

# NATIONAL BEEF ASSOCIATION

## TERMS AND CONDITIONS OF SALE

- a) For use by BREED SOCIETIES AT PUBLIC AUCTIONS held under the auspices of such Breed Societies
- b) For use by INDIVIDUAL MEMBERS OF SUCH BREED SOCIETIES at reduction and production sales (and dispersal Sales where these Terms are offered), conducted by auctioneers approved by the relevant Breed Society

### IMPORTANT

**This document sets out the National Beef Association's Terms and Conditions ("Terms") under which Purchasers and Vendors enter into contracts at Breed Society Auctions and provides the framework under which any disputes arising therefrom may be resolved.**

**By buying and/or selling any such animal referred to in these Terms at any Auction you hereby agree to be bound by these Terms.**

**Please refer to the relevant Breed Society for breed specific standards as marked\*.**

### 1 DEFINITIONS

In these Terms:

'AUCTION' means any Breed Society public auction or reduction and production sale (or dispersal sale where the Terms are expressly applied) in which a Sale is made.

'AUCTIONEERS' means the Auction House or other appropriate body responsible for conducting the Auction, including personnel appointed by the said Auction House responsible for facilitating Sales at the Auction and 'AUCTIONEER' shall be construed accordingly.

'BREED SOCIETY' means a National Beef Association affiliated and approved Pedigree Cattle Breed Society, a list of which is available on request to the National Beef Association.

'BULL FERTILITY REPORT FORM' and 'FEMALE FERTILITY REPORT FORM' means National Beef Association Form available on request to the National Beef Association or to the Auctioneers.

'CALVING DATE' means date calf is born.

'CLAIM' means a complaint by a Purchaser for a breach or breaches of warranty or warranties whether express or implied given by the Vendor in accordance with the clauses set out in these Terms.

'FERTILE' in respect of female cattle means an 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.

'HERD BOOK' means Pedigree Register of cattle registered to the relevant Breed Society.

'INCAPABILITY' in respect of a bull means incapability of getting stock by natural service due to a pre-existing reproductive disorder or lack of libido, and the words 'CAPABILITY', 'CAPABLE' AND 'INCAPABLE' shall be construed accordingly.

'INSPECTOR' means a Breed Society appointed inspector who's function is to carry out Sale inspections as and when requested by, and to the standards set from time to time by the relevant Breed Society.

'MAIDEN HEIFER' means a heifer which has never been served, by natural means or artificial insemination.

'PURCHASER' means:

- a) the successful bidder for any animal in the Auction, or
- b) the successful bidder together with any such one or more persons with whom the said bidder is in partnership, or engaged in a joint venture, and whose names shall have been notified to the Auctioneers on the day of the Auction.

'SALE' means any sale of an animal at an Auction and 'SOLD', 'PURCHASE' and 'PURCHASED' shall be construed accordingly.

'SALE CATALOGUE' means publication issued by the relevant Breed Society or Auctioneers listing cattle offered at the Auction Sale.

'SERVICE' without qualification means both service by natural means and service by artificial insemination, and the words 'SERVE' and 'SERVED' without qualification shall be construed accordingly.

'SHIPMENT' means the sending or taking of an animal outside the United Kingdom.

'TERMS' means the National Beef Association's standard terms and conditions of sale set out herein and (unless the context otherwise requires) include any special terms and conditions agreed in writing between the Vendor and the Purchaser in accordance with Clause 2.2 hereof.

'VENDOR' means the person who has instructed the Auctioneers to sell his or her animal(s) on his or her behalf at the Sale.

'VETERINARY SURGEON' means member of the Royal College of Veterinary Surgeons.

'VETERINARY SURGEON'S CERTIFICATE' means certificate issued and signed by a Veterinary Surgeon.

## **2 BASIS OF THE CONTRACT**

2.1 These Terms shall (subject to Clause 2.2 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 to the fullest extent permitted by law including as subject to the Unfair Contract Terms Act 1977 or any statutory re-enactment or modification thereof.

2.2 These Terms may not be varied at any Auction or following any Sale in any way except by an announcement by the Auctioneers before or at the time of the Sale.

