

The Oaks Stud – Terms & Conditions of Trade

1. Definitions

- 1.1 "Stud" means Karreman Racing Pty Ltd (as Trustee for) Karreman Racing Trust T/A The Oaks Stud, its successors and assigns or any person acting on behalf of and with the authority of Karreman Racing Pty Ltd (as Trustee for) Karreman Racing Trust T/A The Oaks Stud.
- 1.2 "Owner" means the owner of any Mare (or any person acting on behalf of and with the authority of the Owner), who requests the Stud to provide the Services as specified in any invoice, document or order. If there is more than one person requesting the Services, it is a reference to each person jointly and severally.
- 1.3 "Mare" shall mean the Mare described on the Service Contract.
- 1.4 "Services" shall mean all services supplied by the Stud to the Owner, at the Owner's request from time to time (including any advice or recommendations), and are as described on the invoice, quotation, or any other forms as provided by the Stud to the Owner.
- 1.5 "Incidental Items" means any documentation or goods supplied, utilised or consumed incidentally by the Stud in the course of it conducting, or supplying to the Owner, any Services.
- 1.6 "Fee" means the cost of the Services as agreed between the Stud and the Owner subject to clause 5 of this contract. The Fee shall include, but not be limited to stud fees, foaling fees and agistment fees.

2. General

- 2.1 Should the Mare leave the Stud before the expiry date of the forty-two (42) day period, the Owner agrees that it is their responsibility to see that the forty-two (42) day certificate reaches the Stud within ten (10) days of the forty-two (42) day period, and the Owner will pay such sums due to the Stud within fourteen (14) days of receiving an invoice therefore. The Owner agrees that, should they fail to supply the necessary certificate as above, then the full Fee will be due and payable prior to 31st March of the following year.
- 2.2 In special cases where the Mare and/or foal has to be boxed and/or supplemented for veterinary, or other, reasons, then an extra charge will be made over and above the normal daily charge.
- 2.3 The Owner:
 - (a) is responsible for, and will pay, all veterinary fees and charges on the Mare and foal. The Mare and/or progeny shall under the care of the Stud and/or their veterinarian while at the Stud, and may receive such treatments and examinations as they shall in their absolute discretion prescribe;
 - (b) acknowledges that the Stud has a discretionary right to refuse to provide the Services to any Mare;
 - (c) will supply the Stud with the fully completed "MARE PROFILE" prior to her arrival at the Stud.
- 2.4 The Stud will provide all care, good husbandry and attention to the Mare and/or progeny (e.g. expertise, attention to feet, teasing, mating, general health, etc.), but shall not be liable for any loss, damage or claims of whatsoever nature, or howsoever arising from injury, sickness, disease or death caused to, or sustained by the mare and/or progeny whilst under the Stud's care, or the control of its servants or agents.
- 2.5 Insurance requirements must be specified by the Owner. Cover will not automatically be effected and instructions are the sole responsibility of the Owner.
- 2.6 The Owner agrees that this nomination is non-transferable.

3. Acceptance

- 3.1 The Owner is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Owner places an order for, or accepts Services provided by the Stud.
- 3.2 These terms and conditions may only be amended with the Stud's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Owner and the Stud.

4. Change in Control

- 4.1 The Owner shall give the Stud not less than fourteen (14) days prior written notice of any proposed change of ownership of the Owner and/or any other change in the Owner's details (including but not limited to, changes in the Owner's name, address, contact phone or fax number/s, or business practice). The Owner shall be liable for any loss incurred by the Stud as a result of the Owner's failure to comply with this clause.

5. Fee and Payment

- 5.1 At the Stud's sole discretion the Fee shall be either:
 - (a) as indicated on any invoice provided by the Stud to the Owner; or
 - (b) the Fee as at the date of delivery of the Services according to the Stud's current Fee list; or
 - (c) the Stud's quoted Fee (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Stud reserves the right to change the Fee if a variation to the Stud's quotation is requested.
- 5.3 At the Stud's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Fee will be payable by the Owner on the date/s determined by the Stud, which may be:
 - (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Owner by the Stud.

- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Owner and the Stud.
- 5.6 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Owner must pay to the Stud an amount equal to any GST the Stud must pay for any supply by the Stud under this or any other agreement for providing the Stud's Services. The Owner must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Owner pays the Fee. In addition the Owner must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

6. Delivery of Services

- 6.1 Any time specified by the Stud for delivery of the Services is an estimate only and the Stud will not be liable for any loss or damage incurred by the Owner as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Stud is unable to supply the Services as agreed solely due to any action or inaction of the Owner then the Stud shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

7. Title

- 7.1 The Stud and the Owner agree that where it is intended that the ownership of Incidental Items is to pass to the Owner that such ownership shall not pass until:
 - (a) the Owner has paid the Stud all amounts owing for the Services; and
 - (b) the Owner has met all other obligations due by the Owner to the Stud in respect of all contracts between the Stud and the Owner.
- 7.2 Receipt by the Stud of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Stud's ownership or rights in respect of the Incidental Items shall continue.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Owner acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Incidental Items previously supplied by the Stud to the Owner (if any) and all Incidental Items that will be supplied in the future by the Stud to the Owner.
- 8.2 The Owner undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Stud may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Stud for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Stud.
- 8.3 The Stud and the Owner agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Owner waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Stud, the Owner waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Owner shall unconditionally ratify any actions taken by the Stud under clauses 8.1 to 8.5.

9. Owner's Disclaimer

- 9.1 The Owner hereby disclaims any right to rescind, or cancel any contract with the Stud or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Owner by the Stud and the Owner acknowledges that the Services are bought relying solely upon the Owner's skill and judgment.

10. Consumer Guarantees Act 1993

- 10.1 If the Owner is acquiring Services for the purposes of a trade or business, the Owner acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Stud to the Owner.

11. Default and Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Stud's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Owner owes the Stud any money the Owner shall indemnify the Stud from and against all costs and disbursements incurred by the Stud in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Stud's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies the Stud may have, if at any time the Owner is in breach of any obligation (including those relating to payment) under these terms and conditions the Stud may suspend or terminate the supply of Services to the Owner. The Stud will not be liable to the Owner for any loss or damage

the Owner suffers because the Stud has exercised its rights under this clause.

- 11.4 Without prejudice to the Stud's other remedies at law the Stud shall be entitled to cancel all or any part of any order of the Owner which remains unfulfilled and all amounts owing to the Stud shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Stud becomes overdue, or in the Stud's opinion the Owner will be unable to make a payment when it falls due;
 - (b) the Owner 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Owner or any asset of the Owner.

12. Cancellation

- 12.1 The Stud may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Owner. On giving such notice the Stud shall repay to the Owner any money paid by the Owner for the Services. The Stud shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Owner cancels delivery of the Services the Owner shall be liable for any and all loss incurred (whether direct or indirect) by the Stud as a direct result of the cancellation (including, but not limited to, any loss of profits).

13. Privacy Act 1993

- 13.1 The Owner authorises the Stud or the Stud's agent to:
 - (a) access, collect, retain and use any information about the Owner;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Owner's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Owner.
 - (b) disclose information about the Owner, whether collected by the Stud from the Owner directly or obtained by the Stud from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Owner.
- 13.2 Where the Owner is an individual the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 13.3 The Owner shall have the right to request the Stud for a copy of the information about the Owner retained by the Stud and the right to request the Stud to correct any incorrect information about the Owner held by the Stud.

14. Lien

- 14.1 In the event that:
 - (a) the Stud retains possession or control of the Mare; and
 - (b) payment of the Fee is due to the Stud; and
 - (c) the Stud has made demand in writing of the Owner for payment of the Fee in terms of this contract; and
 - (d) the Stud has not received the Fee, then
 - (e) the Stud may dispose of the Mare and may retain all or part of the proceeds of the disposal in payment of the Fee and may claim from the Owner the loss to the Stud on such disposal.

15. Miscellaneous

- 15.1 The failure by the Stud to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Stud's right to subsequently enforce that provision. 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Court.
- 15.3 The Stud shall be under no liability whatsoever to the Owner for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Owner arising out of a breach by the Stud of these terms and conditions (alternatively the Stud's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Services).
- 15.4 The Owner shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Owner by the Stud nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 The Stud may license or sub-contract all or any part of its rights and obligations without the Owner's consent.
- 15.6 The Owner agrees that the Stud may amend these terms and conditions at any time. If the Stud makes a change to these terms and conditions, then that change will take effect from the date on which the Stud notifies the Owner of such change. The Owner will be taken to have accepted such changes if the Owner makes a further request for the Stud to provide Services to the Owner.
- 15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8 The Owner warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.