

Introduction: Model Cows Lease Agreement for Dairy Stock



The model Cows Lease Agreement has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis. It is recommended that the parties work with a dairy adviser to develop their agreement.

Prior to signing, both parties should consider obtaining independent financial and legal advice.

This model Cows Lease Agreement is made up of 2 distinct sections, each of which is needed to make up the complete document.

The Cows Lease Agreement - standard clauses

- This section contains standard clauses which apply to every lease agreement. These clauses lay the foundation for the agreement. This part of the document does not require anything to be added (other than signatures, of course).
- There are also some explanatory notes about the clauses in a separate Information Sheet.

The Schedules

- All the details of the specific lease are set down in the Schedules.
- For example, Schedule 1, Item 4 sets the date of commencement of the lease, and Schedule 2 describes the numbers and age and breed profile of the stock.
- These Schedules must be filled out.

You should have 3 documents downloaded:

1. **The Cow Lease Agreement – standard clauses.** This is a pdf document to print.
2. **The Schedules.** This is a Word document, for you to fill out to complete the Agreement. The details for this section will have been worked out (and recorded) in the **Cows Checklist (Tool F)** if you have used that.

Also

3. **The Information Sheet** giving explanatory notes on the standard clauses. This is a pdf document, for your information only (it does not need to be in the final document).

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LIVESTOCK LEASE AGREEMENT

LEASE OF LIVESTOCK made on the day set out in **Item 1** of **Schedule 1**.

BETWEEN

The Lessor as stated in **Item 2** of **Schedule 1**

and

The Lessee as stated in **Item 3** of **Schedule 1**.

and

The Guarantor as stated in **Item 3(a)** of **Schedule 1**.

RECITALS

A The Lessor is the legal owner of livestock.

B The Lessee has agreed to lease the Lessor's livestock on the terms and conditions of this Lease.

THIS DEED NOW WITNESSETH as follows:

Interpretation

1 In this Lease unless a contrary intention appears:

- (a) **Inspector's Report** is a report prepared in accordance with Clause 23.
- (b) **NLIS Identification Number** means the identification number allocated to a particular animal under the National Livestock Identification Scheme.
- (c) **Livestock** means the livestock owned by the Lessor as configured in **Schedule 2** and includes any Replacement Animal(s) from time to time of the livestock.
- (d) **PPS Act** means the Personal Property Securities Act (2009) (Cwlth).
- (e) **Replacement Animal(s)** means an animal or animals replaced into the herd to maintain stock numbers at a constant age and genetic profile or as otherwise specified in **Schedule 2**.
- (f) **Termination date** means the last day of the Term as stated in **Item 5** of **Schedule 1**.
- (g) **Land** means the land specified in **Item 7** of **Schedule 1**.

Lease

- 2 The Lessor agrees to lease the Livestock to the Lessee on the terms and conditions of this Lease.

Commencement date

- 3 This Lease commences on the date stated in **Item 4 of Schedule 1**.

The Term

- 4 This Lease will be in force for the term stated in **Item 5 of Schedule 1**.

Delivery of Livestock

- 5 The Lessor must deliver the Livestock to the Lessee at the Property on the commencement date or the date specified in **Item 6 of Schedule 1**.
- 6 The cost of delivery is to be met by the party stated in **Item 14 of Schedule 1**.

Ownership of the Livestock

- 7 The Lessee acknowledges that:
- (a) the Livestock belongs to and is the property of the Lessor;
 - (b) any calves from the Livestock belong to and are the property of the Lessee unless a Heifer calf becomes a Replacement Animal;
 - (c) the Lessee must not, and must not threaten to, assign, transfer, sell, sublet, part with or share the possession of or grant any licence affecting any security interest, any mortgage or charge over or otherwise deal with or dispose of all or any of the Livestock other than as provided for in this Lease.

Warranties

- 8 The Lessor warrants that it is the owner of the Livestock which are free from any encumbrances and not subject to any claims of any other party or parties.
- 9 The Lessor warrants that the Livestock are in good condition and properly identified with a NLIS Identification Number and conform to the numbers, age and genetic profile specified in **Schedule 2**
- 10 The Lessee acknowledges that as at the commencement date or the date specified in **Item 6 of Schedule 1** all of the Livestock are identified with a NLIS Identification Number and are located on the Land.

