

EQUINE REPRODUCTION LTD TERMS AND CONDITIONS

TERMS AND CONDITIONS:

These Terms and Conditions apply only to the provision by Equine Reproduction Ltd and/or Pelion Stud of Services defined below. Any associated supply or goods of provision of other Services by Equine Reproduction Ltd is governed by separate terms and conditions applicable to such supply or provision.

1. General

In these Conditions

1.1

'Customer' means the person from whom a Booking Form has been received and accepted for the provision of Services by Equine Reproduction Ltd.

'Conditions' means the standard terms and conditions of Equine Reproduction Ltd set out herein.

'Contract' means a Contract for the provision of Services by Equine Reproduction Ltd to the Customer whether made verbally or in writing.

'Horse' means the stallion, mare, and/or foal named in the Booking Form, and where relevant may also be referred to as "Stallion", "Mare", and/or "Foal" or any combination of those terms.

'Literature' means catalogues, pamphlets, price lists and advertising literature provided by Equine Reproduction Ltd.

'Procedures' means any equine breeding (or related) procedure, or series of procedures performed by Equine Reproduction Ltd or staff at Pelion Stud

'Registered Owner' can mean the person registered as Registered Owner on the Horse's passport or such a person who has authority as delegated by the Registered Owner

'Semen' is collected and or processed by Equine Reproduction Ltd in line with Services or Semen collected by a third party, and stored or processed by Equine Reproduction Ltd

'Services' means the work or Services to be provided by Equine Reproduction Ltd under the Contract namely the collection of Semen from the Stallion (whether with associated stallion housing or not), equine Semen processing, freezing and storage, artificial insemination, embryo transfer, foaling down or any related service.

'Writing' includes letters, cable, facsimile transmission, e-Mails and comparable means of communication.

1.2 Words importing the singular number shall include the plural and vice versa, words importing any gender shall include all other genders and words importing persons shall include bodies corporate, unincorporated associations, partnerships and individuals.

2. Orders, Acknowledgements, Conditions and Variations

2.1 Notwithstanding that Equine Reproduction Ltd may have given a detailed quotation or estimate either verbally or in writing no Booking Form shall be binding on Equine Reproduction Ltd unless and until it has been acknowledged in writing by Equine Reproduction Ltd or the Services are provided by Equine Reproduction Ltd to the customer pursuant to the Booking Form. All bookings are subject to availability and Equine Reproduction Ltd reserves the right to refuse any booking in whole or in part.

2.2 These Conditions are incorporated in the Contract and contain the entire obligations between Equine Reproduction Ltd and the Customer in relation to the Services which are the subject of the Contract. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of Contract sent

by the Customer to Equine Reproduction Ltd, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the event of Equine Reproduction Ltd entering into the Contract without Equine Reproduction Ltd having submitted a written quotation or other letter or document incorporating or referring to these Conditions but in circumstances where the Customer has had prior notice of these Conditions then the Contract shall be subject to these Conditions.

2.3 No variation of the Contract by the Customer shall be binding on Equine Reproduction Ltd unless accepted in writing by Equine Reproduction Ltd.

2.4 No representations or warranties made by or on behalf of Equine Reproduction Ltd prior to the Contract (whether verbally or in writing) shall form part of the Contract.

3. Price

3.1 The price payable for the Services shall be the rate of Equine Reproduction Ltd current at the date of provision of the Services. Equine Reproduction Ltd may at its discretion vary such rate at any time but shall endeavour to give the Customer not less than four weeks' prior notice of the new rate.

3.2 Any price set out in any quotation or estimate shall be considered to have been given solely for information and shall not constitute an obligation on the part of Equine Reproduction Ltd that it will provide the Services at that price.

3.3 All prices are exclusive of any applicable Value Added Tax which will be charged at the rate applicable at the date of invoice (if applicable).

4. Time of Performance

Whilst Equine Reproduction Ltd will make every reasonable effort to complete the Contract by the date or dates therein specified for provision of the Services such date or dates shall only constitute the times by which Equine Reproduction Ltd expects to effect such provision but the time for performance of the Contract by Equine Reproduction Ltd shall not be of the essence of the Contract. Equine Reproduction Ltd's failure to so provide by the due date or dates shall not constitute a breach of Contract and Equine Reproduction Ltd may wholly or partly suspend provision of the Services and the Customer shall accept late provision of the Services.

