



## **BUYER AGREEMENT FOR LIVESTOCK TRANSACTIONS AND TERMS & CONDITIONS**

**Buyer Name and Effective Date is listed here on live agreements.**

- I. **Parties & Effective Date.** This Agreement is made between LiveAg, LLC, a Delaware limited liability Company, (herein referred to as "**LiveAg**") and the buyer set forth above (hereinafter referred to as "**Buyer**").
- II. **Purpose.**
  - a. Buyer is a person or entity interested in the purchase of livestock, as set forth herein and any related forms.
  - b. LiveAg acts as an intermediary between a seller and Buyer in the procurement and purchase of livestock in accordance with this Agreement.
  - c. This Buyer Agreement (the "**Agreement**"), along with all subsequent order forms (also referred to as "**Order Forms**") submitted by Buyer, or on behalf of Buyer by LiveAg or a LiveAg Marketing Representative, shall govern all livestock transactions between LiveAg and Buyer.
  - d. All transactions covered under this Agreement and the Order Forms, for the purchase of livestock as a Buyer, shall be referred to herein as a "**Covered Transaction**".
- III. **Terms and Conditions.**
  - a. **Payments, Expenses, and Fees.**
    - i. **Deposit for Partial Payment.** In the event of a purchase of livestock, Buyer agrees to remit to LiveAg a non-refundable \$40 per head deposit as a partial payment as set forth in the Order Forms (the "**Deposit**") if the cattle will deliver more than 10 business days after the sale of livestock. No livestock will be held on behalf of Buyer until this Agreement, the Order Forms, and the Deposit have been received by LiveAg. The Deposit must be paid within 24 hours of the sale of livestock via Wire Transfer, ACH, or by overnight check via FedEx, or UPS. Buyer agrees not to reverse any ACH payment or place a stop payment on any check provided to LiveAg. Should there be any dispute, LiveAg may present this signed agreement to any bank involved in the transaction as evidence that the Buyer waives all rights to reverse any electronic or other forms of payments. If the cattle deliver within 10 business days of the date the livestock are sold, then LiveAg will waive the partial payment.
    - ii. **Payment of Balance.** After Delivery (as defined below), the remaining balance owed by the Buyer, shall be deposited with LiveAg for payment to the seller within 24 hours of the livestock being received by the Buyer. The balance must be paid via ACH, check, or other forms of payment as agreed upon by both parties. Further, all forms of payment must clear LiveAg's bank before the title to any livestock shall be transferred to the Buyer. The Buyer agrees not to reverse any ACH payment or place a stop payment on any check provided to LiveAg. Should there be any dispute, LiveAg may present this signed agreement to any bank involved in the

transaction as evidence that the buyer waives all rights to reverse any electronic or other forms of payments.

- iii. **Forfeiture of Deposit.** If, prior to Delivery in accordance with a Covered Transaction, Buyer decides not to take possession of the livestock ordered, then Buyer shall forfeit any Deposit. At this time LiveAg will assume the Security Interest in the livestock and may remarket them at LiveAg's discretion. Buyer will then be responsible for any loss incurred by LiveAg in the resale of the cattle. Buyer may also have their buying privileges revoked on LiveAg indefinitely.
- iv. **Term; Renewal; Termination.** This Buyer Agreement is effective on the Effective Date set forth above and shall remain effective for one (1) year from said date, unless otherwise terminated by either party with thirty (30) days' written notice. Further, this Agreement shall automatically renew each year under the same Terms & Conditions represented in this Agreement and on LiveAg's website unless otherwise terminated in writing by either party no less than thirty (30) days prior to the expiration of the then current term or per this Agreement. In the event of a termination, any unsettled and/or pending transactions contemplated by this Agreement, or the Order Forms shall remain in effect until those pending transactions are completed.

Notwithstanding the above, LiveAg shall have the right to terminate this Agreement, with or without cause or reason, no less than 30 days' notice to Buyer.