- 11 The Lessor acknowledges that the Lessee may return to the Lessor at the Lessor's expense any Livestock which are found to be unfit for the purpose within 7 days of the commencement date or the date specified in **Item 6 of Schedule 1**.

The Rental

- 12 The Lessee agrees to pay the Lessor the rental stated in **Item 8 of Schedule 1** to be paid at the times and in the manner specified at **Item 9 of Schedule 1**.
- 13 The rental may be reviewed and may be adjusted in the manner stated in **Item 10 of Schedule 1** at the times stated in **Item 11 of Schedule 1**.

Renewal of this Lease

- 14 Renewal of this Lease will be in accordance with the procedure outlined in **Item 12 of Schedule 1**.

Yield up

- 15 At the end of the Lease the Lessee must deliver and yield up the Livestock to the Lessor in excellent health and condition in all respects in accordance with the specifications contained in **Schedule 2**.
- 16 The party stated in **Item 14 of Schedule 1** will be responsible for transport of stock from the Land.

Management and care of the Livestock

- 17 The Lessee must supply at the Lessee's cost all water, pasture, feed, vitamins and minerals and necessary shelter and all labour for supervision and care for the wellbeing of the of the Livestock (including veterinary services) in accordance with recommended industry practice in order to maintain welfare, prevent disease and promote growth of the Livestock and its progeny.

Replacement Animals

- 18 On or before 30 June in each year of the Term the Lessee must, in consultation with the Lessor or the Lessor's consultant, ensure that the number, age and genetic profile of the Livestock is maintained to the Lessor's reasonable satisfaction in accordance with the specifications contained in **Schedule 2**.
- 19 The Lessee must provide the Lessor with an annual statement no later than 14 July in each year of the term setting out and certifying that the Replacement Animals for the

preceding year ending 30 June have been procured and that all Livestock bear the appropriate NLIS Identification Number.

Lessee's Obligations

- 20 The Lessee will at all times during the term of the Lease and any extension of the Lease:
- (a) pay the rental as stated in **Item 8 of Schedule 1** in the manner laid down in **Item 9 of Schedule 1** or as amended under clause 13 of this Lease;
 - (b) comply with all laws relating to the management and rearing of the Livestock;
 - (c) take out and maintain insurances if required in clauses 38 and 39;
 - (d) not do anything or permit anything to be done which may render any insurance void or voidable.

Guarantee

- 21 If the Lessee is a company, then in consideration of the Lessor entering into the lease at the request of the directors of the Lessee, the directors named in **Item 3(a) of Schedule 1**:
- (a) guarantee to the Lessor that the Lessee will punctually pay the rent and other money payable under the lease;
 - (b) guarantee to the Lessor that the Lessee will perform its obligations; and
 - (c) undertake to the Lessor that, with the Lessee, they will be liable separately and together to the Lessor for the payment of rent and other money and the performance of the Lessee's obligations.

Inspection of Livestock

- 22 The Lessor or its authorised agent may from time to time during the Term as specified in **Item 16 of Schedule 1**, upon giving the Lessee reasonable prior notice, inspect the Livestock and Livestock records as specified in **Item 17 of Schedule 1** and the Lessee hereby agrees to provide access to the Land for this purpose. The Lessor or its authorised agent must use its best endeavours to minimise any disturbance to the Lessee.
- 23 If the Lessor forms the view that any of the Livestock are in an unsatisfactory condition, the Lessor may appoint an inspector experienced in dairy cow management to inspect the Livestock and undertake a review for the purpose of:

- (a) preparing and submitting a report (the Inspector's Report) detailing the condition of the Livestock;
 - (b) setting out any necessary remedial action (if any) required to improve the condition of the Livestock to an acceptable standard.
- 24 If the Lessor forms the view that any of the Livestock are in an unsatisfactory condition, the Lessor may inspect the Livestock at 24-hour intervals until the Lessor is satisfied that appropriate remedial action has been taken.
- 25 The Lessee must as soon as practicable comply with all remedial action in accordance with all requirements and deadlines as prescribed by the Inspector's Report.
- 26 If the Lessee does not agree with the remedial action prescribed by the Inspector's Report the Dispute Resolution procedure in clause 40 applies.
- 27 All costs and expenses in relation to the preparation and submission of any Inspector's Report including any fees payable to the inspector and all expenses relating to necessary remedial action are payable by the Lessee or, if in the first instance paid by the Lessor, are repayable within 7 days of a request by the Lessor.