5. Terms of Payment

5.1 Notwithstanding any other provision of these Conditions Equine Reproduction Ltd reserves the right to invoice and require payment for Services in advance.

5.2.1 Unless otherwise agreed the price for the Services shall be due and payable in full to Equine Reproduction Ltd prior to the removal of the Horse from the premises at the termination of the Contract, or prior to Equine Reproduction Ltd staff leaving the Customer's premises.

5.2.2 Should the period of the Contract exceed one calendar month interim payments are due for the said month and must be made on receipt of an invoice.

5.3 If the Customer does not pay the whole or any part of the price on the due date then the Customer shall pay to Equine Reproduction Ltd interest on the amount outstanding from the due date until the actual date of payment (as well as before judgement) at the rate of 4% pa

over the base rate of National Westminster Bank plc from time to time in force which shall accrue on a daily basis.

5.4 So long as any payment due from the Customer to Equine Reproduction Ltd is outstanding, whether under the same or any other Contract or transaction between Equine Reproduction Ltd and the Customer, Equine Reproduction Ltd shall have a lien on any property of the Customer in its possession and shall be entitled to suspend work on any Contract.

5.5 The Customer shall not be entitled to withhold payment of any amount due to Equine Reproduction Ltd by reason of any disputed claim by the Customer in connection with the Contract nor shall the Customer be entitled to set off against any amount payable under the Contract to Equine Reproduction Ltd any amount which is not then due and payable by Equine Reproduction Ltd or for which Equine Reproduction Ltd disputes liability.

5.6 Where Equine Reproduction Ltd is storing Semen on behalf of a Registered Owner, invoices are required to be paid strictly within 7 days of a monthly invoice or 14 days of an annual invoice.

Clause 5.3 shall apply and in addition Semen may be destroyed or in limited cases sold to recover costs.

There are no exceptions to this clause.

6. Suspension and Termination

6.1 If the Customer shall fail to make any payment when it becomes due (either under the Contract or under any other Contract or transaction between Equine Reproduction Ltd and the Customer) or shall commit any other breach of the Contract and fail to remedy the same within seven days of receiving Equine Reproduction Ltd's request in writing so to do or shall act in such a way as to impede or interfere with Equine Reproduction Ltd's performance of the Contract or any distress or execution is levied upon any goods or property of the Customer or the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an incorporated company) passes a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court makes an order to that effect or an encumbrancer takes possession, or an administrative receiver or receiver is appointed, of any of the property or assets of the Customer, or the Customer ceases, or threatens to cease, to carry on business, or Equine Reproduction Ltd has reason to believe that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly, Equine Reproduction Ltd may –

6.1.1 Suspend work under the Contract and/or

6.1.2 Hold by way of lien all materials or other property of the Customer in the possession of Equine Reproduction Ltd in respect of work carried out or to be carried out by Equine Reproduction Ltd for the Customer or for the general balance of account for the time being owing to Equine Reproduction Ltd by the Customer and/or

6.1.3 Terminate the Contract forthwith and, if the Services or any part of them have been provided but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary but without prejudice to Equine Reproduction Ltd's rights to any unpaid price for Services provided under the Contract and to damages for loss (both direct and consequential) suffered in consequence of such termination.

6.2 Equine Reproduction Ltd may terminate the Contract at any time upon not less than one month's notice in writing to the Customer and the Customer may terminate the Contract at any time by not less than one month's notice (or such shorter period or notice as Equine Reproduction Ltd may in its absolute discretion agree to accept) in writing to Equine Reproduction Ltd. Such termination shall not relieve the Customer of the obligation to pay to Equine Reproduction Ltd all charges accrued under the Contract in respect of Services performed prior to the date of termination and so that Equine Reproduction Ltd shall have a lien as provided in Condition 6.1.2. Equine Reproduction Ltd shall within 14 days after the date of termination refund to the Customer any payment made by the Customer under the Contract representing a prepayment for Services not yet performed prior to the date of termination but after deduction of any amount owing to Equine Reproduction Ltd by the Customer whether or not under the Contract.

