



NATIONAL BEEF ASSOCIATION



TERMS AND CONDITIONS OF SALE FOR USE IN PRIVATE SALES OF PEDIGREE CATTLE BY INDIVIDUAL CATTLE BREEDERS

IMPORTANT

These Terms and Conditions of Sale (hereinafter referred to as 'Terms') contain provisions by way of exclusion and limitation of liability in favour of the Vendor

1. Definitions

1.1. In these Terms:

"Animal" means the bull or cow or heifer described in the Schedule hereto, and which the Vendor is to supply in accordance with these Terms

"Fertile" in respect of a female animal capable of conceiving by natural service and of carrying a calf for twelve weeks and the words "Infertile", "Fertility" and "Infertility" shall be construed accordingly

'Incapacity' in respect of a bull means incapability of getting stock by natural service and the words "Capability", "Capable" and "Incapable" shall be construed accordingly

"Maiden Heifer" means a heifer which has never been served by natural means or artificial insemination

"Purchaser" means the person or persons contracting with the Vendor for the purchase of the animal

"Service" without qualification means both service by natural means and service by artificial insemination and the words

"Serve" and "Unserved" without qualification shall be construed accordingly

"Shipment" means the sending or taking of an animal outside the United Kingdom

"Terms" means the standard terms and conditions of sale set out herein and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Vendor and the Purchaser in accordance with Clause 2.3 hereof

"Vendor" means the person or persons contracting with the Purchaser for the sale of the animal.

2. Basis Of The Contract

2.1 The Vendor shall sell and the Purchaser shall buy the animal described in the Schedule hereto for the price specified

2.2 These Terms shall (subject to Clause 2.3 hereof) form the basis of the Contract between the Vendor and the Purchaser and from the said Contract all conditions and warranties implied under the Sale of Goods Act 1979 or any other statutory enactment or implied by law or custom are expressly excluded subject to the Unfair Contract Terms Act 1977, or any statutory re-enactment or modification thereof

2.3 These Terms may not be varied in any way except by agreement in writing between the Vendor and the Purchaser or their authorised representatives and, apart from such agreement, no servant or agent of the Vendor has authority to make any representation waiver or variation of or inconsistent with any of these Terms or to make any collateral contract or other arrangement to which these Terms do not apply

2.4 Neither the National Beef Association nor any Individual Member of the NBA who is also a member of a Breed Society affiliated to the NBA accept any liability arising out of the use or form of these terms

2.5 Only registered animals owned by an Individual Breed Society member shall be offered for sale under these Terms.

3. Payment

3.1 The Purchaser shall pay the price of the animal without deduction forthwith unless otherwise agreed in writing.

3.2 If the Vendor incurs any costs (including any keep) as a result of the Purchaser's neglect or default, the Purchaser shall pay these costs in addition to the price of the animal

3.3 Unless otherwise agreed in writing between the Purchaser and the Vendor, where the Vendor agrees to deliver the animal elsewhere than at the Vendor's premises, the Purchaser shall be liable to pay the Vendor's charges for transport and feed.

4. Risk And Property

4.1 Risk of injury to or loss of the animal shall pass to the Purchaser upon the signing of this contract

4.2 Notwithstanding the passing of risk in the animal or any provision of these terms, the property in the animal shall not pass to the Purchaser until the Vendor has received in cash or cleared funds, payment in full of the price of the animal and all other animals agreed to be sold by the Vendor to the Purchaser for which payment is then due.

5. General Warranties

5.1 Each animal offered for sale has been bred by the Vendor unless otherwise stated in the Schedule hereto

5.2 The Vendor guarantees the identity, correctness of pedigree, history and description of each animal described in the Schedule hereto save to the extent that any misdescription would be apparent on inspection

5.3 The NBA promotes the concept of high health status. The purchases should familiarise themselves with the health status of potential purchases in advance of them being sold.