2.3 The National Beef Association and Breed Societies exclude all liability arising out of the use or application or form of these Terms to the fullest extent permitted by law.

## **3 GENERAL TERMS AND CONDITIONS OF SALE**

3.1 The Vendor warrants that:

3.1.1 each animal offered for Sale has been bred by the Vendor unless otherwise stated in the Sale Catalogue or by the Auctioneers before or at the time of Sale, and

3.1.2 the identity, pedigree, history and description of each animal submitted for Sale is as stated in the Sale Catalogue or otherwise disclosed to the Auctioneers for public announcement before or at the time of the Sale (including all flushings for embryo transfer, caesarean operations, calvings recorded, and semen collected) save to the extent that any mis-description would be apparent on inspection of the animal and/or Sale Catalogue.

3.2 The Vendor shall not be held liable for any Infertility or Incapability or other such deficiency of any animal not known by the Purchaser at the time of Sale if that deficiency was stated in the Sale Catalogue or by the Auctioneer before the Sale.

3.3 Only animals owned by a member of a Breed Society registered in the United Kingdom, and entered in the Herd Book of the Same Breed Society or registers supplementary thereto shall be offered for Sale under these Terms.

## **4 BULL BREEDING WARRANTIES BY THE VENDOR**

4.1 Subject to the provisions of Clauses 4.2, 4.3, 6, 8 and 11 hereof the Vendor warrants that each bull over the age of eight months at the date of the Sale is Capable of getting stock by natural service from sixteen\* months of age which shall be deemed to be fulfilled as soon as six females or fifty per cent of the herd 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 except where it would be reasonably apparent to a purchaser from the details provided in the Sale Catalogue that the bull would be Capable.

4.2 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 as per Appendix A and,

subject to Clause 4.3 hereof, in any event within six calendar months of the Sale date or within six calendar months of attaining the age of sixteen\*months (whichever is the later) ('THE TRIAL PERIOD'). A claim for Infertility or Incapability will not normally be accepted in the case of an inexperienced bull until he has been allowed a minimum of three natural heat cycles with the females.

- 4.3 DEFERRING THE TRIAL PERIOD. If upon Purchase of the bull, it is found impracticable for the Purchaser to try the bull fairly within the Trial Period stated in Clause 4.2 above due to the Purchaser's normal calving programme, the Purchaser shall ON THE DAY OF THE SALE, or within the next seven days, give the Auctioneer notice IN WRITING of the month in which it is proposed to commence using the bull. AT THE DISCRETION OF THE VENDOR (in consultation with the Auctioneer, if applicable), the Vendor may defer the date of commencement of the Trial Period for a maximum period of three calendar months ('THE DEFERRAL PERIOD'). Acceptance or otherwise of the Purchaser's written request, shall be conveyed to the Purchaser by the Auctioneer in writing, within seven days of the request being made.

If the Trial Period is deferred the bull should not be used during the Deferral Period.

THE PURCHASER SHOULD NOTE THE TIME LIMIT FOR CLAIMS IN CLAUSE 8.1.2 BELOW.

## **5. FEMALE BREEDING WARRANTIES BY THE VENDOR**

Subject to the provisions of Clauses 6, 8, and 11 hereof:

### **5.1 MAIDEN HEIFERS**

Every maiden heifer over the age of twelve\* months at the date of the Sale is sold with warranties by the Vendor:

- 5.1.1 that it shall be fertile up to the age of twenty-eight\* months, which declaration shall be deemed to be confirmed 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 these Terms 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
- 5.1.2 that it is not in calf.

### **5.2 HEIFERS RECENTLY SERVED**

Every heifer over the age of twelve\* months at the date of the Sale and described in the Sale Catalogue or by the Auctioneers at the time of the Sale as having been served less than twelve weeks prior to the date of the Sale is sold with warranties by the Vendor:

- 5.2.1 that it shall be fertile 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 these Terms 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
- 5.2.2 that if it is in calf it is in calf to the bull described in the Sale Catalogue or by the Auctioneers at the time of the sale PROVIDED ALWAYS that no warranty is given or to be implied that such heifer is in calf at the time of the Sale.

