

CRY NZ LIMITED

Delivery Terms

1. AGREEMENT

- 1.1 Cry NZ Limited (**We, Us, Our**) have entered into an agreement for services in relation to the storage of horse semen and embryo's (**Products**) with a third party supplier (**Supplier**).
- 1.2 The dispatch and delivery of the Products to a Supplier are subject to these Delivery Terms.
- 1.3 In addition, a Supplier may authorise third parties to receive delivery of the Products (**Authorised Person**), provided that particular terms and conditions have been satisfied. Dispatch and delivery of the Products to an Authorised Person are also subject to these Delivery Terms.
- 1.4 If these Delivery Terms apply between Us and a Supplier, and they conflict with the Terms of Trade between Us and the Supplier, the parties agree that the Terms of Trade shall prevail.

2. DEFINITIONS

- 2.1 In these Terms the following defined terms apply:
 - Authorised Person** means a person authorised by the Supplier to place a Dispatch Request in relation to the Products.
 - Price** means the price payable for the dispatch and delivery of the Product as specified by Us from time to time.
 - Product** means frozen horse semen and/or embryos owned by the Supplier that are stored at Our facility.
 - Recipient** means the person who has placed the Dispatch Notice, being either the Supplier or their Authorised Person.
 - 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. AUTHORISATION

- 3.1 To be an Authorised Person, the Supplier must have provided written notice to Us, in a form entirely acceptable to Us, that the Authorisation Person is so authorised, and any restrictions regarding the authorisation, for example, the maximum number of Products that may be dispatched and delivered to the Authorised person (**Authorisation Notice**).

4. REQUEST FOR DISPATCH

- 4.1 The Recipient may request the dispatch of Products via any communication method accepted by Us from time to time which may include telephone, text message, email or Our website (**Dispatch Request**).
- 4.2 All Dispatch Requests must be confirmed in writing by the Recipient by text message, email or via our website before we are able to dispatch and deliver the Products.
- 4.3 We will notify the Recipient where We are unable to complete dispatch and delivery of the Products set out in the Dispatch Request for any reason, including without limitation where such person is not an Authorised person, or the Dispatch Notice is not consistent with the Authorisation Notice, and We will not be liable for any loss caused.
- 4.4 Where the Dispatch Notice is placed by an Authorised Person, the Authorised Person acknowledges that the Products are sold by the Supplier, not Us, and that We are merely responsible to arrange dispatch and delivery of the Products.
- 4.5 The Recipient cannot cancel a Dispatch Request once received by Us, unless we agree in writing.

5. DELIVERY

- 5.1 Subject to compliance with clause 4, unless otherwise agreed between Us and the Recipient, We will arrange for dispatch and delivery of the Product from Us to the person and address specified in the Dispatch Request at the Recipient's cost. Where an Authorised Person has placed the Dispatch Request, the Authorised Person acknowledges that the Authorisation Notice may require delivery of the Products to a specified vet.
- 5.2 We will use reasonable endeavours to dispatch the Product in accordance with the timing set out in the Dispatch Request, provided that the Dispatch Request has been provided to Us on a Working Day that is not a Specified Day, and at least 12 Working Hours prior to the time of the requested dispatch.
- 5.3 The Products will be deemed to have been delivered when We provide the Products to a third party transport agent.
- 5.4 We will not be responsible for any Product while in transit, including without limitation damage, loss or otherwise, after the Products have been provided to the third party transport agent. Dispatch and delivery of the Products by Us is at the Recipient's sole risk.
- 5.5 In the event that the Product is damaged or lost in the course of delivery or by any third party then the Recipient must notify Us immediately. For the

avoidance of doubt, where the Recipient is an Authorised Person, any replacement Product shall be on terms agreed between the Authorised Person and the Supplier. We shall not be liable for the cost or replacement of such Product.

- 5.6 The Recipient is responsible to effect and maintain adequate insurance in respect of the Products while they are in transit, if they require such insurance.

6. DELIVERY CONTAINERS

- 6.1 We will package the Product into a deep freeze shipping containers (**Shipping Container**) prior to dispatch. The Shipping Container shall remain Our property and will be provided with pre-paid courier labels. The Recipient 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 the person specified in the Dispatch Request.
- 6.2 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.
- 6.3 The Container shall solely be used for the storage of the Product during delivery. Upon receipt of the Shipping Container the Recipient must remove the Product from the Shipping Container and place it into a storage container owned by the Recipient. The Recipient shall not use the Shipping Container for the storage of the Product, the transport of any other semen, embryo's or other items, or for any other purpose.
- 6.4 Shipping Containers are to be returned in the same condition as they were delivered to You. 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.

7. PRICE AND PAYMENT

- 7.1 By accepting these Delivery Terms, the Recipient agrees to pay the Price plus any additional charges that may be payable to Us as set out herein from time to time.
- 7.2 We will issue an invoice to the Recipient for the Price at or about the time that the Products set out in the Dispatch Request are dispatched. We may also issue additional invoices in relation to any additional charges set out in these Delivery Terms from time to time in Our sole discretion.
- 7.3 Unless We otherwise specify in writing, You will pay all invoices that we issue, using a payment method accepted by Us, in cleared funds without deduction or set-off by the 20th of the month following the date of invoice.
- 7.4 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.

8. INTEREST AND COSTS

- 8.1 If the Recipient fails to pay any amount invoiced or otherwise due to Us prior to the due date We may (at Our sole discretion) do any one or more of the following:
 - (a) charge interest at a rate of 1.5% per month calculated on a daily basis until payment is 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 or refuse to provide any further dispatch or delivery services to You.

9. PRODUCT TESTING

- 9.1 Where We dispatch and deliver Products to You and that Product has any quality testing undertaken in relation to it, You agree that, We will be entitled to take and maintain copies of those test results. Accordingly, the Recipient agrees 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.

10. EXCLUSION OF IMPLIED TERMS

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- 10.1 The Recipient acknowledges that We are not selling the Products, but are merely arranging the dispatch and delivery of them. As such, any issues regarding the nature or quality of the Product should be directed to the Supplier.
- 10.2 Where the supply of dispatch and delivery services to the Recipient are provided 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.
- 10.3 Notwithstanding anything in these Delivery Terms to the contrary, where the Recipient is not acquiring the delivery and dispatch 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 the Recipient is 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 Delivery Terms is expressly excluded but only to the extent that the same are inconsistent with the provisions of those Acts.
- 11. LIMITATION OF LIABILITY**
- 11.1 If clause 10.1 applies, notwithstanding anything else in these Terms, We will be under no liability whatsoever to You for any direct loss, 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.
- 11.2 If clause 10.1 applies, and, notwithstanding clause 11.1, We are found liable for any loss or damage (including that set out in 11.1 above), Our liability will not exceed the Price paid by You to Us under these Delivery Terms, and is inclusive of all claims made against Us.
- 12. INDEMNITY**
- 12.1 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.
- 13. MISCELLANEOUS**
- 13.1 **Amendments:** We may amend these Terms at any time. The amended Terms will be posted on Our website, and Your continued issue of Dispatch Notices to Us will be deemed acceptance of the changes.
- 13.2 **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.
- 13.3 **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.
- 13.4 **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.
- 13.5 **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.
- 13.6 **Assignability:** You will not assign or otherwise transfer or encumber its rights or obligations under these Terms except with Our prior written consent.
- 13.7 **Entire Agreement:** These 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.
- 13.8 **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.
- 13.9 **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.
- 13.10 **Variation:** No alteration or variation of these Terms will be binding on Us unless We authorise in writing.
- 13.11 **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.