



TERMS & CONDITIONS OF TRADE

The following terms will be incorporated into each contract entered into between the Customer, the Customer's Guarantor(s) and EquiBreed NZ Limited for the supply of all Goods and/or Services

1. DEFINITIONS

- 1.1 **Customer** means any person or entity ordering and/or purchasing Goods and/or Services from EquiBreed and includes all of the Customer's employees and agents.
- 1.2 **EquiBreed** means EquiBreed NZ Limited.
- 1.3 **Goods** means all goods supplied or to be supplied by EquiBreed to the Customer.
- 1.4 **Price** means the price for the supply of the Goods and/or Services by EquiBreed to the Customer, as determined by EquiBreed from time to time or as otherwise agreed in writing between the Customer and EquiBreed.
- 1.5 **Services** means all services provided or to be provided by EquiBreed to the Customer.
- 1.6 **Terms of Trade** means these Terms and Conditions of Trade as amended by EquiBreed from time to time.

2. ACCEPTANCE

- 2.1 The Customer agrees to be bound by these Terms of Trade in respect of the supply of all Goods and/or Services and agrees that these Terms of Trade shall apply irrespective of whether, and the extent to which, any Goods and/or Services are provided by EquiBreed, directly or indirectly.
- 2.2 EquiBreed reserves the right, at any time and in its sole discretion, to refuse to supply or cease to supply the Customer with any Goods and/or Services without giving reasons for such refusal.

3. PRICING & PAYMENT

- 3.1 The Customer acknowledges that the Price shall at all times be exclusive of GST (unless otherwise expressly stated by EquiBreed in writing) and the Customer agrees to pay any GST on the Price. The Customer shall pay the Price to EquiBreed without deduction or set off.
- 3.2 Prior to supplying any Goods and/or Services to the Customer, EquiBreed may, at its sole discretion, require:
 - (a) the payment of the full Price; or
 - (b) a deposit as part payment of the Price; and the Customer agrees to pay the same to EquiBreed prior to the supply of the Goods and/or Services without deduction or set off.
- 3.3 EquiBreed shall issue invoices for the supply of the Goods and/or Services which sets out the Price or part of the Price payable by the Customer.
- 3.4 Unless otherwise specified in these Terms of Trade, payment of each invoice must be satisfied on or before:
 - (a) the 7th day after the date of the invoice;
 - (b) where the invoice relates to any Goods and/or Services provided in respect of any animal, the date that such animal is removed from EquiBreed's premises; whichever is the earlier (**Due Date**).

4. CREDIT

- 4.1 EquiBreed may, at its sole discretion, extend credit to a Customer for the supply of Goods and/or Services on a case by case basis. Where such credit is extended to the Customer, EquiBreed may impose a credit limit (**Credit Limit**) at its sole discretion for the Customer's account from time to time, and may alter the credit limit without notice. If the Credit Limit is exceeded by the Customer, EquiBreed may refuse to supply any further Goods and/or Services to the Customer or only continue to supply on a cash up front basis. The Customer acknowledges that staying within the Credit Limit is the Customer's sole responsibility and EquiBreed accepts no responsibility for any account going into excess of the Credit Limit.
- 4.2 In accordance with the Privacy Act 1993, the Customer and any guarantor of the Customer hereby authorises EquiBreed to conduct all credit checks and searches of the Customer and/or guarantor, and, where the Customer and/or guarantor is a company, the directors of the company and its financial and business affairs as deemed necessary by EquiBreed. The Customer and guarantor will provide all necessary written authorisations for such credit checks and searches as requested from time to time by EquiBreed.
- 4.3 EquiBreed reserves the right to keep the creditworthiness of the Customer under review at all times. If EquiBreed deems the credit of the Customer to be unsatisfactory, or forms the view that any current or future payments may be at risk under any relevant insolvency regime, EquiBreed may require security for such payment and the Customer will make such security available in accordance with clause 10 of these Terms of Trade.

5. INTEREST AND COSTS

- 5.1 Without prejudice to EquiBreed's other rights and remedies under these Terms of Trade or at law, EquiBreed may (at EquiBreed's discretion) take any one or more of the following actions:
 - (a) if the Customer fails to pay any invoice by the Due Date, charge interest on all overdue accounts at the rate of 2.5% per month calculated on a daily basis from the Due Date until it is received in full by EquiBreed. Any interest will form an integral part of the overdue debt and any payments received by EquiBreed may be applied firstly against the interest;
 - (b) if at any time during any month the Customer's account is in excess of the Customer's Credit Limit, charge the Customer a default administration fee for that month in which the excess occurred, of the greater of 10% of the excess (highest amount during that month, less the Customer's Credit Limit) or \$50.00; and/or
 - (c) seek reimbursement from the Customer for any costs, charges and expenses (including legal costs as between solicitor and client) incurred by EquiBreed or any third party in consequence of, or in connection with, any default or any breach of these Terms of Trade by the Customer including, without limitation, the enforcement by EquiBreed of any power, right or remedy conferred upon EquiBreed by law or by these Terms of Trade.