### **5.3 COWS UNSERVED**

Every cow under the age of ten\* years at the date of the Sale and described in the Sale Catalogue or by the Auctioneers at the time of the Sale as unserved since last calving is sold with warranties by the Vendor:

- 5.3.1 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
- 5.3.2 that it is not in calf.

### **5.4 COWS RECENTLY SERVED**

Every cow, under the age of ten\* years at the date of the Sale and described in the Sale Catalogue or by the Auctioneers at the time of the Sale as having been served less than twelve weeks prior to the date of the Sale is sold with warranties by the Vendor:

- 5.4.1 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
- 5.4.2 that if it is in calf it is in calf to the bull described in the Sale Catalogue or by the Auctioneers at the time of the Sale PROVIDED ALWAYS that no warranty is given or to be implied that any such cow is in calf at the time of the Sale.

#### 5.5 FEMALES IN CALF

Every cow or heifer stated in the Sale Catalogue or by the Auctioneers at the Sale 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:

- 5.5.1 that it is in calf, and
- 5.5.2 that it is in calf to the bull described in the Sale Catalogue, or by the Auctioneers at the time of the Sale, and
- 5.5.3 that the expected Calving Date will be within a period of 263\* to 303\*days of the Service Date.

#### 5.6 FEMALES 'RUNNING WITH BULL'

Every cow or heifer described in the Sale Catalogue or by the Auctioneers at the time of the Sale as 'running with the bull' up to a date not later than twelve weeks before the Sale is sold with warranties by the Vendor:

- 5.6.1 that it is in calf, and
- 5.6.2 that it is in calf to the bull described in the Sale Catalogue or by the Auctioneers at the time of the Sale and that the latest expected calving date will be within a period of 263\* to 303\* days of the last possible Service Date.

#### 5.7 FEMALES WITH VETERINARY SURGEON'S CERTIFICATE OF POSITIVE PREGNANCY DIAGNOSIS

Scanning is not accepted as proof of diagnosis less than twelve weeks after the Service Date. Every cow or heifer stated in the Sale Catalogue or by the Auctioneers at the time of the Sale to be sold with a Veterinary Surgeon's Certificate of pregnancy diagnosis is sold with warranties by the Vendor:

- 5.7.1 that it is in calf, and
- 5.7.2 that it is in calf to the bull described in the Sale Catalogue or by the Auctioneers at the time of the Sale, and
- 5.7.3 that the expected calving date will be within a period of 263\* to 303\* days of the service date stated in such Veterinary Surgeon's Certificate notwithstanding that the said cow or heifer would not otherwise be Sold with the benefit of the above warranties.

THE PURCHASER SHOULD NOTE THE LIMITATIONS ON THE TIME LIMIT FOR CLAIMS IN CLAUSE 8.1.2 BELOW

### 6. UDDER AND CLEANSING WARRANTIES BY THE VENDOR

Unless otherwise stated by the Auctioneers at the time of the Sale:

- 6.1 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 by the Vendor 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 Auctioneers not later than one hour from the close of the Sale, and if the Auctioneers in their absolute discretion (having taken such veterinary advice as may be appropriate) decide that the udder is not sound in all respects, the Sale of such animal shall be rescinded, and
- 6.2 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:
  - 6.2.1 any Claim under this warranty shall be made, accompanied by a Veterinary Surgeon's Certificate, to the Auctioneers not later than three days from the date of the Sale, and
  - 6.2.2 without prejudice to the rights of the Purchaser set out in Clause 11 hereof, the Purchaser shall have the right to arrange such veterinary treatment to the animal (the reasonable cost of which shall be borne by the Vendor) as may rectify the animal's condition.

