

PO Box 412, 31 McDowall St  
Roma QLD 4455  
T. 07 4622 7077  
F. 07 4622 7088  
admin@topx.com.au



BRANCH:

AGENT:

## CREDIT APPLICATION FORM FOR NEW BUYERS

### BUSINESS CONTACT INFORMATION

*Trading Name:			
*Residential Address:			*PIC:
*City:	*State:	*Postcode:	
Postal Address:			
City:	State:	Postcode:	
*Contact Names:			
*Phone:	Fax:	Mobile:	
*Email:			
Sole Trader:	Partnership:	Corporation:	Other:
*All Entity Member Details:	Partner 1 Name		
	Partner 1 D.O.B		Partner 1 License No.
	Partner 2 Name		
	Partner 2 D.O.B		Partner 2 License No.
	Partner 3 Name		
	Partner 3 D.O.B		Partner 3 License No.
	Partner 4 Name		
	Partner 4 D.O.B		Partner 3 License No.
**If your ABN relates to a trust please provide the Legal Name and ABN for the acting trustee.			
*ABN:	**Trustee Name:		
	**ABN:		
ACN:	*(Please tick) Is your business registered for GST:      Yes      No		

### BUSINESS AND CREDIT INFORMATION

*Bank Name:		
*Branch:	*Phone:	
*City:	*State:	*Postcode:
BSB:	Account Number:	
(Please tick) Monies owed <b>to</b> TopX Australia Pty Ltd will be paid via:	Cheque	Direct Deposit
(Please tick) Monies owed <b>by</b> TopX Australia should be paid via:	Cheque	Direct Deposit

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## CONTINUE...CREDIT APPLICATION FORM FOR NEW BUYERS

### \*BUSINESS / TRADE REFERENCES

Company name:		
Address:		
City:	State:	Postcode:
Phone:	Fax:	E-mail:
Company name:		
Address:		
City:	State:	Postcode:
Phone:	Fax:	E-mail:
Company name:		
Address:		
City:	State:	Postcode:
Phone:	Fax:	E-mail:

### AGREEMENT

1. All invoices are to be paid by the due date stated on the Tax Invoice
2. By submitting this application, you authorise TopX Australia Pty Ltd to make inquiries into the banking and business / trade references that you have supplied.
3. By signing this application, you hereby agree to TopX Australia Pty Ltd's Terms and Conditions