6. SERVICES AT EQUIBREED'S PREMISES

- 6.1 Where any of the Customer's animals are present at EquiBreed's premises for the purpose of the provision of any Goods and/or Services, the Customer acknowledges and agrees such animals are so present at the Customer's sole risk and all obligations in respect of the animals' safety, care and welfare will be the sole responsibility of the Customer. It shall be the sole responsibility of the Customer to insure all animals present at EquiBreed's premises.
- 6.2 Where reasonably required as part of the Goods and/or Services provided by EquiBreed, the Customer authorises EquiBreed to drench and provide any farrier, agistment or other reasonably required veterinary services in respect of any of the Customer's animals, at the Customer's sole cost.
- 6.3 All animals arriving at EquiBreed's premises shall be subject, at EquiBreed's sole discretion, to:
 - (a) the collection of a faecal sample for the purposes of laboratory assessment of faecal egg count and management of the animal's worm burden during its residence at EquiBreed's premises; and
 - (b) the collection of a nasal swab sample where EquiBreed considers the animal exhibits any nasal discharge on arrival, or at any time during residence at EquiBreed's premises.

All costs associated with the collection, processing and diagnosis of any samples by EquiBreed or its agents for any purpose shall be invoiced to the Customer and are payable in accordance with clause 3.

7 SEMEN STORAGE

- 7.1 Where any semen and/or semen storage container is being stored by EquiBreed as part of the Services provided to the Customer, such storage is accepted at the Customer's sole risk. The Customer shall at all times bear the sole risk of any loss, theft and/or damage to any semen and/or containers stored by EquiBreed at EquiBreed's semen storage facility and the Customer shall be solely responsible for insuring all semen stored by EquiBreed.
- 7.2 The Customer's "sole risk" in clause 6.1 means the receipt, custody and delivery of the semen and/or semen storage container and any handling thereof is undertaken by EquiBreed on the basis that the Customer carries the full risk of liability, with no recourse back to EquiBreed.

8. SEMEN DISPATCH

- 8.1 Prior to any semen being dispatched from EquiBreed's storage facility, the Customer must complete and execute a "Semen Request Form" (as produced by EquiBreed from time to time) and EquiBreed must be entirely satisfied with the Customer's completion and execution of such form.
- 8.2 All costs associated with each semen dispatch will be invoiced by EquiBreed and must be paid in full by the Customer prior to the semen being dispatched from EquiBreed's storage facility.
- 8.3 EquiBreed shall in no way be liable to the Customer for any loss or theft of, damage to, or defect found in, any semen or semen containers dispatched once such semen or semen containers leave EquiBreed's storage facility.

9. SEMEN DISPOSAL

- 9.1 Without limiting clause 5.1, where EquiBreed is or has been storing any semen for the Customer and the storage fees invoiced to the Customer by EquiBreed remains unpaid for more than 30 days from the date of the relevant invoice, EquiBreed reserves the right to sell, gift, destroy or otherwise dispose (**Dispose**) of such semen by whatever means it considers appropriate, with the net realised value of the semen Disposed of (if any) to be set-off against any monies owing by the Customer to EquiBreed and any balance being retained by EquiBreed.
- 9.2 The Customer indemnifies EquiBreed against all liabilities, costs, claims or demands arising out of or flowing from EquiBreed exercising the right of Disposal conferred upon it by clause 9.1.
- 9.3 EquiBreed may without notice to the Customer, destroy or otherwise dispose of any semen held or stored by EquiBreed where EquiBreed considers in EquiBreed's absolute discretion that:
- (a) any container, straw or other vessel in which the semen is held is damaged;
 - (b) the semen presents a risk or possible risk of escape or contamination; or
 - (c) the semen or any container, straw or other vessel in which the semen is held is, or may be, in breach of, or is likely to be in breach of, any relevant quarantine rule or procedure imposed by EquiBreed or any other competent authority.

