

Mitchells & Butlers – Quality Cattle scheme

Terms and conditions

1. Definitions and interpretation

1.1 The following definitions and rules of interpretation shall apply in these terms and conditions:

"Beef Finisher" means the beef finisher identified in the Weaned Calf Order Request;

"Beef Finishing Services" means the beef finishing services to be provided by the Beef Finisher for the benefit of the Customer, to take the Weaned Calves through to a target finished weight of a minimum of 280 kilograms (dead weight) and a carcass conformation of E,U,R,O and fat class 3 to 4H such services to include (without limitation) providing all inputs (including without limitation all labour, feed, water, accommodation, bedding, fertiliser, storage, transport and farm management) in relation to the Weaned Calves and for the periodic weighing of the Weaned Calves

"Beef Protocol" means the Customer's Beef Protocol as shall be provided by the Supplier and/or the Customer to the Beef Finisher and as may be amended or updated by the Customer from time to time.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Calves Contract" shall have the meaning given to it in clause 2.1;

"Customer" means Mitchells & Butlers Leisure Retail Limited incorporated and registered in England and Wales with company number 01001181 whose registered office is at 27 Fleet Street, Birmingham B3 1JP;

"Finished Cattle": Weaned Calves that have successfully undergone the Beef Finishing Services;

"Processing Provider" means the processing provider confirmed by the Supplier to the Beef Finisher;

"Supplier" means ABP Trading as Blade Farming, incorporated and registered in England and Wales with company number 04976254, whose registered office is at Harlescott, Battlefield Rd, Shrewsbury, Shropshire, SY1 4AH;

Weaned Calf Delivery Confirmation: the Customer's "Weaned Calf Delivery Confirmation for MAB Cattle Scheme" issued by the Supplier to the Beef Finisher on behalf of the Customer;

"Weaned Calf Order Request" means the "Weaned Calf Order Request for MAB Cattle Scheme" form issued by the Supplier to the Beef Finisher on behalf of the Customer; and

"Weaned Calves" means the weaned calves to be delivered by the Supplier to the Beef Finisher pursuant to the Weaned Calf Order Request.

2. Obligations

2.1 The Supplier and the Beef Finisher shall agree and sign a Weaned Calf Order Request and the Supplier shall then submit a copy of the same to the Customer for approval. Upon the signature of the Weaned Calf Order Request by an authorised representative of the Customer (being the Customer's Director of Food Trading or the Customer's Agri-Procurement Manager) then and only then shall a legally binding contract arise between the Customer and the Supplier and the Beef Finisher for the provision by the Beef Finisher of the Beef Finishing Services, incorporating these terms and conditions ("**Calves Contract**"). 2.2 Following approval by the Customer of the Weaned Calf Order Request pursuant to clause 2.1, the Supplier shall invoice the Beef Finisher for a deposit equal to £20 for each of the Weaned Calves ("**Deposit**") and the Beef Finisher shall promptly pay the Deposit to the Supplier.

2.3 Following receipt of the Deposit, the Supplier shall deliver the Weaned Calves to the Beef Finisher, upon such date and at such time as the Supplier shall confirm to the Beef Finisher.

2.4 Upon delivery of the Weaned Calves to the Beef Finisher, the Supplier shall supply the Weaned Calf Delivery Confirmation to the Beef Finisher and ensure that the Beef Finisher shall have reasonable opportunity to inspect the Weaned Calves and the Beef Finisher may reject or accept the Weaned Calves depending upon whether the Beef Finisher (in its sole discretion) deems the Weaned Calves to be suitable for the Beef Finishing Services.

2.5 The Beef Finisher shall either (a) sign the Weaned Calf Delivery Confirmation within seven days of the date of delivery of the Weaned Calves and supply a copy promptly to the Supplier, or (b) promptly (and in any event within seven days from the date of delivery) notify the Supplier that it rejects the Weaned Calves (in whole or in part).

2.6 Following acceptance of Weaned Calves by the Beef Finisher in accordance with clause 2.5 above, the Beef Finisher shall supply the Beef Finishing Services:

2.6.1 in accordance with the Customer's Beef Protocol and requirements from time to time notified to it by the Supplier and/or the Customer;

2.6.2 with the highest level of care, skill and diligence in accordance with best practice in the Beef Finisher's industry, profession or trade and using suitably skilled, qualified and experienced personnel; and

2.6.3 in accordance with all applicable laws, regulations and codes of practice.

