

**OFFER TO PURCHASE CATTLE AGREEMENT
IN RE: LOWLANDS BEEF CC (IN LIQUIDATION)**

The undersigned Offeror:

OFFEROR'S NAME: _____

IDENTITY/REGISTRATION NUMBER: _____

(“hereinafter referred to as the **Offeror**”)

hereby offers to purchase from:

LOWLANDS BEEF CC (IN LIQUIDATION)

Registration Number: 2008/123071/23

Masters Ref: N000242/2023

duly represented by

Glen Vivian Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O.
in their capacities as the appointed under Master’s Reference: N000242/2023 as the joint
Liquidators of Lowlands Beef CC (in liquidation), registration number: 2008/123071/23,

(“hereinafter referred to as the **Offeree**”)

the Cattle upon the terms and conditions contained in this Offer to Purchase:

INITIALS

1. DEFINITIONS AND INTERPRETATION

The words and expressions set out below shall for the purpose of this Offer to Purchase have the meanings assigned opposite them unless the context clearly indicates a contrary intention:

- 1.1. **“Acceptance Deposit”** means the payment of a non-refundable deposit equal to ten percent (10%) of the Purchase Price payable to the Auctioneers by the Offeror within three (3) days of the Acceptance Notice being delivered;
- 1.2. **“Acceptance Notice”** means the written notice issued by the Liquidators, informing the Offeror that the Offeree has accepted this Offer;
- 1.3. **“Animal Health Act”** means the **Animal Health Act No. 7 of 2002**, as amended, and all Regulations issued in relation to such Act;
- 1.4. **“Auctioneers”** means Devhula Auctioneers Proprietary Limited, Registration Number: 2017/220005/07, situated at Block A, Equity Park, 257 Brooklyn Road, Brooklyn, Pretoria, with VAT number: 4280291438, who are charged with administering the tender process, which is the subject of the Invitation to Tender;
- 1.5. **“Auctioneers Trust Account”** means Devhula Auctioneers’ Trust bank account into which the Registration Deposit shall be paid, the details of which are as follows:

Account name:	Devhula Auctioneers (Pty) Ltd.
Name of bank:	First National Bank
Account number:	62763574160
Branch code:	252145
Reference:	Name of Tenderer

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- 1.6. **Balance of the Purchase Price** means in relation to an Offer accepted by the Offeree, the amount of the full Purchase Price LESS the Acceptance Deposit;
- 1.7. **“Business Day”** means any day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;
- 1.8. **“Cattle”** means the cattle which are the subject of the Offer to Purchase detailed in **Annexure ‘A’**, of which 40% (forty percent) is owned by Lowlands Beef and 60% (sixty percent) is owned by the Lowlands Farming;
- 1.9. **“Certificate of Removal”** means a certificate issued by the Auctioneer on behalf of the Offeree for the removal of the Cattle as required in section 8(1) of the Stock Theft Act No. 57 of 1959 (as amended);
- 1.10. **“Commission”** means the commission payable by the Offeree to the Auctioneers, as detailed in the Invitation to Tender;
- 1.11. **“Date of Sale”** means the date on which the Cattle are deemed to have been sold to the Offeror, being once the Offeree has accepted the Offeror’s Offer; and once the full Purchase Price has been paid to the Offeree in terms of this Offer to Purchase; and once the full Purchase Price has cleared into the Auctioneers’ Trust Account;
- 1.12. **“Delivery Date”** means the Date of Sale;
- 1.13. **“Expiry Date”** means the date on which this Offer to Purchase will expire, being **31 January 2024**;

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- 1.14. **“Farm”** means the farm or farms on which the Cattle are situated being either the Kamberg Farms or the Lowlands Farms;
- 1.15. **“Final Payment Date”** means any date within 7 (seven) calendar days calculated from the date of the Acceptance Notice;
- 1.16. **“Final Removal Date”** means the final date by which the Cattle must be removed from the farms on which they are situated being **15 January 2024** or such other date as agreed to in writing by the Liquidators;
- 1.17. **“Information Schedule and Consent Form”** means the document headed Tenderer Information Schedule and Consent Form, containing the Offeror’s details which was submitted by the Offeror as part of its Tender;
- 1.18. **“Invitation to Tender”** means the document titled *“Invitation to Tender”* dated 23 November 2023, together with the annexures attached thereto, in terms of which the Liquidators called for tenders for the purchase of *inter alia* the Cattle;
- 1.19. **“Kamberg Farms”** means the farms described in the *Kamberg Tender Information Pack* attached to the Invitation to Tender;
- 1.20. **“Loading”** means the loading of the Cattle onto vehicles for the purposes of relocating them from the Offeree’s farms and all things ancillary thereto;
- 1.21. **“Loading Facilities”** means a stock yard including a ramp used for the purposes of loading livestock onto vehicles in order to transport them from the loading site;
- 1.22. **“Lowlands Farms”** means the farms described in the *Estcourt Tender Information*

Pack attached to the Invitation to Tender;