5.4 The Vendor shall give the Purchaser, at the time of the sale, full details of the following matters:

- (a) Defective vision,
- (b) Faulty udders,
- (c) The fact, if this be so, that a freshly calved cow or heifer has not cleansed
- (d) Any other physical defect
- (e) All caesarean births, premature births, multiple births and births from embryo transfer
- (f) All flushings of a female animal in an embryo programme together with the number of eggs collected
- (g) All records of performance and genetic evaluations, together with their sources
- (h) All previous calvings, including the date of the last service
- (i) In the case of a bull, any semen taken from it, including the number of straws taken from it, whether they are to be retained for private use or for general sale or to be sold with the bull and the number of straws sold prior to the sale
- (j) Any transferred embryo being carried by a female animal.
- (k) If the animal has failed a presale inspection on a potential fertility issue this animal cannot be sold under the terms and conditions of the breed warranty.

6. Bull Breeding Warranty

6.1 Subject to the provisions of Clauses 6.2, 8, 10, and 13, hereof, each bull over the age of eight months at the date of the sale is sold with a Warranty by the Vendor that it is capable of getting stock by natural service from fourteen * months of age which shall be deemed to be fulfilled as soon as six females or fifty per cent whichever shall be the lesser number of the animals put to the bull are in calf to the bull by natural service subsequent to the sale.

6.2 Trial Period.

The Purchaser shall give the bull sufficient time and opportunity to prove itself capable of getting stock by natural service while applying the standards of good husbandry and management and in any event within six calendar months

6.2.1 of the date of the sale; or

6.2.2 of attaining the age of fourteen * months, or

6.2.3 of the date specified in the schedule hereto, whichever is the later date

6.2.4 Extending the Trial Period.

6.2.5 If upon purchase of the bull, it is found impracticable for the Purchaser to try the bull fairly, within the period stated in clause 6.1 above, due to the purchasers normal calving programme, the purchaser shall ON THE DAY OF THE SALE, give the vendor, (or auctioneer, if applicable), notice IN WRITING of the month in which it is proposed to commence using the bull.

6.2.6 AT THE DISCRETION OF THE VENDOR (in consultation with the auctioneers, if applicable), the vendor may extend the date of commencement of the Trial Period to the first day of the month in which the Purchaser has notified the vendor, as in clause 6.2.5

6.2.7 Acceptance or otherwise of the purchasers written request, shall be conveyed to the purchaser, by the vendor, in writing, within seven days of the request being made.

THE PURCHASER SHOULD NOTE THE TIME LIMITS FOR CLAIMS IN CLAUSE 10.1.2.1 BELOW.

7. Female Breeding Warranties

Subject to the provision of Clauses 8, 10 and 13 hereof:

7.1 Maiden Heifers

Every maiden heifer over the age of twelve * months at the date of the sale is sold with warranties by the Vendor.

7.1.1 that it shall be fertile from the age of twenty-four * months up to the age of twenty-eight * months, which warranty shall be deemed to be fulfilled as soon as such animal is certified by a Veterinary Surgeon to be not less than twelve weeks pregnant PROVIDED ALWAYS that no claim under this warranty shall be admitted before the animal reaches the age of twenty-four * months (except in a case where a Veterinary Surgeon certifies that it is suffering from an abnormality or malfunction of the reproductive system which will permanently prevent fertility), and

7.1.2 that it is not in calf

7.2 Heifers Recently Served

Every heifer over the age of twelve * months at the date of the sale and described in the Schedule hereto as having been served less than twelve weeks prior to the date of the sale is sold with warranties by the Vendor

7.2.1 that it shall be fertile from the age of twenty-four * months up to the age of twenty-eight * months, which warranty shall be deemed to be fulfilled as soon as such animal is certified by a Veterinary Surgeon to be not less than twelve weeks pregnant PROVIDED ALWAYS that no claim under this warranty shall be admitted before the animal reaches the age of twenty-four * months (except in a case where a Veterinary Surgeon certifies that it is suffering from an abnormality or malfunction of the reproductive system which will permanently prevent fertility) and

7.2.2 that it is in calf to the bull described in the Schedule hereto PROVIDED ALWAYS that no warranty is given or to be implied that such heifer is in calf at the time of the sale

7.3 Cows Unserved

Every cow under the age of ten * years at the date of the sale and described in the schedule hereto as unserved since last calving is sold with warranties by the Vendor

