



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

**Seller 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 seller set forth above (hereinafter referred to as "**Seller**").
- II. **Purpose.**
  - a. Seller is a person or entity interested in the sale of livestock, as set forth herein and any related forms.
  - b. LiveAg acts as an intermediary between the Seller and a buyer in the procurement and sale of livestock in accordance with this Agreement.
  - c. This Seller Agreement (the "**Agreement**"), along with all subsequent order forms (also referred to as "**Order Forms**") submitted by Seller, or on behalf of Seller by LiveAg or a LiveAg Marketing Representative, shall govern all livestock transactions between LiveAg and Seller.
  - d. All transactions covered under this Agreement and the Order Forms for the sale of livestock by the Seller shall be referred to herein as a "**Covered Transaction**".
- III. **Terms and Conditions.**
  - a. **Payments, Expenses, and Fees.**
    - i. **Payments to Seller.** In the event of a sale of livestock, payment must be made directly to Seller by LiveAg, except in the event of an existing lien or encumbrance. All payments shall be made in U.S. Dollars, with the payment being either an ACH, a check, or other forms of compensation as may be agreed upon by both parties in the future. If the livestock has existing liens or encumbrances, the Seller must notify LiveAg at the time of consignment in order for that payment to be made to both the Seller and the secured parties. If cattle are delivered more than 10 business days after the sale date LiveAg will send a partial payment of \$30 per head to the Seller via ACH, wire transfer or overnight check by UPS or FedEx. If cattle are sold and delivered within 10 business days after the sale date (referred to as "immediate delivery"), LiveAg will not send a partial payment, but will instead pay the Seller the full balance owed for the cattle at delivery. No partial payment will be made for breeding stock, for heifers represented as "open", or for cattle outside the continental US. Payment and/or Final Payment will be made to Seller with commission, consignment fee, US Beef Checkoff, State Beef Checkoff and any other agreed upon deduction deducted from the payment to Seller.
    - ii. **LiveAg Commission and Consignment Fee.** Seller understands and agrees that LiveAg takes a commission of 2% of the total sale amount (at least \$8.00 per head) plus a \$2.00 per head consignment fee. For breeding stock, LiveAg takes a commission of 3% of the total sale amount plus a \$2 per head consignment fee. Both parties may agree to changes in commission terms, from time to time, and any such modifications can be made on a transaction-by-transaction basis and modified on the individual transaction order form.

- iii. **Additional Deductions/Expenses.** Upon Delivery, as described in Section d below, LiveAg will pay the amount due (or remaining amount due if partial payments apply), minus Additional Deductions/Expenses for weighing and all such other fees required by Federal and State regulations, such as health inspection, brand inspection, US Beef Checkoff, State Beef Checkoff, and any other legal and administrative fees associated therewith. Said Additional Deductions/Expenses shall be set forth in a final invoice provided to the Seller by LiveAg.
- iv. **Security Interest.** Upon receipt of the Deposit, Seller hereby grants to LiveAg a security interest in the livestock described here or in the Order Forms, including products and proceeds therefrom. Said Security Interest shall remain valid and enforceable by LiveAg until (i) remittance of the full balance owed by the buyer and (ii) delivery of the livestock in accordance with the terms herein. Last, Seller agrees to assist LiveAg in filing all necessary documents to protect and notify others of LiveAg's interest in the livestock.
- v. **No Sale/Pass Out; Scratch Fees.** In the event of a No Sale/Pass Out, the seller must decline the highest bid before the next lot is offered at auction, incurring a fee of (i) \$3.00 per head for non-breeding stock up to \$1,500.00 per auction or (ii) \$30 per head for breeding stock. This fee is collected if not prepaid. A Scratch Fee of \$150 per lot shall apply if livestock are withdrawn and not re-consigned to one of the next two consecutive auctions.
- vi. **Term; Renewal; Termination.** This Seller 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 Seller.