- 1.23. **“Lowlands Farming”** means the Lowlands Farming Partnership;
- 1.24. **“Liquidators”** mean Glen Vivian Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O. collectively, in their capacities as the duly appointed joint liquidators of Lowlands Beef;
- 1.25. **“Lowlands Beef”** means Lowlands Beef CC (In Liquidation), registration number: CK2008/123071/23;
- 1.26. **“Offer to Purchase”** or **“Offer”** means this offer to purchase together with the annexures hereto;
- 1.27. **“Offeror”** means the party described as such on the first page of this Offer to Purchase Cattle Agreement;
- 1.28. **“Offeree”** means the party described as such on the first page of this Offer to Purchase Cattle Agreement;
- 1.29. **“Parties”** means the Offeree and the Offeror and **“Party”** shall mean either one of them, as the context indicates;
- 1.30. **“Purchase Price”** means the purchase price detailed in **Annexure ‘A’** hereto, stated exclusive of VAT, which the Offeror offers to the Offeree for the Cattle;
- 1.31. **“Registration Deposit”** means the deposit of R100,000.00 (one hundred thousand Rand) paid by the Offeror to the Auctioneers in terms of the Invitation to Tender to

participate in the Tender process;

- 1.32. **“Removal Date”** means the date by which the Offeror shall remove the Cattle from the Farm being a date no later than 10 (ten) calendar days from the Date of Sale;
- 1.33. **“Signature Date”** means the date on which both the Offeror and Offeree have signed this Offer to Purchase Cattle Agreement;
- 1.34. **“Storage Charges”** means the charges payable by the Offeror to the Offeree from the Removal Date at a rate of R100.00 (one hundred) per animal, per day calculated from the Removal Date to the date on which the remaining Cattle are removed;
- 1.35. **“Tender”** means the tender which is the subject of the Invitation to Tender; and
- 1.36. **“VAT”** means value added tax as contemplated in the **Value Added Tax Act No. 89 of 1991** (as amended).

2. INTERPRETATION

In this Offer to Purchase:

- 2.1. words importing natural persons shall include a reference to bodies corporate and other legal *personae* and *vice versa*;
- 2.2. a reference to any one gender shall include a reference to the other gender;
- 2.3. a reference to the singular shall include a reference to the plural and *vice versa*;
- 2.4. annexures to this Offer to Purchase shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 2.5. any reference to an enactment is to that enactment as at the Signature Date and as

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- amended or re-enacted from time to time;
- 2.6. where there is reference to a “day” or “days”, such days are ordinary calendar days which include Saturdays, Sundays and Public Holidays in the Republic of South Africa;
- 2.7. when any number of days is prescribed in this Offer to Purchase, same shall be reckoned exclusively of the first and inclusively of the last day;
- 2.8. a reference to a document, including but not limited to the Invitation to Tender, includes an amendment or supplement to or a replacement or novation of that document;
- 2.9. the clause headings appearing in this Offer to Purchase are for reference purposes only and shall not affect the interpretation hereof;
- 2.10. if any provision in any definition set out in the definitions clause of this Offer to Purchase or any other clause in this Offer to Purchase is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it may be set out only in the definitions clause or such other clause, effect shall be given thereto as if it were a substantive provision set out in the body of this Offer to Purchase;
- 2.11. this Offer to Purchase shall be binding and enforceable by the estates, heirs, executors, administrators, trustees, assigns or liquidators of the Parties as fully and effectually as if they made the Offer to Purchase and reference to any Party shall be deemed to include such Party’s executors, administrators, trustees, assigns or liquidators, as the case may be;
- 2.12. where any term is defined within the context of any particular clause in this Offer

to Purchase, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Offer to Purchase, notwithstanding that such term has not been defined in the clause setting out definitions;

2.13. any reference in this Offer to Purchase to the Cattle being sold *voetstoots* shall be interpreted to mean that the Offeror accepts that it purchases the Cattle as they stand and thereby indemnifying the Offeree, Lowlands Farming, ABSA Bank Limited the Liquidators and the Auctioneers against claims for damages in respect of any defects, diseases, and condition in relation to such Cattle, whether patent or latent including all defects disclosed in the Tender Packs. Patent defects are those defects that are visible whereas latent defects are hidden and not discoverable through reasonable inspection;

2.14. the rule of interpretation that a contract will be interpreted against the party responsible for the drafting shall not apply to this Offer to Purchase and the Parties waive any rights they have to rely on such rules; and

2.15. the termination or expiry of this Offer to Purchase shall not affect those provisions of this Offer to Purchase which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3. INVITATION TO TENDER

3.1. This Offer to Purchase shall be read together with the Invitation to Tender and the Offeror acknowledges that it has read and understood the contents of the Invitation

to Tender and agrees to be bound by the provisions of the Invitation to Tender.

- 3.2. If there is a conflict between the provisions of this Offer to Purchase and the Invitation to Tender, the provisions of the Invitation to Tender shall prevail.

4. SALE

- 4.1. The Offeror hereby offers to purchase the Cattle from the Offeree on the terms and subject to the conditions contained in this Offer to Purchase.

