

CRY NZ LIMITED

Terms of Trade

1. AGREEMENT

1.1 The following terms entered into between you, the customer, (**You, Your**) and Cry NZ Limited (**We, Us, Our**) for the supply of Services form an agreement (**Terms**) between You and Us, and apply to the provision of all Services by Us to You from time to time.

2. DEFINITIONS

2.1 In these Terms the following defined terms apply:

Freezing Services receiving and preparing horse semen for freezing, and freezing semen horse semen (to produce a Product(s)).

Imported Product means a Product imported from overseas by Us at Your request.

Price means the price for the Services, or any booking fee, as specified by Us from time to time in Our sole discretion.

Product means frozen horse semen and/or embryos, and include Imported Product.

Services means the services provided by Us to You from time to time, including, but not limited to:

- (a) Freezing Services;
- (b) the collection, storage and delivery of Products; and/or
- (c) the sourcing, acquisition, shipping, collection, storage and delivery of Imported Products,

in accordance with these Terms.

Specified Day means any day where We are closed for business.

Working Day has the definition set out in the Property Law Act 2007.

Working Hours means the hours of 9am to 5pm on Working Days but excluding Specified Days.

3. ORDERS

3.1 All orders for Services must be placed on a Working Day that is not a Specified Day and at least 12 Working Hours prior to the time when the Services are required to be provided.

3.2 We may issue You quotes from time to time. The pricing set out in a quote will be valid for the period specified in the quote, or if no period is specified, 30 days from the date of the quote.

3.3 You may place an order for Services using any method accepted by us from time to time, which may include via telephone, email, website, text message or in writing.

3.4 All orders must be confirmed in writing by You by text message, email or via our website before we are able to undertake the Services.

3.5 You acknowledge that the acceptance of an order (in whole or in part), and the provision of the Services by Us, is subject at all times to Our sole discretion.

3.6 We will notify You in the event We do not accept all or part of an order received from You.

4. CANCELLATION

4.1 Subject to clause 4.2, any request for cancellation of an order for Services must be made on a Working Day that is not a Specified Day and no later than 12 Working Hours after the order is placed.

4.2 An order for Imported Product cannot be cancelled without Our express written consent.

4.3 A cancellation request made outside of the above parameters, the cancellation request may be accepted by Us at Our sole discretion.

5. PRICE AND PAYMENT

5.1 In placing an order for Services, You agree to pay the Price plus any additional charges that may be payable from time to time, in accordance with clause 5.5(b). Any payment for Services in advance shall be non-refundable.

5.2 We will issue You an invoice for the Price at the time the order is accepted, in accordance with the timing set out in this Agreement, or any other time determined by Us in Our sole discretion.

5.3 Unless We otherwise specify in writing, You will pay all invoices by cash, direct debit, electronic credit or telephone banking without deduction or set-off to Us by the 20th of the month following the date of invoice.

5.4 We may, prior to any order of Services pursuant to these terms, vary the time for payment of the Price and/or the Price at each payment date in respect of the Services to be supplied. In order to be effective any such variation must be specific and be in writing. Any such variation will not alter any other provision of these Terms.

5.5 You agree that all Prices must be paid:

- (a) in New Zealand dollars or as otherwise specified by Us in writing; and

- (b) plus GST and other taxes, duties, disbursements and expenses which may be applicable and any insurance, freight and handling charges.

5.6 Where the Services include the acquisition of an Imported Product, We may require You to pay a deposit of the purchase price for the Imported Product prior to Us placing the order for the Imported Product. The balance of the Price, including but not limited to the shipping and handling costs, will be invoiced to You at a later date as decided by Us in accordance with clause 5.2.

5.7 We reserve the right to keep Your creditworthiness under review at all times. If at any time, We deem that Your credit is unsatisfactory, or form the view that any current or future payments may be at risk under any relevant insolvency regime, We may require security for payment and You will make such security available.

5.8 You authorise:

- (a) Us to conduct all credit checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to Your credit, financial and business affairs and history as is reasonably required to assess Your credit position and as otherwise deemed necessary by Us from time to time; and
- (b) third parties to disclose to Us such information as We may reasonably require from time to time in respect of the above authorisation.