Security Interest

- 28 Expressions used in this clause and in the PPS Act have the same meanings as when used in the PPS Act.
- 29 The Lessee acknowledges this Lease constitutes a PPS lease of the Livestock.
- 30 The Lessee consents to the Lessor registering a purchase money security interest in the PPS register in respect of any arrangements that may constitute a PPS lease of the Livestock.
- 31 The Lessee must do all things required by the Lessor from time to time (including, without limitation, obtaining consents, signing or producing further documents and or providing any further information) to:
- (a) ensure that any security interest arising under or in connection with this Lease is enforceable, perfected and otherwise effective and has first ranking priority in respect of the Livestock;
 - (b) enable the Lessor to apply for registration, complete any financing statement, financing change statement or give any notification, in connection with a security interest; and/or
 - (c) allow the Lessor to exercise its rights in connection with a security interest.

- 32 For the purpose of section 115 of the PPS Act, the following sections of the PPS Act do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), and section 135.
- 33 The Lessee consents to the Lessor searching the Personal Properties Securities Register at any time for any information about the Lessee.

Termination by Lessee

- 34 The Lessee may terminate this Lease immediately by notice in writing upon the Lessor breaching any condition of this Lease and failing to rectify such a breach within 30 days of receiving notice in writing from the Lessee of such breach provided that the Lessee has first served a notice on the Lessor specifying the nature of the breach and if the breach is capable of remedy requiring the Lessor to remedy the breach and/or make compensation in money for the breach and the Lessor has failed to make good the breach within 30 days of receipt of the notice.

Termination by Lessor

- 35 The Lessor may terminate this Lease by notice in writing on the Lessee if:
- (a) the rental is unpaid for a period of 30 days after its due date for payment;
 - (b) the Lessee fails to meet its obligations under this Lease;
 - (c) the Lessee is wound up or has an administrator, receiver or manager appointed to it or is placed under official management,
- provided that the Lessor has first served a notice on the Lessee specifying the nature of the breach and if the breach is capable of remedy requiring the Lessee to remedy the breach and/or make compensation in money for the breach and the Lessee has failed to make good the breach within 30 days of receipt of the notice.
- 36 In the event that the Lessor terminates this lease the Lessor or its authorised agent may immediately enter the Land upon which the Livestock are located and take possession of the Livestock and for the purpose of such repossession may enter and break open any gate, door or fastening from any part of the Land.
- 37 In the event that the Lessor terminates this lease the Lessor must take reasonable steps to mitigate the Lessor's damages. Any action taken by the Lessor to mitigate damages will not by itself constitute acceptance by the Lessor of the Lessee's breach or repudiation or a surrender by operation of law.

Insurance and Indemnity

- 38 The Lessee at the Lessee's sole cost and expense, will keep current and be responsible for at all times a policy of:
- (a) public risk insurance for an amount not less than the amount stated in **Item 13** of **Schedule 1**; and
 - (b) other operational insurances
- taken with reputable insurers noting the Lessor's interest in the policies.
- 39 The Lessee will present evidence of these insurances to the Lessor within 2 weeks of the commencement date.

Dispute Resolution

- 40 The Lessor and the Lessee agree that the following steps will take place in the event of a dispute arising during the term of this Agreement:
- (a) The Lessor and the Lessee will meet at a mutually convenient time and make a genuine attempt to resolve the dispute informally and quickly. If the dispute cannot be resolved after this meeting the parties agree that they will submit to a mediation to be conducted by a mutually acceptable mediator.
 - (b) If the parties cannot agree on the mediator the parties agree to submit to mediation by a mediator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 15** of **Schedule 1**.
 - (c) If the dispute cannot be settled by agreement or mediation within 21 days of the dispute arising, the parties agree to submit to arbitration by an arbitrator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in the state referred to in **Item 15** of **Schedule 1**.
 - (d) The parties agree to bear their own costs and that the cost of any mediation or arbitration will be shared equally between them.
 - (e) The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.
 - (f) Nothing in this clause prevents either party from exercising their legal rights to take action to enforce payment or seek urgent court relief to prevent detrimental action by either party.