10. EMBRYO, IVF AND SURROGATE SERVICES

- 10.1 Where EquiBreed provides to the Customer with any in vitro fertilization (IVF) or embryo transfer (ET) and surrogate services, the Customer acknowledges and agrees to the following:
- (a) All surrogate animals are owned by EquiBreed and shall at all times remain the property of EquiBreed. The Customer acknowledges that it is in the possession of the surrogate solely as bailee for EquiBreed and shall not be entitled to sell, lease or otherwise dispose of possession of the surrogate to any third party.
 - (b) The Customer shall ensure that at all times from the date the surrogate leaves EquiBreed's premises to the date it is returned following weaning of the foal, the surrogate remains healthy and disease free. The Customer shall be responsible for all costs relating to the surrogate's health and wellbeing during such period.
 - (c) The Customer shall immediately notify EquiBreed of any health or other issues arising in respect of the surrogate.
 - (d) In the event that a surrogate requires any veterinary services on its return to EquiBreed following weaning of the foal, which in EquiBreed's reasonable opinion are required as a result of any act or omission of the Customer, the Customer shall be responsible for the costs of any veterinary services and shall pay such costs on invoice from EquiBreed in accordance with clause 3.
 - (e) The Customer shall ensure that the Surrogate shall remain free of any security interest, charge, lien or encumbrance during such time as it is in the possession of the Customer.
 - (f) Unless otherwise notified by EquiBreed and without limiting clause 13, EquiBreed provides no representation or warranty as to the results to be achieved from any ET, IVF or surrogate services provided by EquiBreed.

11. OWNERSHIP

- 11.1 EquiBreed retains ownership in all Goods until the Customer has paid the full Price for the Goods and/or Services and all other monies owing by the Customer to EquiBreed.
- 11.2 The Customer grants EquiBreed and its servants or agents an irrevocable and perpetual licence to enter into any premises under the ownership or control of the Customer for the purposes of repossessing any Goods not paid for in full by the Due Date.
- 11.3 The Customer acknowledges that it is in possession of any Goods as bailee for EquiBreed until full payment for all Good and/or Services has been received. The Customer will hold the proceeds of sale of all Goods that have not yet been paid for in trust for EquiBreed.
- 11.4 Without limiting any other remedy of EquiBreed (whether in these Terms of Trade or otherwise), EquiBreed shall be entitled to a lien over all animals located at EquiBreed's premises to which Services are provided in respect of and/or all semen collected or stored by EquiBreed for any amounts outstanding from the Customer and further EquiBreed shall have the power to sell such animals or semen over which such a lien is taken to recover the amounts outstanding should the same not be paid in full within 30 days of the date of the relevant invoice. For this purpose the Customer appoints EquiBreed as its attorney with the power to sell the animal or semen if such amounts remain unpaid.

12. PERSONAL PROPERTY SECURITIES ACT 1999

- 12.1 Notwithstanding anything in clause 8, the parties acknowledge that the Customer grants EquiBreed security interests over:
- (a) all the Goods delivered to the Customer; and
 - (b) all the Customer's present and after acquired property, being all the Customer's personal property and all other property.
- 12.2 The Customer agrees to:
- (a) protect EquiBreed's retention of title provisions as provided in clause 11;
 - (b) if required by EquiBreed, cooperate in good faith with EquiBreed to execute the documentation required to register any security interest in favour of EquiBreed on the Personal Property Securities Register and protect EquiBreed's interest in the Goods and/or Services supplied; and
 - (c) waive any right to receive a copy of the verification statement, pursuant to s148 of the Personal Property Securities Act 1999.

13. WARRANTIES AND GUARANTEES

- 13.1 The Customer accepts that equine farming carries inherent risks and variables that are outside the control of EquiBreed and which may affect the results achieved through use of EquiBreed Goods and/or Services. EquiBreed does not give, and its employees, servants and agents do not have the authority to give, any representation or warranty of any sort, whether express or implied, as to the results and/or performance to be achieved or expected from Goods and/or Services supplied by EquiBreed.



