

## These terms of use are the terms on which PGG Wrightson Limited offers you access to Agonline.

### 1. TERMS OF USE

1. **Acceptance of terms:** By registering, using and/or accessing Agonline you accept these terms. If you do not accept these terms, you may not use Agonline.
2. **Amendment of terms:** We may amend these terms from time to time. Amendments will be effective when posted on Agonline. You are responsible for ensuring you are familiar with our latest terms of use. Your continued use of Agonline represents your agreement to be bound by these terms as amended.

3. **Terminology:** In these Terms of Use:

'we', 'us' and 'our' refer to PGG Wrightson Limited.

'you' and 'your' refer to you and any other person using your member log-in details.

Agonline means [www.agonline.co.nz](http://www.agonline.co.nz) and any other Agonline website, owned and operated by PGG Wrightson Limited, and includes our associated services.

**These terms were last updated on 19 December 2011.**

### 2. WHEN A SALE CONTRACT OCCURS

1. For on-line auctions, a sale contract occurs between a purchaser and a vendor:
  - a. at the time an auction closes when the highest bid by that purchaser is the highest bid of the auction and that bid is higher than the vendor's reserve price; or
  - b. at any time during an auction when a purchaser elects to use the 'buy now' feature displayed on an auction web page,however we may at our sole discretion declare any sale contract void if we are satisfied that any bid or 'buy now' was unauthorised or made in error.  
The terms of the sale contract will be the relevant terms of sale specified in section 7 of these terms of use.
2. For Quotes, any subsequent sale contract will be concluded in writing separately offline, using PGG Wrightson's standard written contract.

### 3. OUR ROLE

1. **What we do:** Through Agonline we provide an online place for members to buy and sell livestock, and as agents for a vendor we quote livestock for sale ("Quotes"). We also administer a bank account to facilitate payments as described in section 9 below.
2. **What we don't do:** We are not a party to any on-line sale through Agonline (except under section 6.2 below). Other than payment through our Agonline account, you deal directly with any purchaser or vendor, and any contract is directly between you and the purchaser or vendor.

We are not responsible or liable for anything a member does or does not do. Neither do we:

- a. endorse or guarantee any livestock or other product or service offered through Agonline, even when offering Quotes;
  - b. make any representation or give any other assurance about any livestock (including ownership, description, quality) or listing (including accuracy or truth), or member (including ability to complete a transaction);
  - c. try to verify any information provided by any person through Agonline. The only exception to this is the Livestock Assessor role described in section 10;
  - d. try to resolve disputes between members over particular transactions, unless we decide to do so at our sole discretion; and
  - e. have authority to bind any member or make any promise or statement on behalf of any member.
3. **Our relationship with you:** We will operate Agonline as we see best in assisting members trade safely and efficiently. We are here to help, and we welcome any comment or feedback you have about Agonline.

### 4. MEMBERSHIP

1. **Becoming a member:** Membership is free. But you must be a PGG Wrightson account holder to buy or sell on-line through Agonline. You don't have to be a member to make enquiries about Quotes. You may only register as a member if you are resident in New Zealand and can form a legally binding contract that is enforceable against you. For example, you must be 18 years old. By registering as a member, you warrant that you can form a legally binding contract.
2. **Access and Membership rules:** You agree that you will:
  - a. comply with these terms of use and act honestly and in good faith;
  - b. not try to manipulate bidding (including through false bids or multiple identities);
  - c. have only one membership (unless we have agreed otherwise);
  - d. keep your password secret and not let anyone use your membership log-in, except where you ask us to make a bid on your behalf under section 6.2 below. You are responsible for anything done by anyone using your membership log-in (including when we make a bid on your behalf under section 6.2) and your membership is not transferable;
  - e. provide complete and accurate membership details (including your email address, postal address and telephone number) and keep your membership details current;
  - f. not include any of your contact details on your profile, your listings, questions and answers, feedback or elsewhere on Agonline, except where Agonline specifically provides for contact details to be provided;
  - g. not use Agonline to promote any livestock or other goods or services outside of Agonline;
  - h. not complete a transaction outside of the Agonline process or otherwise attempt to avoid Agonline's transaction fees;
  - i. not use Agonline to make any offensive, disruptive, vulgar, hostile, defamatory, unlawful or other inappropriate comment, and
  - j. comply with PGG Wrightson's applicable Credit [Terms of Trade](#) if PGG Wrightson extends you credit

3. **Access and Membership is a privilege:** The use of Agonline is a privilege not a right. We may at any time and without notice:
  - a. suspend or cancel any membership;
  - b. remove any listing or any bid;
  - c. bar any person from using Agonline; or
  - d. take any other action we consider desirable,

and you agree that you will only use Agonline as it is intended to be used. You may not try to circumvent Agonline's system or charging structure.