7.3.1 that it shall be fertile for a period of twenty-six weeks from the date of the sale, which warranty shall be deemed to be fulfilled as soon as such animal is certified by a Veterinary Surgeon to be not less than twelve weeks pregnant, and

7.3.2 that it is not in calf

7.4 Cows Recently Served

Every cow under the age of ten * years at the date of the sale and described in the Schedule hereto as having been served less than twelve weeks prior to the date of the sale is sold with warranties by the Vendor

7.4.1 that it shall be fertile for a period of twenty-six weeks from the date of the sale, which warranty shall be deemed to be fulfilled as soon as such animal is certified by a Veterinary Surgeon to be not less than twelve weeks pregnant, and

7.4.2 that if it is in calf it is in calf to the bull described in the Schedule hereto PROVIDED ALWAYS that no warranties are given or to be implied that any such cow is in calf at the time of the sale

7.5 Females In Calf

Every cow or heifer stated in the Schedule hereto to have been served on a date ("the service date") not less than twelve weeks before the date of the sale is sold with warranties by the Vendor

7.5.1 that it is in calf, and

7.5.2 that it is in calf to the bull described in the Schedule hereto, and

7.5.3 that the expected calving date will be within a period of 263 * and 303 * days of the service date

7.6 Females "Running With The Bull"

Every cow or heifer described in the Schedule hereto as "running with the bull" up to a date not later than twelve weeks before the sale is sold with warranties by the Vendor

7.6.1 that it is in calf, and

7.6.2 that it is in calf to the bull described in the Schedule hereto, and

7.6.3 that it is in calf to a service date at any time between the dates stated in the Schedule hereto and that the latest expected calving date will be within a period of 263 * to 303 * days of the last possible service date

7.7 Females With Veterinary Surgeon's Certificate Of Positive Pregnancy Diagnosis

N.B. Scanning is not accepted as proof of diagnosis less than 12 weeks. Every cow or heifer stated in the Sale Catalogues or by the Auctioneers at the time of the sale to be sold with a Veterinary Surgeons Certificate of positive pregnancy diagnosis is sold with warranties by the Vendor.

7.7.1 that it is in calf,

7.7.2 that it is in calf to the bull described in the Schedule hereto, and

7.7.3 that the expected calving date will be within a period of 263 * to 303 * days of the service date stated in such Certificate

THE PURCHASER SHOULD NOTE THE TIME LIMITS FOR CLAIMS IN CLAUSE 10.1.2.1 BELOW.

8. Limitations On The Applications Of The Above Warranties

8.1 None of the warranties in clauses 6 and 7 above shall apply

8.1.1 to any cow or heifer which has been subjected after birth or is subjected after the sale to any process involving the technique of embryo transfer, unless that animal's subsequent natural breeding record (as stated in the Schedule hereto) indicates not less than one natural calving since the said embryo transfer

8.1.2 to any cow or heifer which has undergone a caesarean operation (as stated in the Schedule) unless that animal's subsequent natural breeding record (as stated in the Schedule hereto) indicates not less than one natural non-surgical calving since the said operation

8.1.3 to any cow or heifer which is declared by the Vendor to be a twin to a bull, unless before the sale pregnancy has been certified in writing by a Veterinary Surgeon following rectal examination or the animal has produced a full term calf

8.1.4 to any animal which has not been maintained by the Purchaser at all times since purchase in a normal breeding condition, in accordance with the rules and practice of good animal husbandry and management

8.1.5 to any animal purchased for export outside the United Kingdom unless a claim shall have been notified within the time limits imposed by Clause 10.1.2 hereof and proved correct (after all examination and procedures deemed necessary by the Veterinary Surgeons appointed under these Terms have been carried out) before the date on which shipment of the animal takes place

8.1.6 to any animal which after the sale has contracted an illness or suffered an injury which may affect its fertility or capability as the case may be after the sale

8.1.7 to any animal which does not remain the property of the Purchaser unless it was purchased by means of a hire purchase agreement and the title to buy not the right to possession of the animal has therefore been transferred to a finance or other hire purchase company

8.1.8 to any animal which does not survive until the completion of all examinations and procedures deemed necessary by the Veterinary Surgeons appointed under Clauses 10, 11 and 12 hereof

8.2 No warranty is given or to be implied that a cow or heifer will carry a calf full term or deliver a live or viable calf.

