



**TRADING TERMS AND CONDITIONS FOR EQUINE NUTRITION SYSTEMS PTY LTD
TRADING AS HORSEPOWER**

1. PARTIES:

The Supplier: Equine Nutrition Systems Pty Ltd (ACN 010 502 977) Trading as
Horsepower

The Customer: _____

2. DEFINITIONS

- 2.1. The Supplier is Equine Nutrition Systems Pty Ltd (ACN 010 502 977) Trading as Horsepower of 1/17 Rob Place, Vineyard NSW 2756.
- 2.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 2.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 2.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 2.5. The Goods are the products and/or components and/or equipment provided by the Supplier.
- 2.6. The Services are all the delivery and/or supply of Goods by the Supplier, including any advice or recommendations.
- 2.7. The Price is the amount invoiced for Goods supplied.
- 2.8. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 2.9. Invoices include invoices for Goods supplied or Services provided, or both.

3. GENERAL

- 3.1. These Terms and Conditions together with the Supplier's written or verbal quotation and the Supplier's Credit Application Form forms this Agreement.

- 3.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions notwithstanding any inconsistencies which may be introduced in the Customer Order or acceptance unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 3.7. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 3.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 3.9. The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 3.10. The Customer acknowledges that the Supplier may place these Terms and Conditions on its website and that it is under no obligation to provide notice to the Customer of any amendments. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

4. PLACEMENT OF ORDERS

- 4.1 Orders placed by the Customer with the Supplier will be considered valid when placing the Order by email, verbally and / or in writing.

5. PRICE

- 5.1. At the Supplier's sole discretion the Price shall be either:
 - 5.1.1. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied; or
 - 5.1.2. The Supplier's quoted Price as for the Order (subject to clause 5.2).
- 5.2. The Supplier reserves the right to change the Price in the event of a variation to the Supplier's Order, and notice will be provided in writing by the Supplier within a reasonable time.

6. SUPPLY AND DELIVERY OF GOODS

- 6.1. The Supplier reserves their right to:
 - 6.1.1. Decline requests for any Goods requested by the Customer.
 - 6.1.2. Cancel or postpone the delivery of Goods at their discretion.
- 6.2. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 6.3. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a \$33.00 Non Delivery Fee and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage.
- 6.4. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods at specific times requested by the Customer during the term of this Agreement.
- 6.5. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations of those Goods.
- 6.6. In the discharge of its duties, the Supplier shall comply with all reasonable resolutions, regulations and directions of the Customer that may lawfully be given from time to time as to the nature and scope of the Goods to be provided.
- 6.7. Nothing in the above clause shall effect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.

7. PAYMENT AND CREDIT POLICY

- 7.1. Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.
- 7.2. Customers must make full payment to the Supplier within fourteen (14) days from the date of issue of invoice(s) for the Goods.
- 7.3. Customers who make payments made through credit card will incur a processing fee of 1.5% of the price on the invoice.

Credit

- 7.4 Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 7.5 Any credit granted may be revised by the Supplier at any time and at its discretion.
- 7.6 The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 7.7 The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

8. DISHONOUR OF CHEQUE

- 8.1. If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:
 - 8.1.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;
 - 8.1.2. The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
 - 8.1.3. The Customer may be liable for a dishonoured cheque fee of \$40.00.

9. DEFAULT

- 9.1. Invoices issued by the Supplier shall be due and payable within fourteen (14) days of the date of issue for Account Customers ("Default Date") depending on terms agreed with the Supplier. Without prejudice to any other rights of the Supplier, the Customer may be charged account keeping fees of \$25.00 monthly on any payment in arrears.
- 9.2. If the Supplier does not receive the Outstanding Balance for the Goods on or before the

Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:

- 9.2.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
- 9.2.2. In the event of the Customer being in default of the obligation to pay and the overdue account is then referred to a debt collection agency, or law firm for collection the commission payable and legal costs incurred on an indemnity basis shall be added to the amount outstanding and form part of the debt and in the event where the collection agency charges commission on a contingency basis the commission which would be charged if it achieved 100% recovery shall be added to the debt and the total shall be treated as a liquidated sum

10. RISK AND LIABILITY

- 10.1. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.
- 10.2. The Supplier takes no responsibility if the specifications are wrong or inaccurate and the Customer will be liable for the expenses incurred by the Supplier for any work required to rectify the Order.
- 10.3. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and that the Supplier relies upon the integrity of the information supplied to it.
- 10.4. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.
- 10.5. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer.
- 10.6. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from :
 - 10.6.1. Any claims in respect of faulty Goods supplied.
 - 10.6.2. Physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of supply of the Goods.
- 10.7. Except as provided in these conditions all express and implied warranties, guarantees and conditions under statute or general law as to merchantable quality, description,

quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise is expressly excluded.

