is likely to cause detriment to the Beneficiary, Elders has first notified the Beneficiary of the variation.
- 2.3 A Beneficiary may at any time elect not to receive the LIT

Delivery Warranty as part of each Transaction by providing Elders with a complete Cancellation Notice. Upon Elders receiving and processing such a notice, the Beneficiary will cease to be a 'Beneficiary' for the purposes of these terms and conditions.

3. Fee and payment

- 3.1 In consideration of Elders agreeing to provide the LIT Delivery Warranty in accordance with clause 4 the Beneficiary agrees to pay the Fee to Elders in accordance with this clause 3.
- 3.2 The Beneficiary directs Elders:
 - (a) where the Beneficiary is the vendor in a Transaction, to deduct and retain the Fee and any Freight Costs incurred by Elders from the sales proceeds payable to the Beneficiary pursuant to the Transaction before disbursing the balance of those proceeds to the Beneficiary; and
 - (b) where the Beneficiary is the purchaser in the Transaction, to add the Fee and any Freight Costs incurred by Elders to the sales proceeds to be paid to Elders by the Beneficiary pursuant to the Transaction.
- 3.3 The Fee and any Freight Costs incurred by Elders are exclusive of GST (unless expressly stated otherwise) and the Beneficiary will pay GST in addition to the Fee and any such Freight Costs (where applicable) and will pay GST with respect to any other taxable supply made in accordance with these terms and conditions.

4. LIT Delivery Warranty

- 4.1 Subject to clauses 4.2 and 4.3, 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:
 - (a) assumes as part of each Transaction a contractual obligation in favour of the Beneficiary to have Transaction Livestock delivered alive to the Delivery Location on the Delivery Date; and
 - (b) warrants in favour of the Beneficiary as part of each Transaction that Transaction Livestock will be delivered alive to the Delivery Location and will not need to be euthanised after delivery because of circumstances arising during transit.
- 4.2 Subject to clause 4.3, the obligation assumed, and the warranty made, by Elders in clause 4.1 only apply:
 - (a) where the Transaction Livestock are at the Beneficiary's risk pursuant to the terms of the Transaction;
 - (b) where the Delivery Location for the Transaction is in Australia;
 - (c) if the Transaction Livestock are to be transported on foot, where the total journey is less than 10 kilometres; and
 - (d) in the period as outlined in the following table:

Transaction type	Transport mode	Beneficiary	Starts	Ends
Private sale	Road, rail, boat, or combination thereof	Vendor	On Transaction Livestock entering loading ramp	Immediately after Transaction Livestock exit unloading ramp at Delivery Location
Private sale	Road, rail, boat, or combination thereof	Purchaser	On Transaction Livestock entering loading ramp	Immediately after Transaction Livestock exit unloading ramp at Delivery Location
Auction	Road, rail, boat, or combination thereof	Vendor	On Transaction Livestock entering loading ramp	On fall of hammer
Auction	Road, rail, boat, or combination thereof	Purchaser	On fall of hammer	Immediately after Transaction Livestock exit unloading ramp at Delivery Location
Private sale	On foot	Vendor	On Transaction Livestock exiting vendor's property	Immediately after Transaction Livestock enter Delivery Location
Private sale	On foot	Purchaser	On Transaction Livestock exiting vendor's property	Immediately after Transaction Livestock enter Delivery Location
Auction	On foot	Vendor	On Transaction Livestock exiting vendor's property	On fall of hammer
Auction	On foot	Purchaser	On fall of hammer	Immediately after Transaction Livestock enter Delivery Location

4.3 The obligation assumed, and the warranty made, by Elders in clause 4.1 do not apply:

- (a) where Transaction Livestock were not delivered alive to the Delivery Location because of dishonesty or fraud by the Beneficiary, its directors, employees, contractors, or agents (other than Elders);
- (b) to the extent that Transaction Livestock died in transit, or were euthanised immediately after delivery, because:
 - (i) they were suffering from an infectious disease;
 - (ii) they were poisoned;
 - (iii) they were not fit to be transported (having regard to the Australian Animal Welfare Standards and Guidelines – Land Transport of Livestock) immediately prior to loading, for example, because they were maimed, lame, diseased, or emaciated; or
 - (iv) they were loaded or transported by someone other than

- (c) where the transport of the Transaction Livestock was related to a veterinary movement order;
- (d) where the Beneficiary failed to carry out its obligations in strict accordance with clause 8;
- (e) to the extent that 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);
- (f) to the extent that actions of the Beneficiary increased Elders' costs to investigate the claim.