6.3 In the event of Equine Reproduction Ltd (other than in any of the circumstances set out in Condition 6.1) being prevented from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond its reasonable control then further performance of the Contract shall be suspended for the period during which Equine Reproduction Ltd is so prevented provided that in the event of the Contract being suspended for a continuous period of more than three months then either party may give the other notice in writing to terminate the Contract forthwith and in such circumstances the Customer shall pay for all Services provided to the date of such termination, such payment to be made on or before the stallion leaves the premises. Equine Reproduction Ltd shall be under no liability whatsoever to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of Equine Reproduction Ltd's inability to perform its obligation under the Contract in these circumstances.

6.4 If Equine Reproduction Ltd shall be prevented from providing Services in accordance with the Contract as a result of (a) delay or default on the part of the Customer or (b) any other reason beyond Equine Reproduction Ltd's reasonable control and the Contract is not terminated in accordance with the other provisions of this Condition Equine Reproduction Ltd shall be entitled to reschedule the date or dates for the provision of the Services to such time or times as it shall reasonably require taking into account its commitments to third parties and in the event of (a) shall be entitled to make a reasonable charge in respect of losses or costs incurred by Equine Reproduction Ltd by reason of provision of the Services being so prevented.

7. Warranties of Equine Reproduction Ltd and Limitation of Equine Reproduction Ltd's Liability

7.1 Equine Reproduction Ltd undertakes to use all reasonable care and skill in performance of the Services and also undertakes to comply with all legislation and regulations for the time being in force applicable to Equine Reproduction Ltd's performance of the Contract.

7.2 Notwithstanding the provisions of Condition 7.1 and having due regard to the inherent risks and uncertainties involved in all biological processes Equine Reproduction Ltd does not guarantee or warrant that a particular outcome will occur as a result of the provision by Equine Reproduction Ltd of the Services. In particular but without limitation Equine Reproduction Ltd gives no warranty that:

7.2.1 any Semen collection or processing will result in the recovery of any usable Semen or that insemination of a mare with that Semen will result in a pregnancy.

7.2.2 any artificial insemination procedure will result in the mare becoming pregnant

7.2.3 any embryo flushing procedure will result in the harvesting of one or more viable embryos

7.2.4 any embryo transfer procedure will result in any pregnancy

7.2.5 any pregnancy will result in the birth of a live foal

7.3 Subject as otherwise expressly provided in these Conditions and subject always to the provisions of the Unfair Contract Terms Act 1977 the warranty set out in Condition 7.1 shall be in lieu of and to the exclusion of any other warranties, terms, conditions or undertakings whether express or implied by statute, common law or otherwise howsoever.

7.4 Equine Reproduction Ltd's liability to the Customer (whether for breach of Contract, negligence or otherwise howsoever) under the Contract and in relation to the Services shall (subject to the provisions of Condition 7.5) be limited as follows :-

7.4.1 Any liability of Equine Reproduction Ltd for any loss or destruction of or damage to Semen during the performance of the Services shall be limited to (at Equine Reproduction Ltd's option) either

7.4.1.1 the collection of any equivalent number of doses of Semen where the Stallion is still alive, or

7.4.1.2 payment by Equine Reproduction Ltd of compensation of up to £20 per dose of Semen lost, destroyed or damaged. Where the Customer considers any individual dose of Semen is valued at more than £20 he is strongly advised to effect separate insurance cover for the loss or destruction of or damage to such Semen for the value in excess of £20. Equine Reproduction Ltd's compensation arrangements will not apply where the whole value of the Semen (rather than merely the excess over £20) is insured separately by the Customer. For the purpose of this Condition a 'dose' of Semen means that volume of Semen which at the time of the relevant loss, destruction or damage it was Equine Reproduction Ltd's general practice to use for a single insemination and so that a dose may comprise one or more straws. But in any event Equine Reproduction Ltd's insurance company will retain jurisdiction and absolute discretion.