- b. **Website Buyer Agreement and Terms & Conditions; Opt-Out Updates.** The LiveAg Website "**Buyer Agreement and Terms & Conditions**" will always apply to any Covered Transactions and replace any previous terms. These may be modified periodically by LiveAg and should be checked on Live-ag.com "the Website" before each Covered Transaction. By executing this Agreement, Buyer agrees to the Terms & Conditions as published on the Website at this time, as well as any subsequent updates. LiveAg will attempt to e-mail Buyer about any changes to the e-mail that Buyer has on file with LiveAg. If Buyer fails to receive an e-mail when an update is made because Buyer has not updated a correct e-mail on file with LiveAg then LiveAg is not responsible or liable to Buyer for their failure to review the Website Buyer Agreement and Terms & Conditions prior to each Covered Transaction.

Where a change to the Terms & Conditions listed on the Website is made by LiveAg as defined below, Buyer shall have 30 days to Opt-out of any changes by notifying LiveAg directly in writing. The effect of an "**Opt-out**" by Buyer is that this Agreement, as well as any future Covered Transactions are terminated, however, where a Covered Transaction is already in progress, the terms in effect when the Covered Transaction was commenced shall still apply. If Buyer chooses to Opt-out but continues to enter into Covered Transactions with LiveAg, such continued engagement signifies that Buyer agrees to the Website Buyer Agreement and Terms & Conditions published on the Website at the time of each Covered Transaction and it will be treated as if you did not opt out. It remains the Buyer's responsibility to cease and cancel any and all future Covered Transactions if Buyer does not accept the changes to LiveAg's Buyer Agreement and Terms & Conditions on the Website. LiveAg will attempt to notify all Buyers via the e-mail on file if LiveAg's Terms & Conditions have been updated; however, a failure to notify a Buyer via email shall not nullify consent to the Terms & Conditions if Buyer continues to enter into Covered Transactions. LiveAg also encourages all Buyers to regularly review these Terms and Conditions online as LiveAg cannot guarantee the receipt of a Buyer's email. To be clear, this Buyer Agreement For Livestock Transactions and Terms & Conditions will be provided at the bottom of the homepage of Live-Ag.com with the title of the hyperlink being "Buyer Agreement and Terms & Conditions".

- c. **Forward Contract.** LiveAg and Buyer agree that this is a forward contract under 11 U.S.C. §101 (25) and part of a forward contract trade. It is further understood that LiveAg deals in forward contracts for livestock, which are classified as commodities under Federal Law. LiveAg reserves the right to sign the Livestock Forward Contract on behalf of all Buyers and sellers. LiveAg enters into this Agreement with the specific rights and duties listed herein.
- d. **Delivery.**
- i. **Delivery.** Delivery of the livestock subject to this Agreement is to be Free-on-Board (**FOB**) livestock cars or other carrier designated by the Buyer, the Buyer's agent, or designated marketing representative, subject to the Buyer's ability to bill and ship through to the Buyer's designated destination. All charges incurred prior to loading the livestock on the livestock cars or other designated carrier are to be incurred and paid by the seller. Buyer will work with LiveAg or their representatives to coordinate delivery and Buyer will incur the cost of delivery.
  - ii. **Alternative Delivery.** If shipment in the manner specified in the paragraph above becomes impossible or commercially impractical, the seller shall ship the livestock to the Buyer at an alternative location agreed upon by LiveAg, seller, and Buyer. Any and all additional expenses incurred by reason of such alternative delivery shall be paid by the Buyer.
  - iii. **Transportation Regulatory Requirements.** Buyer is responsible for all regulatory requirements to adequately load the number of head and/or total weight contracted to legally transport the livestock to their destination.
  - iv. **Health Entry Requirements.** Buyer is responsible for all health entry requirements for the state of destination. The Seller shall provide any health certificates required for the state of origin and Federal Law. If additional documentation or tests are required for shipment to the Buyer's destination, it will be at the Buyer's request and expense.
  - v. **Livestock Health.** The seller shall not knowingly sell any sick or infirm livestock without disclosure of such to the Buyer, the Buyer's agent, LiveAg, or a designated marketing representative. Further, the Buyer, the Buyer's agent, LiveAg, or a designated marketing representative can inspect and reject unhealthy livestock, including stags, crippled, blind, livestock with bad eyes, loco, or lump-jawed livestock. Due to the stress of transportation and adjustment to new living conditions, management, and differences in feed and water, the seller shall take no responsibility for the health of the livestock after it is loaded for transport. If Buyer receives livestock they believe to have been in poor health prior to loading on the truck, they shall have 48 hours after receiving the cattle to notify LiveAg. LiveAg will work as an intermediary to both Buyer and seller to find a resolution.
  - vi. **Number of Head.** The seller must deliver at minimum 95% of the number of cattle listed in the Order Forms.
  - vii. **Load Lots & Base Weight.** Livestock will be sold in load lots with a maximum weight of 48,000 pounds per load unless stated otherwise. If, at Delivery, the average weight is higher than the base weight, the Buyer does not have to accept all livestock listed if the total load weight exceeds 48,000 pounds; however, the Buyer does have to accept the cattle up to 48,000 pounds. The base weight is the estimated average weight of livestock at Delivery. If weights