- 4.2. The Offer to Purchase shall remain valid and capable of being accepted by the Offeree at any time up to and including the Expiry Date.

- 4.3. This Offer to Purchase constitutes an irrevocable offer by the Offeror to purchase the Cattle and will become a binding agreement of sale if signed by the Offeree.

- 4.4. The Offeree shall be deemed to have sold the Cattle and the Offeror shall be deemed to have purchased the Cattle on the Date of Sale.

5. PURCHASE PRICE AND PAYMENT

- 5.1. The Offeror offers to pay the Offeree the Purchase Price for the Cattle.

- 5.2. The Offeree is registered as a vendor as defined in terms of the **Value Added Tax Act No. 89 of 1991**, with VAT number: 4910250812 and accordingly this transaction shall attract VAT at the prevailing rate of fifteen percent (15%).

- 5.3. The Purchase Price shall be paid as follows:

- 5.3.1. The Offeror shall pay the Acceptance Deposit to the Auctioneers' Trust

Account within 3 (three) days of the date of the Acceptance Notice, by way of an irreversible electronic bank transfer in immediately available funds;

- 5.3.2. The Balance of the Purchase Price shall be paid by the Offeror in immediately available funds by way of an irreversible electronic bank transfer into the Auctioneers' Trust Account on or before the Final Payment Date; and
- 5.3.3. Should the Offeror fail to pay the Acceptance Deposit within the 3 (three) day period contemplated in clause 5.3.1 above or should the Offeror have paid the Acceptance Deposit but failed to fulfil its obligation in terms of clause 5.3.2, the Offeree may, without prejudice to any other right it may have in law, immediately cancel this Offer to Purchase Cattle Agreement on written notice to the Offeror, without having to first place the Offeror in breach in terms of clause 12 (Breach).
- 5.4. Any and all payments made by the Offeror to the Offeree in terms of this Offer to Purchase shall, unless otherwise specified, be paid into the Auctioneers' Trust Account, free of deduction, demand, set off or bank charges of any nature whatsoever by way of irreversible electronic bank transfer, save that the Offeror shall be entitled to set off the Registration Deposit against the total purchase price payable by the Offeror to the Offeree in respect of all successful offers made by the Offeror in terms of the Invitation to Tender and which were accepted by the Liquidators.
- 5.5. All monies paid into the Auctioneers' Trust Account by the Offeror in terms of this Offer to Purchase shall be invested in an interest-bearing account for the benefit of the Offeree in accordance with the terms of section 86(4) of the **Legal Practice Act 28 of 2014** (as amended).

6. DELIVERY

- 6.1. The Offeror must take delivery of the Cattle from the Farm on the Delivery Date.
- 6.2. The Offeror is responsible for taking delivery of the Cattle including but not limited to Loading the Cattle on the Farm. The Offeror shall be entitled to utilise the Loading Facilities on the Farm at its risk. The Offeror shall have no claim against the Offeree, the Liquidators and/or the Auctioneer arising out of taking delivery of the Cattle.
- 6.3. The Offeror is responsible for the costs of Loading and relocating the Cattle from the Farm
- 6.4. The Auctioneers, on behalf of the Offeree, shall issue the Offeror with a Certificate of Removal.
- 6.5. The Offeror shall keep the Auctioneer fully apprised of all arrangements in relation to taking delivery of the Cattle, which shall be in writing and the Offeror shall provide its full co-operation with the Auctioneer in relation to taking delivery of the Cattle.
- 6.6. The Offeror shall comply with all laws in relation to the removal of the Cattle including but not limited to the Animal Health Act.
- 6.7. The Offeror shall remove the Cattle from the Farm by the Removal Date, failing which the Offeror shall be liable for Storage Charges, which shall be paid to the Offeree, prior to removing the Cattle from the Farm. It is recorded that the until all Storage Charges are paid to the Offeree, the Cattle shall be subject to a lien in favour of the Offeree.
- 6.8. The Offeror shall remove the Cattle by the Final Removal Date, or such other date

that may be agreed with the Liquidators.

- 6.9. Unless otherwise agreed with the Liquidators in writing, in the event that the Offeror fails or neglects to remove all of its Cattle from the Farm on or before the Final Removal Date, the Offeror shall be deemed to have sold the remaining Cattle ("**Buy-Back Cattle**") back to the Offeree at R500.00 (five hundred Rand) per animal excluding VAT ("**Buy-Back Purchase Price**").
- 6.10. The Offeree shall pay the Buy-Back Purchase Price to the Offeror on receipt of a valid and accurate VAT invoice, by depositing the funds into the Offeror's nominated back account detailed in the Information Schedule and Consent Form within twenty-one (21) days from the Final Removal Date, free of any deductions, save for deductions in relation to Storage Charges, which may be deducted.
- 6.11. Ownership of the Buy-Back Cattle shall pass from the Offeror to the Offeree on payment of the Buy-Back Purchase Price.