6. INTEREST AND COSTS ON OVERDUE ACCOUNTS

6.1 If You fail to pay monies by the due date, or breach this Agreement, We may (at Our sole discretion) do any one or more of the following:

- (a) charge interest on all overdue accounts at a rate of 1.5% per month calculated on a daily basis until it is all received in full by Us but without prejudice to all or any of Our rights and remedies under these Terms. Any payments received by Us will be applied firstly against any costs and expenses, then against such interest, and finally against any outstanding payments; and
- (b) obtain reimbursement from You of any legal costs (including all costs between solicitor and client), any other costs or expenses incurred in the recovery of an overdue debt; and
- (c) cease provision of the Services, refuse to provide any further Services to You or terminate this Agreement by providing notice in writing to You.

6.2 Where any payments owing by You to Us remain unpaid for six consecutive months, You will be deemed to have relinquished title of any Product which is in Our possession to Us, which We may then sell, use or dispose of at Our sole discretion.

7. FREEZING SERVICES

7.1 On receipt of an order for Freezing Services, We will dispatch a shipping container to You or Your nominated collection agent or facility (**Collection Agent**) as soon as reasonably practicable, together with instructions regarding the preparation of the horse semen for delivery, and delivery to Us (**Instructions**). You must, or where You use a Collection Agent You must ensure that the Collection Agent, strictly follows all of the Instructions.

7.2 On Our receipt of the horse semen from You or Your Collection Agent in the shipping container We have provided, We will inspect, test and analyse the horse semen, and You acknowledge some of the horse semen may be destroyed in this process. We may reject and destroy any horse semen that is not in the state or condition required by Our instructions, is in poor condition, is unsuitable for freezing, is in a shipping container that has been damaged, that has or may be contaminated or is or may be in breach of any relevant quarantine rule or procedure imposed by Us or any other authority (**Rejected**). We will notify you regarding any Rejected horse semen and provide copies of any readily available test results or reports on Your request. If horse semen is Rejected, any booking fee paid in advance is non-refundable, and We will not charge any further amounts in respect of the Rejected horse semen.

7.3 Where We receive horse semen and it is not Rejected, We will prepare and package it for freezing, and freeze it. Upon the horse semen being frozen, we will thaw one straw and inspect, test and analyse the horse semen for suitability for long term storage. If any material issues or risks are identified in respect of the horse semen (including without limitation regarding low motility or not surviving freezing) we will notify You and provide copies of any readily available test results or reports on Your request. You then may elect to have the horse semen destroyed (**Opt Out**) or continue with the Freezing Services, with such election to be notified to us within 3 Working Days after we first advise you of the issues or risks. Where you Opt Out, We will destroy the horse semen and any booking fee paid in advance is non-refundable, and We will not charge

any further amounts in respect of the horse semen that is subject to the Opt Out. If you do not Opt Out within the above timeframe, or no issues or risks are identified and notified to You, the horse semen will become Product for the purposes of this Agreement, and you will be charged the then current rate for the Freezing Services.

7.4 Where we dispatch a shipping container (**Shipping Container**) to You or Your Collection Agent, the Shipping Container shall remain Our property and will be provided with pre-paid courier labels. You must ensure the Shipping Containers are returned to Us as soon as possible, but in any event no later than three days after receipt of the Shipping Container by You or Your Collection Agent.

7.5 In the event the Shipping Container is not so returned, then We reserve the right to charge You our then current standard Shipping Container rental fee for each day that the Shipping Container is delayed.

7.6 The Container shall solely be used for the storage of horse semen during delivery to Us, and not used for the storage of horse or other semen, embryo's or any other items, or for any other purpose.

7.7 Shipping Containers are to be returned in the same condition as they were delivered to You or Your Collection Agent. In the event the Shipping Containers suffer any damage or are lost, then we may charge the Recipient for the cost to repair or replace the Shipping Container.

8. PRODUCT STORAGE

8.1 You may specify at the time You place an order for Services, or amend Your order for Services, where there are multiple Products to be stored in the performance of the Services, whether You would like the Products to be stored in two or more separate deep freeze containers (**Split Storage**). Such Split Storage may incur additional costs as decided by Us from time to time. If You do not specifically request Split Storage then Your Products will be stored in a single deep freeze container.

9. AUTHORITY

9.1 Where the ordered Services relate to Products which are not owned by You, or are partly owned by You, You warrant that You will obtain all authorities to enable You to comply with these Terms.

10. PRODUCT COLLECTION AND DELIVERY

10.1 This clause 10 applies in respect of Us arranging the collection and delivery of frozen Products. Clauses 7.4 to 7.7 (inclusive), rather than this clause 10, apply in respect of the delivery of horse semen to Us for the purpose of Us providing Freezing Services.