9. Udder And Cleansing Warranties

Unless otherwise stated in the Schedule hereto

9.1 every cow in calf or suckling a calf and every heifer suckling a calf at the time of the sale is sold with a warranty that it is sound in the udder and teats at the time of the sale PROVIDED ALWAYS that any claim under this warranty shall be made to the Vendor before the removal of the animal by the Purchase

9.2 every freshly calved cow or heifer is sold with a warranty by the Vendor that it has satisfactorily cleansed before the sale Provided Always that

9.2.1 any claim under this warranty shall be made, accompanied by a Veterinary Surgeon's Certificate, to the Vendor not later than three days from the date of the sale, and

9.2.2 without prejudice to the rights of the Purchaser set out in Clause 13 hereof, the Purchaser shall have the right to arrange such veterinary treatment to the animal the cost of which shall be borne by the Vendor as may rectify the animal's condition.

10. Claims And Time Limits

10.1 A claim by a Purchaser under any of the above warranties shall not be valid unless:

10.1.1 the animal remains the property of the Purchaser, except where it was purchased by means of a hire purchase agreement and the title to but not the right to possession of the animal has therefore been transferred to a finance or other hire purchase company

10.1.2 the Purchaser shall have given notice in writing to the Vendor of the intended claim as soon as evidence supporting the claim comes to the Purchaser's notice and in any event within the following time limits:

10.1.2.1 Under Clause 6 in the case of a bull: within six calendar months:

(a) from the date of the sale; or

(b) from the date when the bull attains the age of fourteen *months; or

(c) from the date of the commencement of the trial period stated in the Schedule hereto

10.1.2.2 Under Clause 7.1.1 and 7.2.1 in the case of a maiden heifer or a heifer recently served:

(a) within three calendar months from the date of the sale; or

(b) within one calendar month from the date when the heifer attains the age of twenty-eight *months whichever is the later date

10.1.2.3 Under Clauses 7.1.2 and 7.3.2 in the case of a maiden heifer or a cow which was sold as unserved and which subsequently proves to be in calf: within twenty-six weeks from the date of the sale

10.1.2.4 Under Clause 7.3.1 in the case of a cow sold as unserved since last calving and which proves infertile: within twenty-six weeks from the date of the sale

10.1.2.5 Under Clause 7.4.1 in the case of a cow sold as recently served and which proves infertile: within twenty-six weeks from the date of the sale

10.1.2.6 Under Clauses 7.5.1, 7.6.1, 7.7.1 in the case of a cow or heifer which, although not warranted to be in calf, produces a calf to a bull other than that stated as the service sire: within fourteen days from the calving date

10.1.2.7 Under Clauses 7.5.1, 7.6.1 and 7.7.1 in the case of a cow or heifer as being in calf or sold as running with the bull, and which proves not to be in calf: within twenty-eight days from the date of the sale

10.1.2.8 Under Clauses 7.5.2, 7.6.2 and 7.7.2 in the case of a cow or heifer which, having been warranted to be in calf, produces a calf to a bull other than that stated as the service sire in the Schedule hereto (or in a Veterinary Surgeon's Certificate under Clause 7.7.2) as the case may be: within fourteen days from the calving date

10.1.2.9 Under Clauses 7.5.3, 7.6.3 and 7.7.3 in the case of a cow or heifer which, although in calf, does not calve to the stated service date: within fourteen days of the calving date

10.1.2.10 Under Clause 9.1 in the case of a cow or heifer whose udder is not sound: within one hour from the close of the sale

10.1.2.11 Under Clause 9.2 in the case of a cow or heifer which has not satisfactorily cleansed before the sale: within three days from the date of the sale