## 5. SELLING

By listing livestock for sale online on Agonline you agree to the terms of sale referred to in section 7, and confirm that:

1. the livestock exists and is in your possession and control;
2. you can legally sell the livestock and any sale and purchase of the livestock will be in accordance with section 2;
3. your Agonline listing for the livestock is an exclusive listing and you have not listed the livestock for sale elsewhere;
4. all pricing is in New Zealand dollars, exclusive of GST (if any);
5. your listing is accurate, complete and not misleading. Agonline reserves the right to remove any listing that it deems unsuitable or in breach of our terms of use;
6. your listing, the livestock and its sale through Agonline does not infringe any person's rights;
7. you will not use Agonline to promote anything other than the livestock for sale in your listing;
8. you agree to payment through the Agonline account as outlined in section 9 below;
9. a buy now price can be added to your listing or an existing buy now price can be altered on your listing but only until a bid is placed. A reserve can be lowered during an auction but only to an amount greater than \$5 higher for cattle & deer and 50 cents for sheep than the existing leading bid;
10. for auctions, you must sell to the highest bidder if the reserve price is met. You must only sell to a bidder who is not the highest bidder after reasonable attempts have been made to contact the winning bidder without success;
11. you agree to your email address being supplied to the purchaser when your auction closes, and
12. our site administrator may change any of your listing details (including your reserve or buy now price) on your written or verbal instruction. We may also lodge bids for purchasers under section 6.2 below.

## 6. BUYING

1. By bidding on Agonline you confirm that:
  - a. you have the legal right to enter into and complete the transaction;
  - b. your bid is an irrevocable offer to buy the item at the bid price entered. Your bids are not retractable once the auction has closed. You must only place a bid if you intend to buy the relevant item at the bid price entered;
  - c. if your bid is accepted, you will promptly complete the transaction in the manner specified in the listing and required by the terms of use;
  - d. your username and the amount of your bid will be publicly shown on the Website, and your email address will be supplied to the vendor when you win an auction;
  - e. you may not bid on an auction that has been listed by a family member, friend or any Agonline member that is personally known to you, in order to raise the price of that auction; and
  - f. any sale and purchase of livestock through Agonline will be under section 2 of these terms of use.
2. We may purchase stock and lodge bids for you using your membership log-in and password where you have given us specific consent to do so in the form that we nominate. While we are acting on your behalf in doing so, you remain bound by these terms of use and you are fully responsible for anything done by us using your membership log-in.

## 7. TERMS OF SALE

1. **Dairy forward contracts:** Dairy forward contracts are contracts for the sale of dairy cows and heifers with settlement and delivery of the livestock at a future specified date after the date the sale is agreed. The Vendor will specify dairy forward contracts at the time of listing and complete the **Dairy Forward Contract**. The terms of sale for dairy forward contracts apply to all dairy forward sales made through Agonline, and form part of these terms of use.
2. **All livestock transactions (except dairy forward contracts):** The terms of sale for all livestock transactions (except dairy forward contracts) apply to all livestock transactions (except dairy forward contracts) made through Agonline, and form part of these terms of use. The Vendor will specify any livestock forward contracts at the time of listing and complete the applicable Vendor Special Conditions –Lambs or Calves.
3. These terms of use are incorporated into the terms of sale for dairy forward contracts and into the terms of sale for all livestock transactions (except dairy forward contracts). If there is any inconsistency between these terms of use and those specific terms of sale, these terms of use prevail.

## 8. OUR FEES

1. **Current fees:** Agonline's fees for each transaction will be PGG Wrightson's standard commission charges or any other fee agreed in writing with a PGG Wrightson livestock representative at the time of listing. Agonline reserves the right to change the fees charged at any time.
2. **When payable:** Our fees are payable for obtaining an unconditional contract, and are payable on the date for settlement of the transaction without any set off or deduction.

We can deduct our fees from the purchase price paid into the Agonline account or from any account you have with PGG Wrightson Limited or any of its related companies.

3. **Interest and late payment:** You will pay us interest on any unpaid or late payment calculated at the rate charged by PGG Wrightson on its overdue debtor accounts. You will also pay us any costs we incur in recovering any amount from you or enforcing our rights against you.

## 9. AGONLINE ACCOUNT

1. We administer an interest bearing deposit account for Agonline transactions.

- Under the applicable terms of sale in section 7 of these terms of use, purchasers must pay the purchase price into the Agonline account number notified by us, and we will hold and deal with those funds in accordance with those terms of sale.