10.2 Subject to agreement otherwise between You and Us, We will collect (or arrange for collection of) the Product from the address specified in the order (**Nominated Port**) at Your cost. The Products will be deemed to have been collected when We have the Product in Our possession (but not any third party transport service provider that we engage to assist with collection). For the avoidance of doubt, You are unable to deliver Product direct to Our facility. Any collection or delivery will be in accordance with these terms, unless otherwise agreed.

10.3 We will only dispatch and deliver the Product to You or a person authorised by You to receive delivery of the Product (**Authorised Person**). For the avoidance of doubt, We are not permitted to sell the Product on Your behalf, and any sale of the Product to an Authorised Person are subject to terms and conditions to be negotiated between You and the Authorised Person.

10.4 All deliveries of Product are subject to Our Delivery Terms (attached in Schedule One) (**Delivery Terms**) which You agree to.

10.5 For the avoidance of doubt, We may arrange for third party transport services to collect Products where the Nominated Port is outside of the Waikato. In these circumstances, We are not liable for the handling and storage of the Product by the third party transport services.

10.6 Provision of the Services by Us is requested at Your sole risk. The receipt, storage, handling and delivery of any Product is undertaken by Us on the basis that You carry the full risk of liability, with no recourse to Us.

10.7 If the Product is damaged or lost in the course of collection, delivery or by any third party then We will notify You to discuss the supply of further Product. If Product is damaged or lost in the course of delivery to an Authorised Person, We will not re-deliver or replace that Product unless You agree in writing.

11. DISPOSAL OF PRODUCT

11.1 We may, without notice to You, destroy or otherwise dispose of any Product stored on Your behalf, or otherwise in our possession, where We consider (in Our absolute discretion):

- (a) the Product packaging is damaged;
- (b) the Product presents a risk or possible risk of escape or contamination;

(c) the Product is or may be in breach of or is likely to become in breach of any relevant quarantine rule or procedure imposed by Us or any other authority; or

(d) where this Agreement has been terminated, or where we have ceased the provision of Services.

11.2 You fully indemnify Us against all liability arising out of or flowing from Us exercising the right of disposal conferred upon Us by clauses 6.2 and 11.1.

12. IMPORTED PRODUCTS

12.1 We will arrange for the import of Imported Products from time to time, at Your request.

12.2 We make no representation as to the availability of any Imported Product requested by You.

12.3 For the avoidance of doubt, unless We agree otherwise in writing, We are not responsible for obtaining any consents or authorisations in relation to the import of the Imported Product, including but not limited to any quarantine requirements.

13. INFORMATION

13.1 In procuring any Service and/or in any dealing with Us generally, You acknowledge and agree that:

- (a) it is Your responsibility to ensure that all information supplied to Us (directly or indirectly) is valid, up to date, accurate and complete;
- (b) You warrant that all information supplied to Us by You (or Your agent) is valid, up to date, accurate and complete;
- (c) We provide no warranty that any information supplied to Us by You or any third party is valid, up to date, accurate and complete; and
- (d) without prejudice to Our other rights under these Terms or at law, where information received by Us (from any source) is not valid, up to date, accurate and complete, We will not be liable to You or any third party in relation to that Information not being valid, up to date, accurate and complete.

14. PRODUCT TESTING

14.1 Where We provide Services in respect of a Product and that Product has any quality testing undertaken in relation to it, You agree that, We will be entitled to copies of those test results. Accordingly, You agree to provide us, not later than 10 working days from the date of Our request to You:

- (a) a copy of the test results; or
- (b) where the test results are held by a third party (e.g. Your vet) any necessary authorisation to enable Us to obtain the test results from that third party.

15. EXCLUSION OF IMPLIED TERMS

15.1 Where the supply of Services to You under these Terms is in the course of Your business or trade:

- (a) the statutory guarantees contained in the Consumer Guarantees Act 1993 are excluded to the fullest extent permitted by law; and
- (b) where it is reasonable in the circumstances, Our obligations in sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are excluded to the fullest extent permissible by law.

15.2 Notwithstanding anything in these Terms to the contrary, where You are not acquiring Services from Us in the course of trade, such Services are subject to the Consumer Guarantees Act 1993 and/or Fair Trading Act 1986 and You are a consumer as that term is defined in those Acts, the statutory guarantees contained in the Consumer Guarantees Act 1993 and the obligations contained in the Fair Trading Act 1986 will apply and any restriction or limitation imposed or sought to be imposed by Us under these Terms is expressly excluded but only to the extent that the same are inconsistent with the provisions of those Acts.

