

# Terms and Conditions of Trade under Agency Contract

## Introduction

These **Terms and Conditions of Trade** are supplemental to the Agreements between Farm Stock (Scotland) Ltd (“FSS”) and its “Member Societies” and relate to the provision of livestock marketing services provided to Members of those Societies or to Probationary Members (the “Member”). They will be reviewed from time to time and distributed through the Member Societies and the current issue is always available for inspection at the FSS offices. This first issue became current from 1<sup>st</sup> June 2003 and applies to all transactions on or after that date until amended and re-issued.

## 1. Agency Contract

An Agency Contract shall come into effect for each transaction when it is concluded (verbally or in writing), between the Member and FSS, that the member shall sell livestock through FSS (the “Agency Contract”).

## 2 Implementation of Agency Contract

- 2.1 If the Member decides to sell Livestock through FSS, the Member shall give FSS such advance notice that the Livestock is ready for sale as may reasonably be required to enable FSS to act as sales agent in an efficient and mutually beneficial manner.
- 2.2 Entering into this verbal agreement shall be deemed to give FSS the exclusive right as Agent of the Member to market and sell the Livestock in 2.1 and the Member may not then appoint any other person to do so, nor sell the Livestock directly, nor withdraw the Livestock from sale except with the written consent of FSS.
- 2.3 FSS will provide support in the selection and grading of Livestock to be presented for sale where requested by the Member otherwise this responsibility is considered to be delegated to the Member.
- 2.4 FSS is authorised to negotiate, conclude and execute contracts for the sale of Livestock pursuant to the Agency Contract in the name and on behalf of the Member on such terms and conditions as it thinks most advantageous for the Member's business, provided that, unless otherwise agreed between the Member and FSS, Livestock shall only be sold for slaughter.
- 2.5 The Livestock will be sold by FSS in the name of, and on behalf of, the Member and FSS will maintain accurate records and accounts relating to the transaction and will permit the Member or the Member's nominated representative(s) to inspect such records at all reasonable times.
- 2.6 Having negotiated the sale for the Livestock, FSS will advise collection/delivery dates and approximate timing and the Member will be required to ensure the Livestock

are of merchantable quality, are owned by the Member and free of any encumbrance or claim, and prepare them in suitable condition and timely manner for efficient collection.

2.7 The Member will be responsible for complying with all applicable legislation (or codes of practice or guidelines related thereto) regarding the production and supply of Livestock including all applicable schemes relating to animal identification, registration and tracing.

2.8 FSS will advise whether the arrangements for transportation and delivery of the Livestock are the responsibility of the Member, FSS or the Purchaser, and whether the Member or the Purchaser will bear the costs of those arrangements:

2.8.1 Where FSS arranges the transport it will do so using licensed livestock hauliers who maintain appropriate insurance cover against damages or loss in transit.

2.8.2 If the Member arranges themselves to deliver the Livestock, or otherwise arranges their own haulage contractor for delivery to the Purchaser, then the Member shall retain all responsibility for ensuring appropriate insurance cover exists and no liability will fall on FSS.

2.9 The Member shall ensure that Livestock to be transported in implementing the Agency Contract is available for collection from the Member's farm premises (unless previously advised of alternative premises or location) on the date of collection specified by FSS, and shall give the nominated carrier full and free access to those premises as and when required for that purpose.

### **3. Passing of property and risk**

Title to, and risk in, Livestock sold pursuant to the Agency Contract shall pass from the Member to the Purchaser nominated in the contract of sale when the Livestock is delivered to, and accepted by or on behalf of, the Purchaser at the nominated destination. Ownership shall not pass to FSS at any time.

### **4. Financial provisions**

4.1 All payments under the Agency Contract shall be paid to FSS. FSS shall be entitled to levy a marketing fee in respect of Livestock sold pursuant to the Agency Contract. The marketing fee shall be levied at such rate or rates as may be fixed by FSS and notified from time to time, and shall be payable in accordance with this clause 4.

4.2 Following the sale of Livestock by FSS, FSS shall send to the Member a remittance of a sum equal to the Purchased-advised price of that Livestock less (i) FSS's marketing fee in respect of the Livestock, and (ii) any transportation costs arranged by FSS for

the transaction. Such remittance shall be accompanied by a statement showing the calculation of the amount payable. Any VAT in force at the time of the transaction shall also be applied.

- 4.3 The remittance payment under clause 4.2 shall be paid by FSS to the Member by such due date, and by such payment method, as may from time to time be determined by the FSS Board and notified to Members accordingly.
- 4.4 Any sum to which FSS is entitled under this clause 4 and which is not paid to FSS pursuant to clauses 4.2 to 4.3 (inclusive) shall be paid by the Member to FSS on demand.

## **5. Bad Debts**

- 5.1 FSS will take all reasonable and practicable measures to confirm that the intended Purchaser appears creditworthy and able to pay the purchase price without prejudice to the provisions of this clause 5.
- 5.2 FSS shall maintain bad debt insurance cover, together with a bad debt fund, for the benefit of the Members in respect of 100% of the invoice price of each Animal sold to a Purchaser.

## **6. General**

- 6.1 FSS and the Member agree to operate the Agency Contract in a spirit of mutual trust and good faith and FSS is committed to providing an open and transparent trading environment to its Members.
- 6.2 FSS agrees to supply to the Member upon request such information relating to sales of Livestock pursuant to the Agency Contract as the Member may reasonably request.
- 6.3 FSS staff will act in good faith and provide professional input to the Member but FSS shall have no liability to the Member with respect to any statement or representation which it makes to the Member as to the likely grading of Livestock for sale purposes or as to the likely value of such Livestock.
- 6.4 Neither party may assign its rights and obligations under the Agency Contract. FSS may delegate or contract out any of its obligations without the consent of the Member, but shall still be responsible to the Member for the activities of any third party appointed by it as sub-agent or contractor.
- 6.5 The Member agrees to hold and maintain appropriate product and public liability insurance cover.

## **6. Force Majeure**

- 7.1 Neither party shall be liable for any failure or delay in performance of its obligations under the Agency Contract which is caused by events beyond its reasonable control, provided that any delay or failure by a sub-agent or contractor of FSS shall not relieve FSS from liability for delay or failures except where that delay or failure is also beyond the reasonable control of the sub-agent or contractor concerned.
- 7.2 Subject to the provisions of clause 5, any loss (whether direct or consequential) suffered by the Member as a result of failure by a Purchaser to accept any or all of the Livestock in a particular transaction shall be borne by the Member, and FSS shall have no liability or responsibility for such loss or related costs.

## **8. Definitions**

For the avoidance of doubt **Purchaser** means a person, business or organisation to which FSS sells Livestock as Agent for the Member pursuant to the terms herein.