deviate significantly, the Buyer, LiveAg, and/or the designated marketing representative may reject the livestock, renegotiate the price, or require the seller to make a fair adjustment.

- viii. **Slide Adjustments & Weight Stops.** All cattle transactions are subject to price adjustments through designated slide mechanisms and weight stops to account for variations in cattle weights relative to the contracted base weight.

1. **Slides.**

- a. **Conventional Slide.** Adjusts the price per hundredweight (cwt) if livestock weigh more than the base weight, with the slide adjustment stopping at the designated Weight Stop.
- b. **2-Way Slide.** Adjusts the price per cwt equally for weights over or under the base weight with a 25# Weight Stop on both sides.
- c. **LA 2-Way Slide.** Allows separate price adjustments for weights over and under the base weight. The price adjustment on weights under the base weight will always be equal to one half the rate over the base weight. The Weight Stop will be 25# for both directions. For example, if it is a \$.20 slide over the base weight then it will always be a \$.10 slide below the base weight.
- d. **LA Gain Slide.** Allows for a designated rate to be applied to each pound over the base weight. In an example of a set of cattle selling with a base weight of 550# and a \$1 LA Gain Slide, if the cattle deliver with an average base weight of 560# then each pound over 550# will be applied to the selling price by \$1 (per pound) or a total of \$10 per animal.
- e. **LA 2-Way Gain Slide.** Allows for a LA Gain Slide to go both ways. A rate will be designated for each way (and can be the same) with a 25# Weight Stop on cattle above the base weight and a 15# Weight Stop below the base weight.

2. **Weight Stop Application.** In cases where a Weight Stop is designated:

- a. **Over Base Weight.** If the livestock weigh over the base weight, the slide adjustment stops at the Weight Stop, and cattle are sold at the Weight Stop limit.
- b. **Under Base Weight.** If livestock weigh under the base weight, the slide adjustment stops at the Weight Stop, and cattle are sold at their Weight Stop limit.

- ix. **Weighing Conditions.** The seller must ensure cattle are weighed on certified scales which comply with Grain Inspection, Packers and Stockyards Administration ("GIPSA") rules, tested twice annually. Split weighing is prohibited. "**Overnight dry stand**" livestock must be kept without feed or water the night before delivery and remain in dry-lot until weighed. Weigh tickets following GIPSA rules and regulations must be provided to LiveAg to support the pay weights.
- x. **Rejection of More Than 5% of Livestock.** In the event the Buyer receives livestock that are determined in good faith to not fit the contract according to both the Buyer and LiveAg and part or all of the livestock are rejected, LiveAg reserves the right to replace the livestock with livestock of equal quality and value to fulfill the contract with the terms remaining the same upon approval by the Buyer.