- 13.2 Without limiting clause 13.1, in providing the Goods and/or Services, EquiBreed provides no representation or warranty as to the fertility of any animal.
- 13.3 If the Customer acquires the Goods and/or Services for a business purpose the Customer agrees that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 and the Sale of Goods Act 1908 are excluded and do not apply.
- 13.4 The Customer will indemnify and hold harmless EquiBreed from any liability arising from the Customer on-selling any Goods for a business purpose where the Customer fails to exclude the application of the Consumer Guarantees Act to such transaction.
- 14. LIMITATION OF LIABILITY**
- 14.1 EquiBreed shall not be liable for any loss, damage, injury or claim of any kind (including loss of profit, loss of bargain, loss of business opportunity, direct, indirect, consequential or special loss or damage) however caused (whether arising in contract, breach of contract, pre-contractual misrepresentation or other dispute arising out of these Terms of Trade, tort (including negligence), statute or otherwise) suffered by or made against the Customer, any third party or any animal and arising in connection with or flowing from any Good and/or Service supplied (including a total or partial supply failure or performance impairment) by EquiBreed.
- 14.2 Notwithstanding clause 14.1, in the event that EquiBreed is found to be liable for any loss, damage, injury or claim of any kind, then the liability of EquiBreed, whether arising in contract, tort (including negligence), statute or otherwise in any other circumstances whatsoever including in connection with Goods and/or Services supplied, shall not in any event exceed the net Price paid by the Customer in respect of the relevant Goods and/or Services or, at the sole discretion of EquiBreed, the replacement of such Goods and/or re-supply of such Services. In no circumstances whatsoever shall EquiBreed be liable to the Customer for any loss of profit, loss of bargain, loss of business opportunity, consequential, incidental or special loss or damage.
- 15. INDEMNITY**
- 15.1 The Customer indemnifies EquiBreed in respect of all liabilities, costs (including but not limited to full costs of any fees between solicitor and client or debt collection agency fees) claims, demands, disbursements and other expenses incurred by EquiBreed, arising out of or incidental to a breach of this contract or default, act or omission by the Customer.
- 16. CANCELLATION**
- 16.1 Orders for any Goods and/or Services placed with EquiBreed by the Customer cannot be cancelled without the written approval of EquiBreed. In the event that EquiBreed accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done or expenditure incurred on behalf of EquiBreed to the date of the cancellation in reliance on the order, including a fee for the processing and acceptance of the Customer's order and request for cancellation.
- 16.2 EquiBreed may cancel an order for Goods and/or Services at any time by EquiBreed giving the Customer written notice. The Customer shall indemnify EquiBreed against all claims and loss of any kind whatsoever however caused or arising as a result of this clause, brought by any person in connection with any cancellation by EquiBreed, its agents or employees in connection with the cancelled Goods and/or Services.
- 17. FORCE MAJURE**
- 17.1 EquiBreed will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms of Trade, provided that such failure is occasioned beyond the reasonable control and without the fault or negligence of EquiBreed.
- 18. TERMINATION**
- 18.1 If the Customer fails to pay any monies owing by the Due Date or in EquiBreed's opinion breaches these Terms of Trade in any other way whatsoever, commits any act of bankruptcy, or being a company does any act, which would render it liable to be wound up or has a receiver appointed over its property, EquiBreed may (without prejudice to any other remedies available to it) immediately suspend or terminate these Terms of Trade. The proportion Prices owing in respect of all Goods and/or Services will immediately fall due and payable (irrespective of whether the time for such payment is not yet due).
- 19. DISPUTE RESOLUTION**
- 19.1 In the event of any dispute between the parties in relation to these Terms of Trade (but excluding a dispute relating to payment of monies due) the parties will first seek to resolve such dispute by promptly giving notice to the other party and will co-operatively endeavour to resolve the dispute. If the dispute remains unresolved the parties will first seek a resolution through the use of mediation or other informal method of resolution before pursuing arbitration or resolution through the Courts.
- 20. NOTICES**
- 20.1 Every notice given under these Terms of Trade will be sufficiently given if delivered personally, posted or successfully transmitted by fax to the intended recipient at his/her or its last known address or facsimile number.
- 21. INDIVIDUAL LIABILITY AND GUARANTEES**
- 21.1 Where the Customer comprises more than one person carrying on business in partnership, each and every individual partner will be jointly and severally liable to EquiBreed in respect of all or any indebtedness or liability of the Customer arising out of these Terms of Trade.
- 21.2 Where the Customer is a limited liability company or other corporation, trust or partnership, in consideration for EquiBreed supplying any Goods and/or Services to the Customer, the director(s), trustee(s) or partner(s) who at any time sign their agreement to bind the limited liability company or other corporation, trust or partnership to these Terms of Trade also sign in their personal capacity as guarantors interposing and binding themselves as sureties and co-principal debtors with the Customer, jointly and severally, for the due and principal payment of all monies and performance of all obligations due by the Customer arising out of these Terms of Trade.
- 22. MISCELLANEOUS**
- 22.1 No alteration or variation of these Terms of Trade will be binding upon EquiBreed unless authorised by EquiBreed in writing.
- 22.2 EquiBreed may from time to time amend these Terms of Trade by giving the Customer notice in writing. Such notice in writing shall constitute authorisation for the purposes of clause
- 22.3 The Customer will not assign or otherwise transfer or encumber its rights or obligations under these Terms of Trade except with the prior written consent of EquiBreed.
- 22.4 No waiver of any provision of these Terms of Trade will serve as a waiver of any other provision of these Terms of Trade nor as a continuing waiver of such provision and EquiBreed will not have waived or deemed to have waived any provision of these Terms of Trade unless such waiver is in writing and executed by EquiBreed.
- 22.5 Should any part or provision of these Terms of Trade be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remaining of the Agreement will remain binding on the parties.