10.8. The Supplier does not represent that it will carry out any Services and/or provide and/or deliver any Goods unless it is included in the Quote.

11. WARRANTY

Warranty for Goods

11.1. The warranty for Goods supplied shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.

11.2. The Customer agrees to be responsible for all amounts owing to the Supplier in the event that any Goods are supplied on the basis that a manufacturer's warranty is in place and it subsequently becomes known to the parties that the warranty is void or inapplicable.

11.3. Warranty for Goods shall only cover the cost of Goods. The Customer acknowledges that additional costs incurred, such as labour and/or freight, must be borne by the Customer.

11.4. If the Customer is in default of any payment to the Supplier after a written request has been made, the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty.

12. RETURN OF GOODS

12.1 The Supplier will not accept the return of Goods after twenty-one (21) days from the date of delivery.

12.2 If the Customer does not advise the Supplier of any failure of the Goods to comply with the description and quality ordered made pursuant to these conditions within twenty-one (21) days from the date of delivery, the Customer is deemed to have accepted the Goods and is deemed to agree that the Goods comply with terms of the Agreement made pursuant to these terms and conditions.

12.3 All Goods where a claim is made are to be returned to the Supplier in which they were delivered. If the Goods are not so left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and pay the price as stated in the invoice.

12.4 The Customer will be responsible for any freight costs associated with the return of the Goods. The Customer shall inspect the Goods on delivery and shall notify the Supplier in writing within twenty-one (21) days of delivery of the Goods, of any alleged defect, shortage in quantity, damage or failure of the Goods to comply with the description or quote.

13. RETENTION OF TITLE

13.1 While the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading), legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Pending such payment the Customer:

13.1.1 Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.

13.1.2 Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Good whilst they are in the Customer's possession.

13.2 The Supplier reserves the right to enter the Customer's premises without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.

14. TERMINATION AND CANCELLATION

Cancellation by Supplier

14.1. The Supplier may cancel any Order to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered provided by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.

14.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:

14.2.1. Any money payable to the Supplier becomes overdue; or

14.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

14.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

14.3. Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.

14.4. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

14.5. If the Customer places an Order with the Supplier and the Supplier places an Order with a third party Supplier to meet the Customer's request, the Customer shall be liable for the Price of the Goods ordered if the Customer cancels the Order and the Goods have already been dispatched.

Limitation of damage

14.6 The Customer acknowledges that in the event of any breach of this Agreement/Order by the Supplier including indirect, special or consequential loss, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price.

15. SET-OFF

15.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.

15.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

16. INSURANCE

16.1. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

17. AGREED USE

17.1 The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if:

- 17.1.1 The Goods are applied for any other use to which the Goods are not intended for and/or not in accordance with any applicable manual;
- 17.1.2 Any alteration to the Goods is carried out other than in accordance with intended alterations and/or the Goods are not repaired by an authorized repairer.
- 17.2 The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way, which the Customer may forfeit their rights against the Supplier.
- 17.3 The Customer acknowledges that they have no relied on any representation or warranty from the Supplier with respect to the merchantable quality, description, quality, suitability or fitness of the Goods.

18. JURISDICTION

- 18.1. This Agreement is deemed to be made in the State of New South Wales and all disputes hereunder shall be determined by the appropriate courts of New South Wales.

19. ENTIRE AGREEMENT

- 19.1. The Terms and Conditions set out in this Agreement constitute the whole Agreement made between the Customer and the Supplier.
- 19.2. This Agreement can only be amended in writing signed by each of the parties.
- 19.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 19.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition And Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:

POSITION HELD:.....

SIGNATURE:

DATE:/...../200...

NAME:

POSITION HELD:.....

SIGNATURE:

DATE:/...../200...

WITNESS NAME:

ADDRESS:.....

.....

SIGNATURE:

DATE:/...../200...

GUARANTEE

We each of the undersigned, for ourselves, our respective executors and administrators jointly and severally agree that if at any time the Customer shall default in any part of its performance of this Agreement, we will on demand by the Supplier pay, to the Supplier the whole of the monies owed by the Customer to the Supplier and we will keep the Supplier indemnified against all losses, costs, charges and expenses whatsoever which the Supplier may incur by any default on the part of the Customer. This is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on the part of the Supplier enforcing payment of any of the monies owed.

We acknowledge, by signing this Guarantee, that we have read and understood the Terms and Conditions and that we have consulted our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Agreement.

Guarantor 1:

Name:

Address:

Contact Number (H)

Contact Number (M)

Signature :

Guarantor 2:

Name:

Address:

Contact Number (H)

Contact Number (M)

Signature

DATED this day of 20....