2.7 At any time upon request and in any event at regular intervals, being not less than monthly, the Beef Finisher shall provide the Supplier with such information and data relating to the Beef Finishing Services as the Supplier may request.

2.8 Upon completion of the Beef Finishing Services, the Beef Finisher shall arrange for delivery of Finished Cattle to the Processing Provider (subject to any requirements that may be notified to the Beef Finisher by the Supplier and/or the Customer).

2.9 The Beef Finisher shall maintain and comply with applicable laws relating to the marking, identification, registration, passports, other records and movement of the Weaned Calves and shall at all times the Weaned Calves shall be identifiable as the property of the Customer.

3. Risk and Title

3.1 The risk in the Weaned Calves shall pass to the Beef Finisher on completion of delivery.

3.2 The legal and beneficial title in the Weaned Calves shall remain with the Customer and/or one or more of the Customer's Group as the case may be at all times.

3.3 The Customer may at any time require the Beef Finisher to deliver up the Weaned Calves and if the Beef Finisher fails to do so promptly, the Customer may enter any premises of the Beef Finisher or of any third party where the Weaned Calves are stored in order to recover them.

3.4 The Beef Finisher shall allow the Customer and/or the Supplier non-exclusive access at all times to the locations at which the Weaned Calves are kept to inspect the Weaned Calves to ensure that the terms of this Calves contract are being complied with and for any other reason arising out of or in connection with the Weaned Calves (including without limitation any requests by regulatory bodies).

3.5 The Beef Finisher shall not part with possession of the Weaned Calves, or allow control or supervision of the Weaned Calves to be undertaken by anyone other than a person or body employed by him or under his control.

3.6 The Beef Finisher shall take all necessary steps to provide stock control and ensure that the Weaned Calves are kept secure at all times.

3.7 The Beef Finisher shall avoid any sewage effluent or other environmental contamination of the locations at which the Weaned Calves will have contact with, including any waterways or adjacent or neighbouring land or premises.

3.8 The Beef Finisher shall keep the Weaned Calves separate and distinct from other livestock.

4. Liability

4.1 The Beef Finisher shall effect and maintain in force with a reputable insurer for the duration of the supply of Beef Finishing Services and for six (6) years thereafter appropriate policies of insurance with a reputable insurer, sufficient to cover its obligations and potential liabilities under the Calves Contract and with cover of no less than the level specified by the Customer in writing.

4.2 In the event that a Weaned Calf dies prior to the completion of the Beef Finishing Services:

(a) the costs incurred up to that time shall be borne by the Beef Finisher and the Weaned Calves Price shall be credited to the Customer by the Supplier on behalf of the Beef Finisher. Alternatively, the Customer may (at its own option and sole discretion) deduct the Weaned Calves Price from any subsequent payment due to the Beef Finisher; and

(b) the Beef Finisher shall dispose of any carcasses in accordance with applicable laws at its own cost.

4.3 Provided that nothing in this clause 4.3 shall limit the Customer's liability for personal injury or death resulting from the Customer's negligence or for fraud:

(a) the Customer shall have no liability to the Supplier or the Beef Finisher for any loss of profit, loss of opportunity, loss of or damage to goodwill, or for any indirect or consequential loss; and

(b) the Customer's total aggregate liability in respect of any direct loss or damage suffered by the Supplier or the Beef Finisher and arising out of or in connection with the Calves Contract whether in contract, tort (including negligence) or for breach of statutory duty or in any other way shall not exceed the lesser of:

(i) in respect of non-payment of charges, the amounts due but not paid to the Supplier or the Beef Finisher (as the case may be) under the Calves Contract; and

(ii) in respect of all other direct loss or damage suffered by the Supplier or the Beef Finisher (as the case may be), £500,000.

5. Termination

5.1 The Customer may, without affecting any other right or remedy available to it, terminate the Calves Contract with immediate effect by giving written notice to the other parties if:

(a) the Supplier or the Beef Finisher commits a material breach of any term of the Calves Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

(b) there is a change of control of Supplier or the Beef Finisher (within the meaning of Section 1124 of the Corporation Taxes act 2010); or

(c) has reasonable grounds to believe that the Beef Finisher is in financial distress and/or may go into one or more of the insolvency situations defined in Clause 5.2 below; or

(d) has reasonable grounds for concerns over the welfare of the Weaned Calves.