1. If cattle are rejected, then Buyer must notify LiveAg or its marketing representative within 48 hours of receiving the cattle.
  2. Neither LiveAg nor the seller are responsible for the performance or description of any cattle that are received without issue after 48 hours of the Buyer receiving the cattle.
- xi. Failure to Deliver.** If the seller fails to deliver the promised number of cattle, except where such failure is directly caused by either a natural disaster, Act of God, or disease, the seller, at the sole choice of the Buyer, must either provide similar replacement cattle or pay the Buyer the difference in price. Further, the seller shall be solely responsible for any necessary freight adjustments.
1. **Failure to Deliver 95% of the Livestock.** If the seller fails to deliver at least 95% of the livestock sold, the seller must either replace the missing livestock with those of equal size and quality or pay the Buyer the difference between the contract price and the current market price for the undelivered livestock, based on the average weight of those delivered. The seller must also cover any necessary freight adjustments. These actions will be at the seller's expense and subject to the Buyer's choice and approval, which may not be unreasonably withheld.
  2. **Failure due to Act of God or Disease.** The Buyer understands and agrees that the seller and LiveAg shall not be liable to the Buyer for delays or failures to deliver livestock directly caused by Acts of God, destruction of the livestock, or disease occurring after the contract was signed and before Delivery. However, the seller must provide reasonable notice and proof to both LiveAg and the Buyer if claiming nonperformance for any of these reasons. Upon receipt, LiveAg and the Buyer shall review the notice and proof to decide if it is valid and sufficient. If accepted, the seller shall immediately return any partial payment or deposit received to LiveAg, and LiveAg shall, upon receipt, immediately refund the Buyer with any partial payment made, which will be the sole liability of the seller to LiveAg and the Buyer. For clarity, the seller has no right to and shall not retain any partial payment received from LiveAg for any undelivered livestock.
- e. Security Agreement.** Buyer hereby grants to LiveAg a security interest in each lot of cattle that are subject to this agreement until LiveAg has received payment in full from Buyer AND the funds have been honored by the financial institution from which payment was drawn. Buyer hereby grants LiveAg the authority to authenticate and file all documents necessary to perfect and give notice of LiveAg's interest in such livestock.
- f. Transfer of Title.** Title to the livestock that are the subject of this Agreement, and the Order Forms shall pass to the Buyer after (i) the weighing and loading onto the livestock cars or other carrier of the livestock as set forth above, and (ii) receipt by LiveAg of the full balance owed from Buyer.
- g. Risk of Loss.** The risk of loss from any casualty to the livestock, regardless of the cause of such casualty shall be on the seller until the livestock have been loaded on the Buyer's truck as specified in this Agreement. Upon the cattle loading on the Buyer's truck, the Buyer shall immediately assume all risks of loss and shall have no further rights or remedies against the seller or LiveAg regarding such loss.
- h. Amendments to Order Forms.** Buyer agrees to permit LiveAg or LiveAg's Marketing Representative to amend the Order Forms solely for the purpose of providing an accurate livestock description prior to the sale of livestock.

- i. **Partial Invalidity.** Whenever possible, each provision and term of this Agreement will be interpreted in such manner as to be valid and enforceable. If any provision or term of this Agreement should be determined by a court of competent jurisdiction to be invalid or unenforceable, all other provisions and terms of this Agreement will be unaffected and will remain valid and enforceable to the extent permitted by law.
- j. **Default as the Buyer.** The Buyer in a Covered Transaction is in default for any of the following reasons:
1. Failure to remit full payment to LiveAg after taking possession of the livestock.
  2. The Payment by the Buyer is dishonored or returned by the bank.
  3. The Buyer becomes insolvent, bankrupt, or dies.
  4. The Buyer refuses to take delivery of the livestock for any reason not specified in this Agreement.