### \*SIGNATURES

NAME 1:	NAME 2:
----- SIGNATURE	----- SIGNATURE
NAME 3:	NAME 4:
----- SIGNATURE	----- SIGNATURE

## TERMS & CONDITIONS – TOPX AUSTRALIA PTY LTD

1. **Definitions - In this Contract:**
  - 'Agent', 'Buyer' and 'Seller'** means the entity described as such in the Contract Particulars;
  - 'Default Interest Rate'** means the Default Interest Rate set out in the Contract Particulars;
  - 'Delivery'** means the voluntary transfer of Livestock or carcasses from the Seller or the Seller's agent or nominee into the custody of the Buyer or the Buyer's agent or nominee. Unless otherwise agreed delivery shall be given at the place and on the date of delivery set out in the Contract Particulars;
  - 'Livestock'** means the Livestock and/or carcasses described in the Contract Particulars;
  - 'PPSA'** means the Personal Property Securities Act 2009.
  - 'Price'** means the price the Buyer has agreed to pay the Seller for the Livestock and calculated in accordance with clause 3;
2. **Agreement to Sell** – The Seller agrees to sell and the Buyer agrees to buy the Livestock.
3. **The Price**
  - Price determined prior to delivery**
    - 3.1 Where the Price is to be determined prior to delivery it shall be determined in accordance with the method indicated in the Contract Particulars (and/or annexed price grid) and by reference to the actual quantity of Livestock delivered to the Buyer; and
    - 3.2 Unless specific credit terms are set out in the Contract Particulars, the Buyer must pay cash on delivery of the Livestock.
  - Price determined after live weighing**
    - 3.3 In the case of sales on a cents per kilogram live weight basis (and where the Livestock are not weighed prior to delivery), the Livestock shall be weighed within 24 hours of the date of leaving the Seller's possession; and
    - 3.4 Unless specific credit terms are set out in the Contract Particulars, the Buyer must pay cash immediately weighing of the Livestock is completed.
  - Price determined after slaughter**
    - 3.5 Where the Price is to be determined after slaughter of the Livestock the following terms and conditions apply;
    - 3.6 The Buyer will arrange for the slaughter of Livestock within 24 hours of the stock being received at the place of slaughter.
    - 3.7 The Buyer agrees to indemnify the Seller for any expense incurred as a result of the Buyer's breach of this clause.
    - 3.8 The slaughter will be carried out in accordance with all applicable legal requirements.
    - 3.9 The Seller warrants to the Buyer that at the date of sale the disease and residue status of the Livestock complies with the applicable statutory requirements for disease and residue status.
    - 3.10 The contract price for slaughtered Livestock will be determined either in accordance with the price per kilo per carcass stated in the Contract Particulars or where a price grid is annexed in accordance with that grid and Ausmeat language descriptions.
    - 3.11 Upon slaughter of the Livestock the Buyer will assess the contract price and provide the Agent with full calculations relating to that assessment by close of business on the following business day and will if requested by the Agent allow the Agent access to the carcasses and all relevant documentation to audit that assessment.
    - 3.12 Where the contract price is to be determined in accordance with a price grid, and where a carcass falls outside of the grid the Livestock slaughtered for that carcass will be excluded from sale under this agreement at the written request of the Buyer and if no request is received within seven (7) days of slaughter then that Livestock will not be excluded and the price will be as reasonably determined by the Agent.
    - 3.13 Within two (2) days (or any greater period as prescribed by statute from time to time) from slaughter the relevant authority may test the carcasses for contamination. The contract price for Livestock slaughtered for any carcass condemned under the authority of any Act or relevant authority as containing residue in excess of the amount prescribed for domestic or export consumption or as unfit for human consumption will exclude or have deducted from it the price otherwise payable for such condemned carcasses.
    - 3.14 The Buyer will not be entitled to recover any damages from the Seller for such condemned carcasses. However, hides and offal from affected animals will remain the property of the Buyer.
    - 3.15 The Buyer will have no claim against the Seller or the Agent for any loss the Buyer may suffer if the Livestock or carcasses are contaminated through the fault of the Buyer.
    - 3.16 Unless specific credit terms are set out in the Contract Particulars, the Buyer must pay cash immediately after slaughter and determination of weight.
4. **GST:** The Contract Price is exclusive of Goods and Services Tax (GST). GST will be added if the Seller is registered. All charges except government levies will be subject to GST. The GST is payable by the Buyer at the time of payment of the Contract Price.
5. **Interest:** If the Price is not paid by the due date then the Buyer shall pay interest on the Price or any outstanding part of the Price the Default Interest rate set out in the Contract Particulars. Interest shall be calculated on a daily basis and may be recovered as a liquidated amount.
6. **Commission:**
  - (a) The Agent agrees to pay to the Seller's account with the Agent an amount equal to the Price less the Agent's commission and charges.
  - (b) The Seller will pay the Agent commission at the rate currently being charged by the Agent who is authorised to deduct such commission from the gross proceeds from the sale.
  - (c) Where an agent in conjunction is nominated in this agreement the Agent agrees he will receive.....% of the commission.
7. **Authority to Act:** The parties warrant that the respective nominated representatives of the Seller and the Buyer have full and uncontrolled authority to act for their respective principals and to bind them in all respects save as may be otherwise notified in writing before taking delivery.
8. **Seller Warranties:** The seller warrants:
  - 8.1 That the Seller has (or will have) the right to sell the Livestock at the time title passes;
  - 8.2 That the Buyer will obtain title on completion of the Buyer's obligations under this Contract;