Claims Procedure

10.1.3 in the case of any claim under Clauses 6, 7.1.1, 7.2.1, 7.3.1 or 7.4.1 above the Purchaser shall within thirty days of the receipt of a Bull Fertility Report form or a Female Fertility Report form, as the case may be, (which shall be available on request from the National Beef Association), return it to the Vendor, completed by a Veterinary Surgeon appointed by the Purchaser

10.1.4 the Veterinary Surgeon appointed in accordance with the sub-clause 10.1.3 hereof certifies in writing that:

10.1.4.1 the animal is in a normal breeding condition, and

10.1.4.2 the animal's infertility or incapability as the case may be is not due to illness contracted or an injury suffered, or poor husbandry after the 'fall of the hammer', and

10.1.4.3 in the case of a bull he has examined the cows and heifers on which the bull has been tried and has found them to be in normal breeding condition and that they are not responsible for the bull's incapability, or

10.1.4.4 in the case of a cow or heifer, he has examined any bull with which the cow or heifer has been running after the sale and has found the said bull to be capable of getting stock by natural service

10.1.5 in a case of a claim under Clause 7.1.2, 7.3.2, 7.5.1, 7.6.1 or 7.7.1 the Purchaser shall, when notifying such claim, forward to the Vendor a Certificate from the Purchaser's Veterinary Surgeon certifying that the animal is or is not in calf as the case may be

10.1.6 in the case of a claim under clause 7.2.2, 7.4.2, 7.5.2, 7.6.2 or 7.7.2, the Purchaser shall, when notifying such claim, forward to the Vendor a report from the Purchaser's Veterinary Surgeon giving his opinion that the animal has produced a calf to a bull other than that stated to be the service sire

10.1.7 in the case of a claim under Clause 7.5.3, 7.6.3 or 7.7.3, the Purchaser shall, when notifying such claim, forward to the Vendor (with a copy to the Auctioneer, in the case of a sale by auction.) a Certificate from the Purchaser's Veterinary Surgeon certifying that the animal has not calved to the stated service date

10.1.8 where such a claim concerns an animal purchased for export outside the United Kingdom it shall have been notified and proved correct (after all examinations and procedures deemed necessary by the Veterinary Surgeons appointed under these Terms have been carried out) before the date on which shipment takes place or before the relevant period in sub-clause 10.1/2 (whichever shall be the earlier date)

10.1.9 the animal shall survive at least until the completion of all examinations and procedures deemed necessary by the Veterinary Surgeons appointed under Clauses 11 and 12 hereof.

11. Examination

Upon receipt by the Vendor in accordance with sub-clause 10.1.2 of any notice of claim under any of the warranties the Purchaser shall permit a Veterinary Surgeon appointed by the Vendor to examine the animal should the Vendor desire such examination.

12. Disputes

12.1 Any dispute as to the condition, fertility or capability of an animal under the warranties contained in these Terms shall be determined by a Veterinary Surgeon acting as an Arbitrator under the Arbitration Act 1996 appointed by agreement between the Purchaser and the Vendor or in default of such agreement appointed by the President for the time being of the British Veterinary Association.

12.2 The Veterinary Surgeon shall have the power to make such directions as he thinks fit including (but without prejudice to the generality of such directions) directions as to costs and directions under Clause 12.3 below and to make such investigations as he may deem necessary and the Purchaser and the Vendor shall comply with such directions and shall co-operate in such investigation and shall provide such records and information to the Veterinary Surgeon as he may require

12.3 If the Veterinary Surgeon so appointed decides that further opportunities are required to prove whether or not a bull is capable of getting stock by natural service, or, as the case may be, whether or not a cow or heifer is fertile, he shall direct under what conditions and within what timescale such opportunities shall be afforded, and the Purchaser shall, if so directed by the Veterinary Surgeon, allow the Vendor to remove the animal from the Purchaser's premises and the Vendor shall, if so required by the Veterinary Surgeon, afford such opportunities as the Veterinary Surgeon may direct and shall before removal of the animal lodge the purchase money (or such part of it as the Purchaser has paid) in a bank deposit interest account in the names of both Vendor and Purchaser, interest thereon to accrue for the benefit of the Vendor pending the outcome of the dispute