### 7. LIMITATIONS ON THE APPLICATION OF VENDOR WARRANTIES

- 7.1 None of the Vendor warranties in Clauses 4 and 5 above shall apply:

- 7.1.1 to any cow or heifer which has been subjected to any process involving the technique of embryo transfer or ova collection, unless that animal's subsequent natural breeding record (as declared in the Sale Catalogue) indicates not less than one natural calving since the said embryo transfer or ova collection;
  - 7.1.2 to any cow or heifer, which has undergone a caesarean operation (as declared in the Sale Catalogue) unless that animal's subsequent natural breeding record (as declared in the Sale Catalogue) indicates not less than one natural non-surgical calving since the said operation;
  - 7.1.3 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;
  - 7.1.4 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 Standards of Good Animal Husbandry and Management as per Appendix A;
  - 7.1.5 to any animal Purchased for export outside the United Kingdom (unless a claim shall have been notified within the time limits imposed by Clause 8.1.2 hereof and proved correct after all examinations and procedures deemed necessary by the Veterinary Surgeon appropriate under these Terms has been carried out) before the date on which Shipment takes place;
  - 7.1.6 to any animal, which has been rejected at the date of the Sale by its Breed Society Inspector or Inspectors, appointed for the purpose of that Sale;
  - 7.1.7 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;
  - 7.1.8 to any animal, which does not remain the property of the Purchaser unless the Purchase was 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;
  - 7.1.9 to any animal, which does not survive until the completion of all examinations and procedures, deemed necessary by the Veterinary Surgeons appointed under Clauses 8, 9, and 10 hereof.
- 7.2 No Vendor warranty is given or to be implied that a cow or heifer will carry a full term or deliver a live or viable calf.

## **8. CLAIMS**

8.1 A Claim by a Purchaser shall not be valid unless:

- 8.1.1 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, and
- 8.1.2 the Purchaser has followed the Claims Procedure as set out in clauses 8.2-8.9 below and has given notice in writing to the Auctioneers 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:

8.1.2.1 Under Clause 4

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 sixteen\* months; or
- c) from the date of the commencement of the Trial Period stated in Clause 4.3 above, whichever is the later date

8.1.2.2 Under Clause 5.1.1 and 5.2.1

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

8.1.2.3 Under Clause 5.1.2 and 5.3.2

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

8.1.2.4 Under Clause 5.3.1

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

8.1.2.5 Under Clause 5.4.1

In the case of a cow Sold as recently served and which proves infertile: within twenty-six weeks from the date of the Sale

8.1.2.6 Under Clauses 5.2.2 and 5.4.2

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 to be the service sire: within fourteen days from the calving date

8.1.2.7 Under Clauses 5.5.1 and 5.7.1

In the case of a cow or heifer Sold as being in calf, and which proves not to be in calf: within twenty-eight days from the date of the Sale

8.1.2.8 Under Clauses 5.5.2 and 5.7.2

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 Sale Catalogue or by the Auctioneers at the time of the Sale as the case may be: within fourteen days from the calving date

8.1.2.9 Under Clauses 5.5.3, 5.6.3, and 5.7.3

In the case of a cow or heifer which, although in calf, does not calve to the stated service date: within fourteen days from the expected calving date

8.1.2.10 Under Clause 6.1

In the case of a cow or heifer whose udder is not sound: within one hour from the Close of the Sale

8.1.2.11 Under Clause 6.2

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**

8.2 In the case of a Claim under Clauses 4, 5.1.1, 5.2.1, 5.3.1, or 5.4.1 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, completed by a Veterinary Surgeon appointed by the Purchaser, return it to the Auctioneers.

8.3 The Veterinary Surgeon appointed in accordance with sub-clause 8.2 hereof must certify in writing that:

8.3.1 the animal is in a normal breeding condition, and

8.3.2 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 Sale and

8.3.3 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

8.3.4 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.

8.4 In the case of a Claim under 5.1.2, 5.3.2, 5.5.1, or 5.7.1 the Purchaser shall when notifying such Claim, forward to the Auctioneers a Veterinary Surgeon's Certificate certifying the animal is or is not in calf as the case may be.

8.5 In the case of a Claim under Clause 5.2.2, 5.4.2, 5.5.2, 5.6.2, or 5.7.2 the Purchaser shall when notifying such Claim forward to the Auctioneers a Veterinary Surgeon's Certificate that the animal has produced a calf to a bull other than that stated to be the service sire.

8.6 In the case of a Claim under Clause 5.5.3, 5.6.3, or 5.7.3 the Purchaser shall, when notifying such Claim, forward to the Auctioneers a Veterinary Surgeon's Certificate, certifying that the animal has not calved to the stated Service Date.