- b. **Website Seller Agreement Terms & Conditions; Opt-Out Updates.** The LiveAg Website "**Seller 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, Seller agrees to the terms and conditions as published on the Website at this time, as well as any subsequent updates. LiveAg will e-mail Seller about any changes to the e-mail that Seller has on file with LiveAg. If Seller fails to receive an e-mail when an update is made because Seller has not updated a correct e-mail on file with LiveAg then LiveAg is not responsible or liable to Seller for their failure to review the Website Seller 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, Seller shall have 30 days to Opt-out of any changes by notifying LiveAg directly in writing. The effect of an "**Opt-out**" by Seller 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 Seller chooses to Opt-out but continues to enter into Covered Transactions with LiveAg, such continued engagement signifies that Seller agrees to the Website Seller 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 Seller's responsibility to cease and cancel any and all future Covered Transactions if Seller does not accept the changes to LiveAg's Seller Agreement and Terms & Conditions on the Website. LiveAg will attempt to notify all Sellers via the e-mail on file if LiveAg's Terms & Conditions have been updated. LiveAg also encourages all Sellers to regularly review these Terms and Conditions online as LiveAg cannot guarantee the receipt of a Seller's email. To be clear, this Seller 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 "Seller Agreement and Terms & Conditions".

- c. **Forward Contract.** LiveAg and Seller agree that this is a forward contract under 11 U.S.C. §101 (25) applicable law 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 Sellers and buyers. 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. The 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. **Number of Head.** The Seller must deliver at minimum 95% of the number of cattle listed in the Order Forms.
  - iv. **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.
  - v. **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.

- vi. **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.

- vii. **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.

- viii. **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. LiveAg will attempt to replace either all or part of the cattle initially from the Seller and any loss in price whether all the cattle or some of the cattle are replaced by the Seller or replaced from another source will be at the expense of the Seller.

- 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.
- ix. **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 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. **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.
- f. **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.
- g. **Amendments to Order Forms.** Seller 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 the livestock.
- h. **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.

- i. **Default as the Seller.** The Seller in a Covered Transaction is in default if they fail to deliver the livestock for any reason not covered by Paragraph (d)(ix) above. If the seller fails to deliver in accordance with a Covered Transaction, they must promptly refund LiveAg the \$30.00 per head part payment, plus commission and consignment fee. Upon default, LiveAg can take any legal actions, including but not limited to replacing the livestock for the buyer and holding the Seller liable for any damages, including the cost of replacing the cattle at current market rates. If the cost of replacing the cattle exceeds the original sale price, then the Seller will be responsible for the balance owed to LiveAg.

The seller 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.

- j. **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, Texas 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.
- k. **Designation of Agent.** To enable LiveAg to fulfill the Purpose of this Agreement and the Order Forms, Seller does hereby constitute, authorize, and appoint LiveAg as their lawful agent for (i) the execution of any necessary contracts related to the sale of the described livestock, (ii) the handling and management of any disputes which may arise related to the sale 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.
- l. **Assignment; Prohibited Transfer.** Other than as set forth herein, Seller shall not assign any right or interest in this Agreement. If Seller 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.
- m. **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.
- n. **Governing Law and Jurisdiction.** This Agreement, as well as the Order Forms and any other related agreements between the Seller 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.
- o. **Entire Agreement.** It is understood that this Agreement, the Order Forms, as well as the Terms & Conditions provided to the Seller 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 Seller and LiveAg. Any terms or conditions may only be changed in writing and agreed upon by Seller 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.

- p. **Execution; Future Orders.** Seller agrees to the terms of this Agreement, which shall govern any and all Covered Transactions set forth in the Order Forms. The signature of Seller on this Agreement, whether in writing or electronically, constitutes full acceptance of the terms and conditions on behalf of Seller and LiveAg. By signing this Agreement, Seller 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 Seller. However, prior to placement of a future order or Covered Transactions, LiveAg shall notify the Seller in writing, either through their LiveAg website account, e-mail, or in writing, that an order was created on their behalf and is now classified as a Covered Transaction hereunder. Each Covered Transaction and corresponding Order Form must detail the specific terms of the transaction, including the description of livestock, quantity, price, and expected delivery date.

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.

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