7. OWNERSHIP AND RISK

- 7.1 Ownership and therefore risk in and to the Cattle shall pass from the Offeree to the Offeror on the Date of Sale.
- 7.2 **From the Date of Sale, the Offeror shall be liable for any losses and/or damage in relation to the Cattle, howsoever arising and it waives any claim that it may have against the Offeree, the Liquidators and/or the Auctioneers in this regard.**

8. VOETSTOOTS, REPRESENTATIONS, WARRANTIES AND SPECIFIC CONDITIONS

- 8.1. The Cattle are owned by Lowlands Beef and Lowlands Farming, with Lowlands Beef

owning 40% (forty percent) of the Cattle and Lowlands Farming owning 60% (sixty percent).

- 8.2. It is disclosed that that Cattle are subject to a notarial bond in favour of ABSA Bank Limited, which notarial bond has been perfected in terms of a Perfection Order.
- 8.3. ABSA Bank Limited is entitled to sell the Cattle by virtue of the Perfection Order and has agreed with the Liquidators that the Cattle may be sold and the Liquidators shall pay sixty percent (60%) of the nett proceeds from the sale of the Cattle to ABSA Bank Limited, which is a *stipulatio alteri* in favour of ABSA Bank Limited, which is deemed to have been accepted by ABSA Bank Limited.
- 8.4. The Cattle are sold *voetstoots*, without any guarantee or warranty.
- 8.5. The Cattle are sold entirely at the Offeror's risk.
- 8.6. The Offeree makes no representations as to the health or condition of the Cattle, including any latent (hidden) physical defects, diseases or illness, save as detailed in this Offer to Purchase.
- 8.7. The Offeror warrants that:
- 8.7.1. it has independently verified all aspects that are of any importance in relation to offering to purchase the Cattle prior to making this Offer to Purchase;
- 8.7.2. it has inspected the Cattle and accepts the condition of the Cattle;
- 8.7.3. it will not hold the Offeree, the Liquidators and/or the Auctioneers responsible for any deterioration in the condition of the Cattle between the date of this Offer and the Date of Sale;
- 8.7.4. no representations have been made to the Offeror by the Offeree to induce

the Offeror into concluding this Offer to Purchase other than as set out in this Offer to Purchase read with the Invitation to Tender; and

8.7.5. no warranties have been given to the Offeror by the Offeree, except for those which are contained in this Offer to Purchase.

8.8. The Offeree discloses that:

8.8.1. certain Cattle have tested positive for *Brucellosis* (commonly referred to as 'contagious abortion' or 'CA');

8.8.2. not all the Cattle have been tested for *Brucellosis*;

8.8.3. the Cattle are sold without any warranties that the Cattle are free of *Brucellosis* or any other illness; and

8.8.4. the most recent test results and quarantine documents are available from Auctioneers on written request.

9. FARMS UNDER QUARANTINE

The Offeror acknowledges and accepts that:

9.1. the Lowlands Farms are currently under quarantine;

9.2. none of the Cattle may be removed from the Lowlands Farms without the prior written permission of the State Veterinarian and/or any other authority having jurisdiction in this regard;

9.3. it is responsible for obtaining whatever permission, consent or permit that is

required to remove the Cattle, at its cost; and

- 9.4. the Cattle situated on the Kamberg Farms have not been tested for Brucellosis or for any other disease and are sold without any warranties that the Cattle are free of Brucellosis or any other illness.

10. LOSSES

- 10.1 The Offeror acknowledges and accepts that during the period from the Acceptance Notice to the Date of Sale, some of the Cattle may die, become lost or be stolen ("**Losses**").

- 10.2 In the event that there are any Losses during the period from the issuing of the Acceptance Notice to the Date of Sale, the Purchase Price shall be adjusted by the Offeree so as to account for such Losses.

- 10.3 The Offeree, the Liquidators and the Auctioneer shall not be responsible for any such Losses howsoever arising and the Offeree waives any claim that it may have in this regard.

11. WARRANTIES BY THE OFFEROR AND THE PERSON SIGNING THIS DOCUMENT ON BEHALF OF THE OFFEROR

- 11.1. The Offeror warrants and represents to the Offeree that as at the date of the Acceptance Notice and the Date of Sale (and at all times between such dates):

- 11.1.1. where the Offeror is a juristic person, it is duly incorporated as a company/close corporation/trust (whichever is applicable) and validly existing under the laws of the Republic of South Africa;

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- 11.1.2. where the Offeror is a juristic person, it has the legal capacity and power to enter into and perform its obligations under this Offer to Purchase;
- 11.1.3. where the Offeror is a juristic person, it has taken all necessary actions (whether corporate, internal or otherwise) to authorise its entry into and performance of this Offer to Purchase;
- 11.1.4. the execution of this Offer to Purchase and the performance of its obligations hereunder do not and shall not –
- 11.1.4.1. contravene any law or regulation to which the Offeror is subject; or
- 11.1.4.2. contravene any provision of the Offeror’s constitutional documents; or
- 11.1.4.3. result in a breach of any of the Offeror’s contractual obligations contained in any other agreement to which it is a party and bound;
- 11.1.5. this Offer to Purchase constitutes, an agreement which is valid and binding on it and is enforceable against it in accordance with its terms; and
- 11.1.6. it is entering into, and will be performing its obligations under, this Offer to Purchase as principal and not as agent.
- 11.2. Each warranty contemplated in clause 11 is a separate warranty and shall not be limited to or restricted by inference or otherwise by the terms of any other warranty.
- 11.3. The Offeree has entered into the Offer to Purchase on the strength of the warranties, representation and undertakings given to the Offeree in terms of clause 11, on the basis that such warranties are correct as at the date of the

Acceptance Notice and the Date of Sale and the entire period between those dates.