12.4 The Veterinary Surgeon's decision as to the condition, fertility or capability as the case may be of the animal shall be final and binding upon the Vendor and the Purchaser, PROVIDED ALWAYS that the Veterinary Surgeon may decide in favour of the Vendor if in his opinion the cow or heifer would have proved fertile or the bull would have proved capable of getting stock by natural service within the terms and period allowed by the relevant warranty if within that period the appropriate opportunity or veterinary treatment had been given or proper management or principles of good husbandry had been applied

12.5 If the Veterinary Surgeon decides in favour of the Vendor, then the Purchaser, or if he decides in favour of the Purchaser, the Vendor shall pay or reimburse all veterinary and laboratory fees and any reasonable transport costs incurred by both parties in the course of the dispute.

13. Limitation Of Rights On Breach Of Warranty

13.1 Upon breach of any Warranty contained in these Terms, the Purchaser shall have the right to return the animal, together with any calf sold at foot or born subsequent to the sale, and recover from the Vendor:

13.1.1 the purchase money or such part of it as the Purchaser has paid;

13.1.2 interest thereon calculated on a daily basis at two per cent above the base lending rate from time to time in force at Lloyds Bank plc from the date upon which notice of the claim was received by the Vendor to the date of return or the date of disposal of the animal as the case may be;

13.1.3 the expense of transporting any such animal to and from the Purchaser's premises;

13.1.4 the reasonable cost of any such animal's keep from the date on which notice of the claim was received by the Vendor to the date of return to the Vendor's premises or to the date of disposal of the animal as the case may be not exceeding the slaughter carcase value of the animal at the date of return, which sum shall be assessed, in the event of a dispute, by an Arbitrator appointed by the President for the time being of the Central Association of Agricultural Valuers; whose assessment shall be final and binding upon the Vendor and the Purchaser.

13.1.5 the cost of insuring the animal from the date of purchase

13.1.6 the reasonable expenses (including laboratory fees) of any Veterinary Surgeon employed for the purpose of investigating the animal's condition, fertility or capability and for making a claim under these Terms

BUT THE PURCHASE SHALL HAVE NO RIGHT TO CLAIM DAMAGES FROM THE VENDOR IN RESPECT OF:

(i) ANY INDIRECT OR CONSEQUENTIAL LOSS SUCH AS (BUT NOT LIMITED TO) LOSS OF PROFIT, OR

(ii) ANY OTHER LOSS WHATSOEVER

14. Time Limits

14.1 Time shall be of the essence of all Terms in which time limits are prescribed and a claim made under any warranty herein will not be admitted unless made within the prescribed time limit provided that where the time limited for any person to do anything expires on a Sunday, Bank Holiday or Public Holiday or on a day following next after any such days, then such Sunday, Bank Holiday or Public Holiday shall be excluded from the computation of the time.

14.2 In the computation of any period of time before or after the sale or any other event, the day of the sale or other event, as the case may be, shall be excluded

14.3 All periods expressed, as a number of days shall be taken to refer to that number of clear days, and similarly for any period of time.

15. Arbitration

Any disputes, other than those determined by the Veterinary Surgeon in accordance with Clause 12 hereof, between Vendor and Purchaser shall be referred in accordance with the provisions of the Arbitration Act 1996 and all statutory modifications or re-enactments thereof for the time being in force to a single arbitrator to be appointed by agreement between Vendor and Purchaser or in default of agreement by the President for the time being of the Central Association of Agricultural Valuers. In the case of veterinary disputes the President of the BVA or in the case of an expenses dispute by the President of the CAAV or IAAS or arbitrator nominated by them.

16. Notices

Any notice required to be served on any person shall be deemed to have been duly served if left at or sent by prepaid first-class post to that person at his last known abode or principal place of business and shall if sent by post to that person at his last known abode or principal place of business be deemed to have been received on the fourth day after the date on which it was sent.

17. General

17.1 If any provision of these Terms is held by any competent authority or court to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

17.2 The headings in these Terms are for convenience only and shall not affect their interpretation

17.3 The validity construction and performance of these Terms shall be governed by the laws of England.

THE NATIONAL BEEF ASSOCIATION, 2006