16. INSURANCE

16.1 You are responsible for effecting and maintaining adequate insurance in respect of Your Products while they are in Our possession.

17. NO WARRANTY

17.1 You acknowledge that the provision of Services is subject to events and variables outside of Our control. To the extent permitted by law, and subject to clause 15, we do not give any warranty or representation of any sort as to the results or outcomes expected from the supply of the Services, or the Products handled by Us in the course of supplying those Services, including without limitation regarding fertility of semen, ability to bring about a pregnancy or quality of progeny.

18. LIMITATION OF LIABILITY

- 18.1 Where clause 15.1 applies, We will be under no liability whatsoever to You for any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages or losses suffered by You arising out of or flowing from any breach of contract, any pre-contractual misrepresentation or other dispute arising out of these terms of trade and whether actionable in contract, tort (including negligence), equity or otherwise.
- 18.2 If clause 15.1 applies and, notwithstanding clause 18.1, We are found liable for any loss or damage (including that set out in 18.1 above), Our liability will not exceed the price of the Services paid, or to be paid by You under these Terms, to which the liability relates, and is inclusive of all claims made against Us under these Terms.
- 19. INDEMNITY**
- 19.1 You will indemnify Us against all liabilities, costs (including full costs between solicitor and client), losses, claims or demands incurred by Us arising out of or incidental to Your non-compliance with these Terms.
- 20. CONFIDENTIALITY**
- 20.1 All intellectual property and other information belonging to You or Us (including but not limited to these Terms) which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of these Terms (**Confidential Information**). Information You provide to Us relating to You, the stallion owner, Collection Agent or third parties relating to the stallion, Products and Services will be Confidential Information.
- 20.2 You will not without Our prior written consent disclose any Confidential Information to any third party. We will not without Your prior written consent disclose any Confidential Information to any third party, other than as required to perform the Services, including without limitation Your Collection Agent, delivery providers, veterinarian or other third parties that We reasonably require.
- 20.3 We also provide Product marketing services, under separate terms and conditions, please contact Us if you require this Service.
- 21. DISPUTE RESOLUTION**
- 21.1 In the event of any dispute between the parties in relation to these Terms the parties will first seek to resolve such dispute by promptly giving notice of such dispute to the other party and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved the parties will then seek a resolution through the use of mediation prior to seeking resolution through the Courts.
- 22. MISCELLANEOUS**
- 22.1 **Amendments:** We may amend these Terms at any time, by notifying you in writing. Your continued ordering of Services from Us will be deemed acceptance of the changes.
- 22.2 **Intellectual Property:** The provision of a party's intellectual property for use by the parties pursuant to these Terms will in no way alter the proprietary rights of a party in relation to its intellectual property. Unless otherwise agreed between the parties in writing, each party will retain ownership of its intellectual property.
- 22.3 **Force Majeure:** We will not be liable for delay or failure in the performance of any of the obligations imposed by these Terms, provided that such failure will be occasioned beyond the reasonable control and without the fault or negligence of Us.
- 22.4 **Governing Law:** These Terms are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 22.5 **Notices:** Any notices required to be given by the parties pursuant to these Terms will be given at the addresses set out in the parties' description, the parties' registered address or other address notified from time to time.
- 22.6 **Assignability:** You will not assign or otherwise transfer or encumber its rights or obligations under these Terms except with Our prior written consent.
- 22.7 **Entire Agreement:** These Terms, together with the Delivery Terms, constitute the sole understanding of the parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.
- 22.8 **Waiver:** No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms nor as a continuing waiver of such provision and We will not have waived or deemed to have waived any provision of these Terms unless such waiver is in writing and executed by Us.
- 22.9 **Survivorship:** Termination of these Terms for any reason will not affect such rights and obligations of the parties as are intended to survive the termination.
- 22.10 **Variation:** No alteration or variation of these Terms will be binding on Us unless We authorise in writing.
- 22.11 **No partnership:** These Terms do not create any relationship of partnership, agency or joint venture between the parties.
- 22.12 **Severability:** Should any part or provision of these Terms be held unenforceable or in conflict with any applicable laws or regulations, 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 remainder of these Terms will remain binding on the parties.

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