  - 8.3 That the Livestock are free and will remain free from any charge or encumbrances not disclosed or known to the Buyer prior to sale.
  - 8.4 That the meat of the Livestock is not affected by any disease or condition making it unfit for human consumption.
  - 8.5 That the information contained in any declaration or other document supplied by the Seller in relation to the sale is true and correct.
9. **Buyer Warranties:** The Buyer warrants:
  - 9.1 That the Buyer has authority to enter into this contract; and
  - 9.2 That the Buyer can pay for the Livestock.
10. **Agents Liability Limited**
  - 10.1 The Agent shall not be responsible for any breach of warranty by the Seller or the Buyer.
  - 10.2 The Agent gives no warranty as to the Seller's title to the Livestock or the Seller's right to sell the Livestock and is not liable in respect of any error mis-description or omission in any particulars appearing or stated regarding the description or pedigree of any of the Livestock.
11. **Faults and Warranties:**
  - (a) The Livestock are sold with all faults, if any, whether or not such faults are discoverable by inspection. All guarantees, conditions and warranties which might otherwise be implied by law are to the extent permissible by law hereby expressly negated.
  - (b) The Buyer acknowledges that no warranty express or implied has been made by the Agent or Seller as to the condition of the Livestock and that the Buyer is aware that certain rights are conferred upon some Buyers of goods by law which cannot be excluded from or modified or limited in any contract for the sale or purchase of goods.
  - (c) The liability of the Seller to the Buyer by reason of any breach howsoever arising of any such non-excludable guarantee, condition or warranty which might be implied by law shall, if permitted by law, be limited at the Seller's option to the replacement of the Livestock or the supply of equivalent Livestock, the repair of the Livestock or payment of the respective cost thereof.
  - (d) In no circumstances shall the Seller or the Agent be liable to the Buyer for any indirect, incidental or consequential damages including for economic loss, loss of profits or damage to goodwill;
12. **Pregnancy Test** Any statement made by the Seller or by the Agent, whether in writing or orally, to the effect that any of the Livestock has been pregnancy tested in calf shall mean and require only that a certificate in writing shall be supplied to the Buyer, signed by a qualified veterinary surgeon, certifying that the veterinary surgeon has pregnancy tested the female on a date specified in the certificate and that in the veterinary surgeon's opinion the female was in calf on that date. Such certificate shall not constitute any warranty by the Seller or the Agent who shall be under no liability to the Purchaser should the female not be in calf.
13. **Pedigree Certificates:** It is not the responsibility of the Agent to acquire pedigree certificates and transfers. It is the responsibility of the Seller who shall notify the secretary of the respective breed society of the full name and address of the Buyer together with the payment of transfer fees within the time period specified by the relevant breed society of which the Seller is a member.
14. **Passing of Risk:**
  - 14.1 All Livestock (except Livestock sold on a live weight basis) shall be at the risk and expense of the Buyer from delivery.
  - 14.2 The Buyer shall indemnify the Seller against any loss or damage caused by the stock occurring after the stock shall have become at the risk of the Buyer.
  - 14.3 Where Livestock are weighed prior to the Sale they shall be at the risk and expense of the Buyer from delivery. Where Livestock are weighed after the Sale they shall be at the risk and expense of the Buyer from completion of weighing.
  - 14.4 After risk has passed the Buyer shall not have any claim against the Seller or Agent whatsoever howsoever arising.
15. **Delivery Before Payment**
  - 15.1 If delivery is made to or possession is obtained by the Buyer or its representative before the Price is paid in full, by cash or credited to the Buyer's or Agent's account then until the Price is paid in full to the Seller or Agent, the Buyer:
    - 15.2 Does not acquire title to the Livestock ;
    - 15.3 Holds the Livestock as trustee for the Seller but in all respects at the risk of the Buyer;
    - 15.4 Must act in a fiduciary capacity in its relationship with the Seller;
    - 15.5 Must store the Livestock separately or so that they are readily distinguishable from other Livestock owned by the Buyer;
    - 15.6 Is responsible for the safety and well-being of the Livestock;
    - 15.7 May make a bona fide sale for market value of any or all of the Livestock. As between the Buyer and the subsequent Buyer, the sale shall be made by the Buyer in its own name and not as agent for the Seller. However as between the Seller and Buyer, the sale shall be made as Bailee and agent for the Seller;
    - 15.8 Must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds together with the benefits of any rights against subsequent Buyers on trust for the Seller.
    - 15.9 The Seller or the Agent may repossess and resell the Livestock and enter property owned or occupied by the Buyer or its representative if necessary to do so; and
    - 15.10 Interest may be charged at the Default Interest Rate.
16. **PPSA**
  - 16.1 The Buyer agrees that:
    - (a) The subject sale of Livestock creates a registrable security interest under the PPSA;
    - (b) the Buyer acknowledges the rights of the Seller (and/or the Agent if Clause 27.2 applies) to register a financing statement under the PPSA with respect to the security interest created by this sale;
    - (c) The Livestock are collateral for the purposes of the PPSA.
  - 16.2 The Buyer waives any right the Buyer has under the PPSA to receive notice in relation to registration Events.
  - 16.3 The Buyer and the Seller (and/or the Agent if clause 27.2 applies) agree that neither will disclose information of the kind specified in Section 275 (1) of the PPSA.
  - 16.4 At the election of the Seller (and/or the Agent if clause 27.2 applies) to be exercised at any time in its absolute discretion, any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.
17. **Security**