- 11.4. All of the warranties given by the Offeror to the Offeree in terms of clause 11 of this Offer to Purchase shall be deemed to be material.
- 11.5. If the Offeror is a juristic person or a trust, the signatory hereby binds himself/herself personally as Offeror in terms of this Offer to Purchase, should the Offeror not be bound hereby for any reason whatsoever.
- 11.6. This Offer is conditional upon the signatory for the Offeror signing the deed of suretyship attached hereto marked **Annexure 'B'**, binding himself/herself as surety for and co-principal debtor with the Offeror for the due and proper discharge of all the Offeror's obligations arising from this Offer to Purchase, but only in the event that the Liquidators demand this in writing in which case the signatory for the Offeror shall sign such deed of suretyship within seven (7) days of being requested to do so by the Liquidators.
- 11.7. In the event that the Offeror is a juristic person, where the signatory for the Offeror has not been duly authorised by the juristic person, such signatory shall, upon signature of this Offer to Purchase, be deemed to have purchased the Cattle in his/her personal capacity and shall accordingly be bound by all of the provisions of this Offer to Purchase.
- 11.8. For the purposes of clauses 11.5 to 11.7 above, the signatory to this Offer to Purchase will be required to disclose his/her name, particulars and all relevant "FICA Documents" as detailed in the Invitation to Tender.

12. BREACH

- 12.1. Subject to clause 5.3.3 above, should a Party be in breach of any of its obligations in

terms of this Offer to Purchase (“**Defaulting Party**”) and have failed to remedy such breach at the end of a period of 7 (seven) calendar days after delivery by the aggrieved Party (“**Aggrieved Party**”) to the Defaulting Party of a notice in writing requiring the Defaulting Party to remedy such breach, then the Aggrieved Party shall be entitled, without further notice to the Defaulting Party and without prejudice to any other right or remedy which may be available to the Aggrieved Party in terms hereof or at law:

- 12.1.1. to cancel this Offer to Purchase forthwith and to claim and recover from the Defaulting Party such damages as the Aggrieved Party shall have sustained in consequence of such default, breach and/or cancellation; or
- 12.1.2. to institute action for specific performance of the provisions of this Offer to Purchase and/or for damages.
- 12.2. Should either Party institute action against the other for payment in terms of this Offer to Purchase, such Party shall be entitled to claim legal costs on an ‘attorney and client’ scale.
- 12.3. **The Offeror agrees that in the event that the Offer to Purchase is cancelled by the Offeree as a result of a breach by the Offeror, all amounts paid by the Offeror to the Auctioneers in terms of this Offer to Purchase shall, at the option of the Offeree exercised in writing delivered to the Auctioneers, be forfeited to the Offeree as *rouwkoop* and the Offeror hereby irrevocably authorises the Auctioneers to pay same to the Offeree, or alternatively, and in the discretion of the Offeree, be retained on account of any damages suffered by the Offeree.**

13. BROKERAGE OR AGENCY OR AUCTIONEER

- 13.1. The Offeror warrants that it has been introduced to the Cattle by the Auctioneers

only and that the Auctioneer is the effective cause of the sale. The Offeror indemnifies the Offeree against any other claim for commission by any other agent.

13.2. The Commission shall be payable by the Offeree to the Auctioneers. The Commission shall be deemed to have been earned by the Auctioneers on payment of the full Purchase Price by the Offeror in terms of this Offer to Purchase.

13.3. The Commission shall be payable by the Offeree within three (3) days calculated from the Date of Sale, against presentation of an invoice in relation to the Auctioneers Commission. Should the Offeree fail to make payment of the full Commission, the Auctioneers shall be entitled to institute legal proceedings against the Offeree and recover its legal costs on a scale as between attorney-and-client. The provisions of this clause 13 are a *stipulatio alteri* in favour of the Auctioneers who shall be deemed to have accepted it.