5.2 Without affecting any other right or remedy available to it, a party may terminate the Calves Contract with immediate effect by giving written notice to the other parties if:

(a) one of the other parties commits a material breach of any term of the Calves Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(b) one of the other parties commits a series of persistent minor breaches of the Calves Contract;

(c) one of the other parties suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) one of the other parties commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that one of the other parties other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over one of the other parties (being a company);

(g) the holder of a qualifying floating charge over the assets of one of the other parties (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of one of the other parties or a receiver is appointed over the assets of the other party;

(i) a creditor or encumbrancer of one of the other parties attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(j) one of the other parties, being an individual, is declared bankrupt or makes any arrangement with or for the benefit of its creditors or has a county court administration order made against it under the County Court Act 1984;

(k) any event occurs, or proceeding is taken, with respect to one of the other parties in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.2(c) to clause 5.2(j) (inclusive); or

(l) one of the other parties suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

5.3 On termination of the Calves Contract:

(a) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Calves Contract which existed at or before the date of termination, shall not be affected;

(b) clauses of the Calves Contract that are expressly or impliedly intended to survive such termination shall continue in full force and effect; and

(c) where required by the Customer, the Beef Finisher shall give the Customer and/or the Supplier all access to the locations at which the Weaned Calves are held and/or other records and paperwork relating to this Calves Contract.

6. General

6.1 No variation of the Calves Contract shall be effective unless it is in writing and signed by the authorised representatives of the parties (and in the case of the Customer, the authorised representatives for the purposes of this clause 6.1 shall be the General Counsel and Company Secretary).

6.2 A waiver of any right or remedy under the Calves Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Calves Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Calves Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

6.3 The rights and remedies provided under the Calves Contract are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies provided for in the Calves Contract are cumulative and no one of them shall be deemed to be exclusive of the others or of any rights or remedies allowed by law.

6.4 If any provision or part-provision of the Calves Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Calves Contract.

6.5 If any provision or part-provision of the Calves Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

6.6 Neither the Supplier nor the Beef Finisher may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of their rights and obligations under the Calves Contract without the prior written consent of the Customer.

6.7 The Customer may assign, transfer or subcontract any or all of its rights and obligations under the Calves Contract.

6.8 Nothing in the Calves Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

6.9 The Customer's group undertakings (as defined in section 1161(5) of the Companies Act 2006) may enforce the terms of the Calves Contract pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999. Save for the Customer's group undertakings, a person who is not a party to the Calves Contract has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to rely upon or enforce any term of the Calves Contract. Further, and without limitation to the foregoing, any loss suffered by a group undertaking of the Customer shall be recoverable by the Customer as if it were a loss suffered by the Customer directly. Where a person who is not a party to the Calves Contract has a right to enforce any provision of the Calves Contract pursuant to this clause, the parties to the Calves Contract may vary or terminate this master services agreement without requiring the consent of that person and need not comply with section 2(1) of the Contracts (Rights of Third Parties) Act 1999.

6.10 Any notice or other communication given to a party under or in connection with the Calves Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice or communication shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt; or (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

6.11 The Calves Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

6.12 Beef Finisher shall provide the Customer and any internal and external auditors or regulators with copies of and access to records and paperwork arising out of or in connection with this Calves Contract and/or the Weaned Calves.

6.13 During the term and for up to six (6) years after the end of the calendar year in which the term expires, the Beef Finisher will fully co-operate with and assist the Customer in meeting its audit and regulatory requirements by providing access for the Customer and/or any applicable regulator, and its or their internal and external auditors to conduct appropriate reviews and inspections of the activities and records of Beef Finisher relating to the performance of the Beef Finishing Services and compliance of its obligations under this Calves Contract and the Beef Finisher shall permit the Customer, the Supplier and its or their auditors and/or regulators to take copies of records and documentation and interview the Beef Finisher's personnel as required for the purpose of meeting the Customer's and/or the Supplier's audit and regulatory requirements.

6.14 For the avoidance of doubt, any examination or inspection by the Customer, its internal or external auditors or a regulator shall not constitute a waiver or exclusion of any of the Supplier's obligations or the Customer's rights under any Calves Contract.

6.15 The Calves Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

6.16 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Calves Contract or its subject matter or formation (including non-contractual disputes or claims).