#### 10. PGG WRIGHTSON LIVESTOCK ASSESSMENT

- Livestock Assessors:** A Livestock Assessor is a PGG Wrightson representative who has extensive farming and/or livestock representative and has been through the PGG Wrightson assessment training programme.
- Livestock Assessed Listings:** Our Livestock Assessors take reasonable professional care in providing Livestock Assessed Listings. If a listing is approved as "Livestock Assessed", then:
  - a Livestock Assessor has personally inspected all the listed livestock on or near the date of listing; and
  - b. the Livestock Assessor considers that the livestock inspected corresponds to the listing's physical description of that livestock.

#### 11. DISCLAIMERS AND OUR LIABILITY

- Agonline:** Agonline will use its reasonable endeavours to ensure the availability of the Website, subject to any downtime required for maintenance. Agonline is provided on an 'as is' and 'as available' basis. We do not promise that Agonline will operate uninterrupted, securely or error free, or give any other specific performance guarantee relating to Agonline or its operation or use. Agonline is not liable for any system unavailability, any corruption of any data or information held by Agonline, or for any loss that is incurred because the Website is unavailable.  
Should the normal Agonline functionality be affected, at Agonline's sole discretion an auction may be extended 24 hours (or such other time) from the time the functionality was either affected or restored, as determined by Agonline.
- Disputes:** Agonline is not a party to any transaction between you and another member, and you agree not to involve Agonline in any dispute between you and another member arising from this Website, except where we have specifically agreed to be involved in a contract entered into under section 7.
- External links:** Agonline may include ads or links to external sites. We do not control, review or endorse any advertised product or service, or the external sites. The responsibility for the content of any ad appearing on this Website (including hyperlinks to advertisers' own websites) rests solely with the advertisers. Putting ads on the Website does not constitute Agonline's recommendation or endorsement. Each advertiser is solely responsible for any representation in its ads.
- No warranties:** No advice or information that is obtained by you from Agonline or anyone else shall create any warranty by Agonline or us that is not expressly stated in these terms of use. Without limiting section 3.2, all warranties and representations implied by law are excluded to the extent permitted by law.
- Force majeure:** We are not liable for any failure or other thing that is not reasonably foreseeable or that is outside our reasonable control.
- Our liability:** You use Agonline at your own risk. We will never in any circumstances be liable to you or any other person in contract, tort, negligence, equity or in any other way for any loss or damage of any kind, arising from or in relation to your use of, or inability to use, Agonline. This includes where we act on your behalf under section 6.2. Agonline is not liable for any misconduct or fraud of its members.

If for any reason we cannot rely on the above exclusion of liability, our liability to you will be limited to direct physical loss suffered by you to a maximum of \$50 per transaction. In no event will we be liable to you for any loss of profit, savings, data, goodwill or business opportunity or for any indirect or consequential loss or for general or special damages.

- Indemnity:** You agree to indemnify us on demand against all claims, costs (including full legal costs), losses, liabilities and demands we incur directly or indirectly as a result of your failure to comply with these terms of use, your failure to complete any transaction through Agonline under the applicable terms of sale in section 7, or the use of Agonline by you or anyone else using your membership log-in, including where we act on your behalf under section 6.2.

#### 12. INTELLECTUAL PROPERTY

- We (and our licensors or suppliers, as applicable) own all copyright and other intellectual property rights in Agonline. We reserve all our rights.

You may not in any form or by any means copy, reproduce, modify, create derivative works from, distribute, or publicly display anything from Agonline without our (and any applicable third party's) prior written consent.

#### 13. PRIVACY

- You accept our [Privacy Policy](#) which forms part of these terms of use.

#### 14. OTHER LEGAL TERMS

- Not an auctioneer:** Even though Agonline may sometimes be referred to as an auction, we are not auctioneers (under the Auctioneers Act 1928 or otherwise).
- No waiver:** Any delay or failure by us to exercise any of our rights does not constitute a waiver of that right.
- Contract Privity:** Your agreement to these terms of use is also for the benefit of, and enforceable by, other members.
- Joint and several liability:** Where you comprise more than one legal person, each person's liability will be joint and several.
- Severability:** If any part of these terms of use is held to be invalid, unenforceable or illegal for any reason, then that part shall be severed or amended to the minimum extent necessary for the balance of these terms of use to continue in full force and effect.
- Entire agreement:** These terms of use contain everything we have agreed in relation to your use of Agonline. You cannot rely on anything else said or done by us (any of our representatives).
- Governing law:** New Zealand law governs these terms of use and your use of Agonline. You agree to the jurisdiction of New Zealand's Courts.