14. NOTICES AND *DOMICILIA*

14.1. The Parties choose as their respective physical addresses as their respective *domicilium citandi et executandi* for all purposes of this Offer to Purchase, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

14.1.1. **Offeree:**

Address: **Usher Attorneys in their capacity as the joint liquidators of Lowlands Beef CC (in liquidation) 192 Howick Road, Pietermaritzburg, KZN**

Postal: **PO Box 11703, Dorpspruit, 3206**

Tel: **033 342 3881\9**

E-mail: glen@usherlaw.co.za

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- 14.1.2. **Offeror:**
 The physical address and contact details as set out for the Offeror in the Information Schedule and Consent Form.
- 14.2. Any notice given in terms of this Offer to Purchase shall be in writing and shall:
- 14.2.1. if delivered by hand to a responsible person during ordinary business hours (being between 08h00 and 16h30 on a Business Day) be deemed to have been duly received by the addressee on the date of such delivery; and
- 14.2.2. if transmitted by e-mail be deemed to have been received by the addressee 1 (one) day after despatch.
- 14.3. Any Party may by notice to the other Party change the address chosen as its *domicilium* address to another physical address in the Republic of South Africa (not being a post office box or *post restante*) or e-mail address, provided that the change shall become effective on the 7th (seventh) Business Day from the deemed receipt of the notice by the other Party.
- 14.4. Notwithstanding anything to the contrary in this clause 14, a written notice or other communication actually received by any Party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its *domicilium*.

15. **INDEPENDENT ADVICE AND RELIANCE**

Each Party hereby acknowledges and agrees that –

- 15.1. they have been free to secure independent legal and other professional advice (including financial and tax advice) as to the nature and effect of all of the

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transactions contemplated in this Offer to Purchase and that they have either taken such independent advice or have dispensed with the necessity of doing, so assuming all risks involved in such a choice;

- 15.2. all of the provisions of this Offer to Purchase and the restrictions contained herein are fair and reasonable in all of the circumstances and are in accordance with their intentions; and
- 15.3. they have not placed any reliance upon the advice, views and/or opinions expressed by the other of them or the other Party's independent legal, tax and other advisors in the preparation, negotiating, executing and implementing of this Offer to Purchase, and accept the duty to verify all representations made to it by anyone whomsoever.

16. NO CESSION OR ASSIGNMENT

Neither Party shall be entitled to cede, delegate or assign all or any of its rights, obligations and/or interests in, under or in terms of this Offer to Purchase to any third party without the prior written consent of the other Party.

17. DISPUTE RESOLUTION

- 17.1. This clause 17 is a separate and divisible agreement from the rest of this Offer to Purchase and shall not become void, voidable or unenforceable by reason of any alleged misrepresentation, mistake, duress, undue influence, impossibility, illegality, immorality, absence of consensus, lack of authority or any other cause relating to the rest of this Offer to Purchase. The Parties intend that any such issue shall be subject to arbitration in terms of this clause 17. This clause 17 shall remain in effect even if this Offer to Purchase terminates or is cancelled.

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- 17.2. The Parties agree that if a dispute arises, they shall meet together and to exercise their reasonable endeavours to resolve any difference or dispute that may arise between them in an amicable, informal and expeditious manner and through bona fide negotiation.
- 17.3. Any unresolved dispute which arises out of this Offer to Purchase of any nature whatsoever, including but not limited to: (1) the existence of this Offer to Purchase apart from this clause 17; (2) the interpretation and effect of this Offer to Purchase; (3) the Parties' respective rights and/or obligations under this Offer to Purchase; (4) the rectification of this Offer to Purchase; (5) the breach, termination or cancellation of this Offer to Purchase or any other matter arising out of the breach, termination or cancellation; (6) damages or any other claim for compensation; and (7) any other dispute that may be as a result of this Offer to Purchase, shall, unless it is resolved in terms of clause 17.2, be finally determined by arbitration.
- 17.4. Unless the Parties can agree on the nomination of an arbitrator within a period of 7 (seven) calendar days following their meeting in terms of clause 17.2, either Party may refer the dispute to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being. The Parties agree that:
- 17.4.1. if the matter is primarily of an accounting nature, the arbitrator shall be an independent practising chartered accountant of not less than 15 (fifteen) years standing appointed by the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being; and
- 17.4.2. if the matter is primarily of a legal nature or any matter which is neither primarily of an accounting nature or a legal nature, the arbitrator shall be an independent practicing senior counsel advocate of not less than 5 (five) years standing appointed by the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being.

-
- 17.5. If the Parties fail to agree whether the matter is primarily of an accounting, legal or other nature, the matter shall be deemed to be primarily of a legal nature.
- 17.6. The request to nominate an arbitrator addressed to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being in terms of clause 17.4 shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware. A copy of the request shall be furnished to the other Party who may within 7 (seven) calendar days, submit written comments on the request to the addressor of the request and to the Chairperson for the Society of Advocates of KwaZulu-Natal for the time being.
- 17.7. The arbitration shall be held at Pietermaritzburg or at any venue agreed to by the Parties in writing.
- 17.8. The arbitration shall be governed by the rules and procedures as determined by the arbitrator, in writing.
- 17.9. The Parties shall use their best endeavours to ensure that the arbitration is completed within 90 (ninety) Business Days after the appointment of the arbitrator.
- 17.10. Notwithstanding anything contained in this clause 17, nothing shall prevent a Party from approaching a court of competent jurisdiction for urgent interim relief.

18. GENERAL

- 18.1. The termination of this Offer to Purchase for any cause shall not release a Party from any liability or claim which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.