Upon default, LiveAg may undertake any legal remedies available to them in accordance with this Agreement, including but not limited to:

1. Forfeiture of the \$40.00 per head partial payment.
2. Immediate transfer of all ownership interests in the livestock or proceeds to LiveAg.
3. LiveAg may pay the seller in full and re-sell the livestock.

In the event of a default, the Buyer will be responsible for any damages, including re-selling costs and market value declines. The Buyer will also be liable for actual and incidental damages allowed by the Uniform Commercial Code, including court costs, attorney's fees, and any equitable relief.

- k. **Mandatory Mediation.** The parties hereto shall, and shall cause their respective affiliates and assigns to, resolve any dispute, controversy or claim arising out of or in connection with this Agreement, the Order Forms, and any other transactions related to or contemplated hereby (a “**Dispute**”) in accordance with the following procedures: (i) within thirty (30) business days after any party has served written notice on the other party, such Dispute shall be submitted to the Dallas, TX office of JAMS for mediation, and (ii) the mediation shall take place in Dallas, TX. However, in instances where a party is seeking immediate injunctive relief, this clause shall not apply.
- l. **Designation of Agent.** To enable LiveAg to fulfill the Purpose of this Agreement and the Order Forms, Buyer does hereby constitute, authorize, and appoint LiveAg as their lawful agent for (i) the execution of any necessary contracts related to the purchase of the described livestock, (ii) the handling and management of any disputes which may arise related to the purchase or delivery of the livestock, and (iii) any other actions necessary to fulfill the Purpose and Covered Transactions as set forth in this Agreement and the Order Forms.
- m. **Assignment; Prohibited Transfer.** Other than as set forth herein, Buyer shall not assign any right or interest in this Agreement. If Buyer breaches this clause, LiveAg has the right, but not the obligation, to take over the contract and enforce it in LiveAg's name. Further, prior to full payment and receipt of funds by LiveAg, the Buyer in a Covered Transaction shall be prohibited from selling any interest in the livestock.
- n. **Successor-in-Interest.** Upon Delivery and full payment to the seller under a Covered Transaction, the Buyer understands that LiveAg shall be the successor-in-interest of the seller and shall possess all of the seller's rights and remedies remaining under the law to enforce this Agreement in its name.

- o. Governing Law and Jurisdiction.** This Agreement, as well as the Order Forms and any other related agreements between the Buyer and LiveAg, shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Jurisdiction for any court action under this Agreement shall be in Parker County, Texas.
- p. Entire Agreement.** It is understood that this Agreement, the Order Forms, as well as the Terms & Conditions provided to the Buyer in the set-up of their account as well as what is listed on Live-ag.com The Website shall constitute the entire agreement between Buyer and LiveAg. Any terms or conditions may only be changed in writing and agreed upon by Buyer and LiveAg. In the event of any ambiguity or conflict in the terms between this Agreement, the Order Forms, and Website Terms & Conditions, the terms in this Agreement shall control. Further, the parties agree that any ambiguity or conflict shall not be interpreted against the drafting party.
- q. Execution; Future Orders.** Buyer agrees to the terms of this Agreement, which shall govern any and all Covered Transactions set forth in the Order Forms. The signature of Buyer on this Agreement, whether in writing or electronically, constitutes full acceptance of the terms and conditions on behalf of Buyer and LiveAg. By signing this Agreement, Buyer acknowledges that LiveAg, through its authorized representatives, has reviewed and agreed to these terms. Any additional orders, which are set forth in the Order Forms and created by LiveAg or a LiveAg Marketing Representative shall be governed by this Agreement and do not require additional signatures from Buyer.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together are deemed to be one and the same agreement. A portable document format (.pdf) of this Agreement shall be considered the same as an original, and that electronic signatures via Docusign or otherwise, shall have the same force and effect as manual signatures.

**### Buyer information and Signature pages follow on live agreements ###**