To secure payment of all moneys owed by the Buyer to the Seller (or the Agent if clause 27.2 applies) the Buyer hereby grants the Seller (or the Agent if clause 27.2 applies) a fixed charge over all real property currently owned or later acquired by the Buyer and consents to the Seller (or the Agent if clause 27.2 applies) registering a caveat in this regard.
18. **Transport**
  - 18.1 If the Buyer is unable to secure trucks or transport on the date arranged for delivery or from any other cause beyond the control of the Buyer shall be unable to take delivery on that day the Livestock shall be at the Buyer's risk from that day, but an extension of time shall be given by the Seller (maximum period 3 weeks) in which to take delivery after which time the Buyer will pay agistment charges to be mutually agreed between the Seller and the Buyer in default of agreement at a rate fixed by the Agent.
  - 18.2 Notwithstanding anything herein contained where by reason of any law order or regulation made by any competent authority which comes into effect after the date of the sale the Buyer is unable to transport any Livestock to the destination nominated by him at the date of the sale, the Buyer shall be bound nevertheless to accept and pay for the Livestock and shall have no claim for compensation or damages of any kind whatsoever.
19. **Breach by Buyer:**
  - 19.1 If the Buyer shall commit any breach of his obligations under this contract the Seller at the Seller's option may rescind this Contract, sue the Buyer for breach of contract or resell the Livestock upon such terms and conditions as the Seller elects and any deficiency arising and all expenses of and incidental to any such resale including any attempted sale shall be recoverable by the Seller from the Buyer as liquidated damages.
  - 19.2 The Buyer may not make any claim against the Seller for actions by the Seller under this clause and indemnifies the Seller against any loss, damage, costs, expenses, penalties, fines or claims suffered by the Seller or any person or entity arising from the Seller exercising its rights under this clause.
20. **Power of Attorney:** The Seller hereby appoints the Agent to be the Seller's attorney in the Seller's name and on the Seller's behalf in the event of a default by the Buyer to exercise the Seller's rights under this Contract and to institute in the Seller's name and to prosecute such proceedings against the Buyer as it may be advised to recover the Price and any interest thereon and any other monies payable to the Seller by the Buyer under this Contract.
21. **Quantity:**
  - 21.1 Should there be any discrepancy in numbers of any Livestock sold, the Seller or the Agent shall not be bound to deliver more than the number actually in the possession of the Seller or the Agent and the Buyer shall not be bound to accept any number of Livestock in excess of 10% of the number set out in the contract particulars.
  - 21.2 The actual number of Livestock delivered to the Buyer shall be determined by a muster and count prior to delivery.
  - 21.3 The Buyer shall be entitled at the time of the count and before delivery, but not afterwards, to reject any animals that are blind, maimed, diseased or unfit to travel and/or do not meet the Livestock movement requirements of any relevant legislation.
22. **Force Majeure:**
  - 22.1 No party will be liable nor deemed to be liable to the other party for failure or delay in meeting any obligation due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by according to the demands of the employees responsible for such action) Acts of God, war, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of the party which had the duty to perform.
  - 22.2 In any such event, the time for performance of the obligations under this Deed will be extended by the same period or periods (as the case may be) for which performance is delayed. The party so affected will use its best endeavours to avoid or remove such causes of non-performance and will continue performance hereunder with the utmost dispatch as soon as such causes are removed. Nothing in this clause will be construed as requiring the affected party to settle any industrial dispute.
  - 22.3 If the non-observance or non-performance exceeds 7 days either the Seller or the Buyer may terminate this contract by giving notice in writing to the other party.
23. **Governing Law:** This Contract is governed by the laws of the State in which the transaction takes place.
24. **Further Assurance:** Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Contract.
25. **Counterparts:** This Contract may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Contract will be the date on which it is executed by the last party.
26. **Service of Notices:** Service of any notice under this contract may be effected in any manner authorised by law.
27. **Del Credere Agent:**
  - 27.1 The Agent acts as del credere agent unless otherwise indicated in the contract Particulars.
  - 27.2 Where the Agent is acting as a del credere agent, the Seller and the Buyer agree that if the Agent pays to the Seller the Price in full less commission then the rights of the Seller under this Agreement shall thereupon be assigned to the Agent to do anything the Seller could do under this contract. Where the Agent is not acting as a del credere agent, the Agent may elect to pay the Seller the Price and thereupon assume the Seller's rights under this contract.
  - 27.3 If the Buyer does not pay the purchase price and the Agent is not acting as del credere agent, the Agent is not liable under any circumstances to the Seller, and the Seller indemnifies the Agent against any loss arising from the Agreement.
28. **NLIS Information:**

Any Claim or objection arising out of an error or mis-description in the provision of relevant information required by legislation or regulation giving effect to the National Livestock Identification Scheme in force in the State in which the sale takes place must be made within seven days of the date of the sale. After the seventh day following the sale, the Buyer may not make any objection, requisition or claim against the Seller or agent in respect of such error or mis-description.
29. **Privacy**
  - 29.1 The National Privacy Principles apply in respect of any personal information collected from an individual by the Seller or the Agent prior to 12 March 2014; and
  - 29.2 The Australian Privacy Principles apply in respect of any personal information collected from an individual by the Seller or the Agent on or after 12 March 2014.