8.7 In the case of any Claim, where the 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 of Shipment or before the relevant period in sub-clause 8.1.2 (whichever shall be the earlier date).

8.8 In the case of any Claim, the animal shall survive at least until completion of all examinations and procedures deemed necessary by the Veterinary Surgeons appointed under Clauses 8, 9 and 10 hereof.

8.9 Where notice of an intended Claim is given to the Auctioneers in accordance with sub-clause 8.1.2 the Auctioneers shall as soon as is reasonably practicable inform the Vendor and the Secretary of the Breed Society to which the animal is registered, and forward to the Vendor a copy of the Bull Fertility Form or Female Fertility Report Form and/or Veterinary Surgeon's Certificate if applicable.

## **9. EXAMINATION OF ANIMALS**

9.1 Following receipt by the Auctioneers of notice by the Purchaser of an intended Claim and such subsequent notice to the Vendor in accordance with the above clause 8 the Vendor may submit a request to the Auctioneers for a Veterinarian Surgeon appointed by the Vendor to examine the animal and upon being given notice of the same by the Auctioneers the Purchaser shall permit such examination.

9.2 Any examination carried out in accordance with clause 9.1 shall be carried out within 14 days of the Auctioneer notifying the Vendor of the Purchaser's Claim at the cost of the Vendor, such cost to be reimbursed by the Purchaser if it is deemed in accordance with clause 10 that the Purchaser does not have a valid Claim.

## **10. DISPUTE RESOLUTION**

10.1 Each party recognises that the other party's business relies in whole or in part upon the condition, Fertility and/or Capability of the animals Sold and, if a Claim has been submitted by the Purchaser in accordance with the prescribed time limits and procedures as set out in these Terms, the Vendor and Purchaser shall in the first instance upon notice by the Auctioneers of the Claim in accordance with clause 8.9 meet in a good faith effort to settle the Claim.

10.2 If the Claim cannot be resolved in accordance with clause 10.1 the dispute shall be determined by a Veterinary Surgeon appointed by agreement between the Purchaser and the Vendor. In default of any such agreement between the Vendor and the Purchaser as to a suitable Veterinary Surgeon, the parties shall notify the Auctioneers in writing of this failure to agree and the Auctioneers shall appoint a Veterinary Surgeon within 28 days of the Auctioneers receiving such notice from the parties.

10.3 The Veterinary Surgeon so appointed in accordance with clause 10.2 above shall have the power to make such directions as to the validity of the Claim including (but without prejudice to the generality of such directions) directions as to costs and directions under sub-clause 10.4 below, and to make such investigations as he thinks fit, and the Purchaser and the Vendor shall comply with such directions and shall co-operate in such investigations and shall provide such records and information to the Veterinary Surgeon as he may reasonably require.

10.4 If the Veterinary Surgeon so appointed in accordance with clause 10.2 above decides that further opportunities are required to prove whether or not a bull is Capable 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 with the Auctioneers the whole amount of the purchase money (or such part of it as the Purchaser has paid) for the animal, interest thereon to accrue for the benefit of the Vendor pending the outcome of the dispute, such interest to be calculated on a daily basis at two percent above the base lending rate from time to time in force at Lloyds Bank plc.

10.5 The appointed 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 within the Terms and period allowed, if within that period the appropriate opportunity or veterinary treatment had been given or the Standards of Good Husbandry & Management had been applied.

10.6 If the Veterinary Surgeon so appointed in accordance with clause 10.2 above 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 reasonable

veterinary and laboratory fees and any reasonable transport costs incurred by both parties in the course of the Claim being addressed in accordance with these Terms.

## **Alternative Dispute Resolution**

10.7 If the parties cannot, or refuse to, resolve a Claim in accordance with the procedures set out clauses 10.1 – 10.6 above, they shall, with the assistance of the Centre for Effective Dispute Resolution ("CEDR") in London, seek to resolve the Claim amicably by using a single arbitrator, whose decision will be final and binding upon both parties. Unless otherwise agreed between the parties, the arbitrator will be nominated by CEDR.