4.4 Each qualification and limitation in clause 4.3 is to be construed and applied independently of the others and is not limited by any other qualification or limitation.

5. Payment on deaths of Transaction Livestock

- 5.1 If, contrary to the LIT Delivery Warranty, any Transaction Livestock are not delivered alive to the Delivery Location, or need to be euthanised 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:
 - (a) the value of the dead Transaction Livestock, as calculated under clause 5.2; plus
 - (b) the amount of reasonable costs incurred by the Beneficiary to round up, agist and provide emergency transport of surviving Transaction Livestock following a fire, collision or overturning of the carrying vehicle, up to a maximum of the amount equal to 50% of the value of the surviving Transaction Livestock; plus
 - (c) the amount of reasonable costs incurred by the Beneficiary in relation to the removal and disposal of carcasses and veterinary expenses, up to a maximum of \$20,000.
- 5.2 Elders will calculate the amount payable pursuant to clause 5.1 as follows:
 - (a) where the Transaction is a private sale, the amount will be calculated having regard to the relevant prices specified in the Transaction less customary fees and charges and the salvage value received by the Beneficiary for the dead Transaction Livestock;
 - (b) where the Transaction will be effected by auction and Transaction Livestock die while being delivered to the auction site, the amount will be calculated having regard to the prices that comparable Livestock achieve at the relevant auction less customary fees and charges and the salvage value received by the Beneficiary for the dead Transaction Livestock;
 - (c) where the Transaction was effected by auction and the Transaction Livestock die while being delivered from the auction, the amount will be calculated having regard to the actual prices that the dead Transaction Livestock achieved at the auction, less customary fees and charges in transactions similar to the Transaction on a pro rata basis less the salvage value received by the Beneficiary for the dead Transaction Livestock.
- 5.3 Elders' calculation of the amount payable pursuant to clause 5.1(a) under clause 5.2 is final and binding.
- 5.4 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 for a breach by Elders of the LIT Delivery Warranty.
- 5.5 The benefits to the Beneficiary given by the LIT Delivery Warranty are in addition to other rights and remedies of the Beneficiary under a law in relation to the services to which the LIT Delivery Warranty relates. To the extent permitted by law, however, all conditions, warranties and guarantees implied in these terms and conditions by law are excluded. Where such conditions, warranties or guarantees cannot be excluded, Elders' liability is limited to its election to supplying the services to which the LIT Delivery Warranty relates again, or paying the cost of having those services supplied again.

6. Notification of claims

- 6.1 If the Beneficiary believes that circumstances exist that would entitle it to a payment under clause 5.1, the Beneficiary must:
 - (a) notify Elders of those circumstances within 48 hours of those circumstances occurring by either:
 - (i) contacting the Elders representative that effected the relevant Transaction; or
 - (ii) emailing livestockintransit@elders.com.au; and
 - (b) provide Elders with all information reasonably required by Elders relating to the circumstances giving rise to the claim within 31 days of those circumstances occurring.

7. Engagement of carrier

- 7.1 Subject to any contrary terms in the Transaction, Elders engages the Beneficiary to have the Transaction Livestock transported by a reputable carrier to the Delivery Location on the Delivery Date in a safe manner and otherwise in accordance with the Chain of Responsibility Laws. The Beneficiary will be responsible for all resulting Freight Costs. The Beneficiary has no authority, and must not represent that it has authority, to bind Elders in any way.

8. Transport documentation

- 8.1 The Beneficiary:
 - (a) consents to be, and must ensure that it is, named as the 'consignor' (or an equivalent expression) in all relevant Transport Documentation; and
 - (b) must ensure that all Transport Documentation is complete and correct.
- 8.2 Elders does not consent to be named as 'consignor' (or any equivalent expression) in any Transport Documentation.