- 18.2. No addition to, variation of or agreed cancellation of this Offer to Purchase shall be of any force or effect unless reduced to writing and signed by the Parties in wet ink form. For the avoidance of doubt the Parties expressly agree that no variation, amendment, or consensual cancellation shall arise pursuant to an exchange of “data” by means of an “electronic signature”, or an “advanced electronic signature” as envisaged in the **Electronic Communications and Transactions Act 25 of 2002**, as amended (“**ECTA**”), or otherwise by means of electronic correspondence. Further the Parties agree, to the extent allowed in law, that section 13 of ECTA shall not apply to this Offer to Purchase. For the purposes of this Offer to Purchase, the Parties agree that the fact that their name or the name of the entity that they represent appears at or near the end of any email, electronic correspondence or other written correspondence shall not in any way be deemed or considered to be their signature or electronic signature.
- 18.3. This Offer to Purchase constitutes the entire agreement between the Parties in regard to its subject matter. No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Offer to Purchase.
- 18.4. No indulgence, leniency or extension of time which any Party ("**the Grantor**") may grant or show another Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 18.5. The failure by any Party to enforce any provision of this Offer to Purchase shall not affect in any way that Party’s right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

- 18.6. The Parties shall co-operate with each other and execute and deliver to the other Parties such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Offer to Purchase.

- 18.7. This Offer to Purchase may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Offer to Purchase by signing any such counterpart.

- 18.8. The validity of this Offer to Purchase, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

- 18.9. If any provision of this Offer to Purchase, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law it shall be severable from this Offer to Purchase, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

- 18.10. Each Party warrants that it has the power, authority and legal right to sign and perform in terms of this Offer to Purchase and that, where applicable, this Offer to Purchase has been duly authorised by all necessary actions of any directors, members or liquidators, as is applicable, and constitutes valid and binding obligations on it in accordance with the terms of this Offer to Purchase.

SIGNED by the **OFFEROR** at _____ on the _____ day of _____ 2023

As Witnesses:

1. _____

INITIALS

For: **OFFEROR**

Name: _____

Resolution: Attached

2. _____

OFFEREE ACCEPTANCE AND CONFIRMATION:

SIGNED and accepted by the **OFFEREE** at _____ on the _____ day of _____ 2023

AS WITNESSES:

1. _____

For: **OFFEREE**

G. V. Usher N.O.

2. _____

For: **OFFEREE**

E. Nel N.O.

3. _____

For: **OFFEREE**

P. Carolus N.O.

4. _____

For: **OFFEREE**

S. A. Potgieter N.O.

Annexure 'A'

CATTLE LOTS AND PURCHASE PRICE

The Offeror hereby offers to purchase the following Cattle at the Purchase Price stated exclusive of VAT:

Cattle Description:	Lot Numbers:	Number of Cattle in each Lot	Price Offered per animal (excl. VAT):	Total Price Offered per Lot (excl. VAT):
Store Cows (Lowlands)	1	176		
Open Heifers (Lowlands)	2	576		
Weaner heifers (Lowlands)	3	484		
Weaner bull (Lowlands)	4	146		
Weaner heifers (Kamberg)	5	231		
Weaner bull (Kamberg)	6	50		
Cows and Calves (Lowlands)	7	734		
Cows (Lowlands)	8	207		
Bulls 2-3 / Herd sires (Lowlands)	9	172		
Cows and Calves (Kamberg)	10	335		
Cows (Kamberg)	11	34		
TOTAL				

Annexure 'B'

DEED OF SURETYSHIP

INITIALS

Empty rectangular box for stamp or signature.

LOWLANDS BEEF CC (IN LIQUIDATION)

Registration Number: 2008/123071/23

Masters Ref: N000242/2023

duly represented by:

Glen Usher N.O., Eugene Nel N.O., Peter Carolus N.O. and Sharon Amy Potgieter N.O. in their capacities as the appointed joint liquidators under Master’s Reference: **N000242/2023** of **Lowlands Beef CC, Registration Number: 2008/123071/23** (in liquidation)

(hereinafter referred to as “**the Offeree**”)

I, the undersigned,

NAME OF THE SURETY: _____
IDENTITY NUMBER: _____
MARITAL STATUS: _____
PHYSICAL ADDRESS: _____

(Chosen domicilium citandi et executandi)

(hereinafter referred to as “**the Surety**”),

hereby bind myself jointly and severally *in solidum* to the Offeree as surety for and co-principal debtor with:

NAME OF THE OFFEROR: _____
REGISTRATION NUMBER: _____

INITIALS

(hereinafter referred to as “**the Offeror**”) for the due and punctual performance by the Offeror of all the Offeror’s payment obligations to the Offeree arising out of the Offer to Purchase concluded between the Offeror and the Offeree (hereinafter referred to as “**Offer to Purchase**”), to which this Deed of Suretyship is attached.

1. **Interpretation:**

- 1.1 In this Deed of Suretyship, unless the contrary intention appears from the context: words signifying the one gender shall include the other genders; words signifying the singular shall mean and include the plural and *vice versa*; reference to natural persons shall mean and include reference to artificial persons and *vice versa*.
- 1.2 When any number of days is prescribed in this Deed of Suretyship, the number shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday, or proclaimed public holiday (in the Republic of South Africa) in which event the last day shall be the next succeeding day which is not such a Saturday, Sunday or public holiday.
- 1.3 The rule of interpretation that a contract will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Deed of Suretyship and the Surety hereby waives any rights he has to rely on such rules.
- 1.4 This Deed of Suretyship shall be binding and enforceable by and against the estates, heirs, executors, administrators, trustees, assigns and liquidators of the parties to this Deed of Suretyship as fully and effectually as if they had signed this Deed of Suretyship in the first instance and reference to any party shall be

deemed to include such party's executors, administrators, trustees, assigns or liquidators, as the case may be.

- 1.5 The termination or expiry of this Deed of Suretyship shall not affect those provisions of this Deed of Suretyship which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. The Surety hereby waives and renounces:

- 2.1 any right to claim an accounting from the Offeree before making payment;
- 2.2 any benefits to which the Surety is entitled to in law and without detracting from the generality of the foregoing, including the benefits of:
- 2.2.1 excussion;
 - 2.2.2 division;
 - 2.2.3 cession of action; and
 - 2.2.4 being sued together with the Offeror.

3. Acknowledgement:

The Surety confirms and acknowledges that he knows and understands the meaning, as well as the effect of waiving and renouncing the benefits referred to in clause 2 above.

4. Undertaking:

The Surety undertakes to pay the Offeree any amount due and owing by the Offeror arising out of the Offer to Purchase within 7 (seven) days (excluding

Saturdays, Sundays or public holidays) of the Offeree sending a written notice to the Surety to the effect that the Offeror has defaulted in its payment obligations to the Offeree.

5. **Instituting Action:**

The Surety agrees that should he fail or neglect to pay the Offeree the amount claimed by the Offeree, as contemplated in clause 4 above, the Offeree shall be entitled to institute action against the Surety forthwith in terms of this Deed of Suretyship.

6. **Certificate:**

The Surety agrees that a certificate issued by the Offeree, shall be sufficient proof of the Offeror's indebtedness to the Offeree including but not limited for the purposes of any dispute, legal action or application (whether for summary judgement, provisional sentence or any other reason).

7. **Performance:**

If the Offeror fails to discharge any of its obligations to the Offeree or any of its other creditors, the Offeree shall be entitled to demand from the Surety immediate performance of all the obligations then owing by the Offeror to the Offeree whether or not the due date for the performance of the obligations has arrived.

8. **Domicilium citandi et executandi:**

The Surety elects as his *domicilium citandi et executandi* for the purposes of serving any notice or summons, his physical address on the first page of this Deed of Suretyship.

9. **Jurisdiction:**

The Surety consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act, 32 of 1944 (as amended) in respect of any legal proceedings which the Offeree may wish to institute against the Surety arising out of this Deed of Suretyship, notwithstanding the fact that the amount or value of the Offeree's claim might otherwise exceed such jurisdiction. The Surety further agrees that notwithstanding such consent, the Offeree may at its option institute any such proceedings out of the High Court of South Africa.

10. **Legal Costs:**

The Surety agrees that, in the event of the Offeree having to institute proceedings against him arising out of this Deed of Suretyship, the Surety will be liable for all costs incurred by the Offeree as between attorney-and-client.

11. **Legal Advice:**

The Surety acknowledges and agrees that:

- 11.1 he has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Deed of Suretyship and that he has either taken such independent advice or has dispensed with the necessity of doing so;
- 11.2 this Deed of Suretyship was complete in all respects when it was signed; and

- 11.3 any payments received by the Offeree shall firstly be applied to the redemption of legal costs, then interest and thereafter capital.

12. **General Terms:**

12.1 Severance

If any provision of this Deed of Suretyship, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law it shall be severable from this Deed of Suretyship, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.2 Survival of Rights, Duties and Obligations

Termination of this Deed of Suretyship shall not release the Surety from any liability which at the time of termination had already accrued to the Offeree.

12.3 Non Variation

Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Deed of Suretyship or to cancel or terminate it shall be effective unless made in writing and duly signed by both the Surety and the Offeree.

12.4 Entire Deed of Suretyship

This Deed of Suretyship constitutes the entire undertaking by the Surety to the Offeree in regard to the subject matter of this Deed of Suretyship. No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Deed of Suretyship.

12.5 Indulgence

No indulgence, leniency or extension of time which the Offeree may grant or

show the Surety, shall in any way prejudice the Offeree or preclude the Offeree from exercising any of its rights in the future.

12.6 No Waiver

The failure by the Offeree to enforce any provision of this Deed of Suretyship shall not affect in any way the Offeree’s right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

12.7 Governing Law

The validity of this Deed of Suretyship, its interpretation and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

SIGNED at _____ on this _____ day of _____ **2023**

SURETY

AS WITNESSES:

1. _____
WITNESS SIGNATURE

2. _____
WITNESS SIGNATURE

NAME: _____
ID: _____
ADDRESS: _____

NAME: _____
ID: _____
ADDRESS: _____

INITIALS