7.4.2 Any liability of Equine Reproduction Ltd in relation to the death, damage or injury of the Horse shall be limited to the lower of (a) £1,000 and (b) the difference between the value of the Horse immediately before the death, damage or injury and its value immediately thereafter. Equine Reproduction Ltd accepts no liability for ill health, infertility, injury or loss of breeding potential of the Horse as a result of the provision of the Services unless and to the extent caused by Equine Reproduction Ltd's negligence and then only up to a maximum amount as specified in this Condition. Accordingly the Customer is required to effect 'all risks' insurance cover, including public liability insurance for the Stallion whilst involved in the Services, and are required to provide proof of the same. If this insurance is not effected then the Registered Owner is required to accept all risks, and to indemnify Equine Reproduction Ltd against any loss.

7.4.3 In the event that Equine Reproduction Ltd cancels or fails to keep (otherwise than in the circumstances set out in Condition 6) an appointment for Services on any particular occasion Equine Reproduction Ltd's liability shall be limited to the costs (if

any) incurred by the Customer in the certification of the Stallion by the Customer's veterinary surgeon in preparation for the Services.

7.4.4 The Customer shall notify Equine Reproduction Ltd as soon as he becomes aware of any event which may give rise to a claim against Equine Reproduction Ltd in respect of the provision of the Services and of such notification if oral shall confirm it in writing within 7 days. No claim in relation to the provision of the Services shall be accepted by Equine Reproduction Ltd unless notified to Equine Reproduction Ltd by the Customer in accordance with this Condition.

7.4.5 In no circumstances and notwithstanding any other provision of these Conditions shall Equine Reproduction Ltd be liable for any loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever.

7.5 Nothing in these Conditions shall exclude or restrict any liability of Equine Reproduction Ltd for death or personal injury of any human being resulting from Equine Reproduction Ltd's negligence.

8. Customer's Obligations

8.1 The Customer shall comply with the Procedures.

8.2 The Customer shall keep and provide to Equine Reproduction Ltd all such records and information as are relevant to the subject matter of the Services and to the provision of the Services by Equine Reproduction Ltd.

8.3 Where the Customer is not the Registered Owner of the Horse, he shall notify Equine Reproduction Ltd in writing of that fact and warrant that he has full authority to accept these Conditions on behalf of the Registered Owner. Where the Registered Ownership of the Horse or any

Semen stored by Equine Reproduction Ltd changes during the term of the Contract the Customer shall notify Equine Reproduction Ltd immediately in writing of that fact and undertake to Equine Reproduction Ltd to secure the agreement of the new Registered Owner to these Conditions.

8.4 Any failure by the Customer to comply with the obligations in this Condition 8 shall entitle Equine Reproduction Ltd at its discretion to refuse to provide the Services in which event the provisions of Condition 6.4 shall apply.

9. Description

9.1 Equine Reproduction Ltd undertakes to use all reasonable care and skill in the compilation of its literature.

9.2 Notwithstanding the provisions of Condition 9.1, any figures, statements, descriptions, illustrations, photographs, drawings or any other matters contained in the Literature are not guaranteed to be accurate and are intended merely to represent a general picture of Equine Reproduction Ltd's products and Services and shall not form part of the Contract.

10. Severance

If at any time any one or more of the provisions of these Conditions becomes or is invalid, illegal or unenforceable in any respect under any law or is held by a court to be invalid,

illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11. Jurisdiction

These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with English law and Equine Reproduction Ltd and the Customer hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

12. Notices

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business (or such other address as may prior to the relevant time have been notified pursuant to this provision to the party giving the notice) and in the case of a company, marked for the attention of the Company Secretary.

Equine Reproduction Ltd reserves the right to amend, remove, and add to the clauses of these Conditions as becomes appropriate from time to time.

13. Waiver

No waiver by Equine Reproduction Ltd or any breach of any provision of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision and Equine Reproduction Ltd shall not be prejudiced by any forbearance or indulgence granted by it to the Customer.

14. Privacy Policy

Equine Reproduction Ltd does not store any financial information.