## **11. LIMITATION OF RIGHTS ON BREACH OF VENDOR WARRANTY**

11.1 Upon breach of any warranty contained in these Terms as accepted by the Vendor or as determined by a Veterinary Surgeon so appointed in accordance with clause 10 hereof the Purchaser shall have the right to return the animal, together with any calf born subsequent to the Sale, and recover from the Vendor:

- 11.1.1 the purchase money or such part of it as the Purchaser has paid;
- 11.1.2 interest thereon calculated on a daily basis at two percent 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 Auctioneers to the date of return or the date of disposal of the animal as the case may be;
- 11.1.3 the reasonable expense of transporting any such animal to and from the Purchaser's premises;
- 11.1.4 the reasonable cost of any such animal's keep, as determined by the relevant Breed Society, from the date on which notice of the Claim was received by the Auctioneers to the date of return to the Vendor or the date of disposal of the animal as the case may be, not exceeding the slaughter carcass value of the animal at the date of return, which sum shall be assessed by the Auctioneers, whose assessment shall be final and binding upon the Vendor and the Purchaser;
- 11.1.5 the reasonable expenses (including laboratory fees) of any Veterinary Surgeon employed for the purpose of investigating the animal's condition, Fertility or Capability as the case may be and for making a claim under these Terms, BUT THE PURCHASER 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) ANY LOSS OF PROFITS, OR
  - (ii) ANY OTHER LOSS WHATSOEVER.

## **12. TIME LIMITS**

12.1 Time shall be of the essence of all Terms in which time limits are prescribed and a Claim made under any Vendor warranty herein will not be admitted unless made within the prescribed time limit, provided that where 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.

12.2 In the computation of any period of time before or after the Sale or any other event, the day of the Auction or other event, as the case may be, shall be excluded.

12.3 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.

## **13. NOTICES**

Any notice required to be served on any person or body mentioned herein shall be deemed to have been duly served if left at or sent by prepaid first-class post to that person or body at the last known abode or principal place of business and shall if sent by post to that person or body at the 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.

## **14. GENERAL**

14.1 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.

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

- 14.3 Unless expressly provided to the contrary in these Terms no failure or delay in exercising any right under these Terms shall operate as a waiver thereof or extend to, or affect any other subsequent event, or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of the relevant party under these Terms.
- 14.4 These Terms shall be personal to the Vendor and Purchaser and neither may, unless provided to the contrary in these Terms, assign, licence, sub-contract or otherwise purport to grant rights over or transfer the benefit of any such rights or obligations under these Terms without the prior written consent of the other party.
- 14.5 These Terms comprise the entire agreement between the parties in relation to the subject matter of these Terms.
- 14.6 The validity, construction and performance of these Terms shall be construed in accordance with English Law and governed by the Laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

## **THE NATIONAL BEEF ASSOCIATION**

**Revision December 2014**

### **Annex 1**

#### **Guidelines for the Standards of Good Husbandry and Management In respect of bulls purchased at Sales**

Taking care to settle a newly purchased bull properly will assist in ensuring that you have many years of good service from him. On arrival at the purchasers farm bulls must not be isolated from other cattle until they have settled into their new environment.

Under the National Beef Association's Terms and Conditions of Sale the Purchaser is required to maintain the animal in normal breeding condition, in condition with the rules and practice of Good Animal Husbandry and Management, as referred to in clauses 4.2 and 7.1.4 and 8.3.2.

Following purchase the National Beef Association would require a Purchaser to adhere to the following points to fulfil the requirement of Good Husbandry and Management:

- 1 The bull should not be used within two weeks of the date of purchase
- 2 The Purchaser should ensure that the bull is in normal breeding condition before use
- 3 In consultation with the Vendor, the Purchaser should maintain the bull on its current diet and only introduce any new feed gradually
- 4 When the bull is first used, try it with 1 or 2 smaller females first, in a yard on a non-slip surface, so he is introduced to service gradually and safely. Observe him closely to ensure that he is serving the female properly
- 5 Once the Purchaser is satisfied that these females are not returning, then he should put the bull out with more females. 20 to 25 females should be a maximum in the first year.

These are guidelines only. Purchasers should be aware that should they choose not to follow them they might invalidate these Terms. In addition you may refer to the relevant Breed Society's guidelines.