Assignment

41 The Lessee will not assign any rights, privileges or benefits under this Lease without the prior written consent of the Lessor which may be withheld by the Lessor at its absolute discretion.

Additional terms and conditions

42 The parties agree that the additional terms and conditions contained in **Schedule 3** form a part of this Lease.

Costs of the preparation of this Lease

43 Each party will bear their own costs of and incidental to this Lease.

Whole Agreement

44 This Lease contains the whole agreement between the parties and supersedes all prior representations, warranties, arrangements, understandings and agreements between them relating to the subject matter of this Lease.

Variation

45 No variation, modification or waiver of any provision of this Lease nor consent to any departure by and party therefrom will in any event be of any force unless it is confirmed in writing and signed by the parties and will only be effective to the extent for which it has been made or given.

GST

46 The following provisions apply with respect to GST:

- (a) expressions used in this clause have the same meanings as when used in the GST Act;
- (b) amounts payable and consideration provided under or in respect of this Lease (other than in sub-clause (c)) are GST exclusive;
- (c) the recipient of a taxable supply made under or in respect of this Lease must in addition pay to the supplier, at the time the consideration for the supply is due, the GST payable in respect of the supply;
- (d) a party is not obliged, under sub-clause (c), to pay the GST on a taxable supply to it under this Lease until given a valid tax invoice for the supply.

Severability

47 Every provision or part of this Lease will be deemed to be severable as far as is possible from any other provision or part thereof and should any provision or part thereof be void or unenforceable for any reason the same will be deemed to be omitted therefrom and this Lease with such provision or part omitted will otherwise remain in full force and effect so far as is possible.

Applicable Law

48 This Lease will be construed in accordance with the laws of the state specified in **Item 15 of Schedule 1** and the parties submit to the jurisdiction of the appropriate courts of that state in respect of any matter or thing relating to this Lease.

Notices

49 Any notice required to be served under this Lease will be sufficiently served on a party in one of the following ways:

- (a) if left addressed to the party at the address stated in **Item 2, 3 or Item 3(a) of Schedule 1** for that party or such other address as may be notified to the sender by the recipient from time to time or forwarded to the recipient by post at such address;
- (b) by faxing to the party at the number shown at in **Item 2, 3 or Item 3(a) of Schedule 1**;
- (c) by email to the party at the email address shown at in **Item 2, 3 or Item 3(a) of Schedule 1**.

A notice sent by post is deemed to be given at the time when in a normal course of the post it would be delivered at the address to which it is sent.

General

- 50 In this Lease, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa;
 - (b) words importing one gender include other genders;
 - (c) a reference to a document or instrument, including this Lease, includes that document or instrument as novated, altered or replaced from time to time;
 - (d) a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
 - (e) a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
 - (f) other grammatical forms of defined words or expressions have corresponding

meanings;

- (g) a covenant, undertaking, representation, warranty, indemnity or agreement made or given by two or more parties or a party comprised of two or more persons, is made or given and binds those parties or persons jointly and severally;
- (h) a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- (i) a recital, schedule, annexure or description of the parties forms part of this Lease;
- (j) if an act must be done on a specified day that is not a business day, the act must be done instead on the next business day;
- (k) if an act required to be done under this Lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- (l) all monetary amounts are in Australian dollars;
- (m) a party that is a trustee is bound both personally and in its capacity as trustee of the trust for which it is acting as trustee;
- (n) a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- (o) headings are for convenience only and do not affect the interpretation of this Lease.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED

SIGNED for and on behalf of the Lessor

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)

.....

Affix company seal if applicable

SIGNED for and on behalf of the Lessee

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)

.....

Affix company seal if applicable

SIGNED for and on behalf of the Guarantor

.....

(full name)

.....

in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness)