

# BELJAY PERFORMANCE HORSES

## GENERAL TRADING TERMS

### DEFINITIONS

**Admission Form** means Beljay's 'Breeding Admission and Consent Form' which incorporates these general trading terms.

**Agreement** means the Breeding Contract and either the Admission Form or the Semen Request Form as the case may be.

**Beljay** means Beljay Performance Horses ABN 40 038 998 513.

**Breeding Contract** means the documented agreement between Beljay and the Client or between the owner of a Stallion standing at Beljay's farm and the Client, which incorporates these general trading terms.

**Breeding Fee** means the service fee charged by the owner of the Stallion to breed the Mare.

**Client** means the individual or person who has requested Beljay to supply Services under the Admission Form or the Semen Request Form.

**Delivery Address** means the delivery address of the chilled or frozen Semen ordered by the Client.

**Mare** means the mare nominated for breeding to the Stallion in the Admission Form, and includes any unweaned foal alongside.

**Semen** means semen of a Stallion.

**Semen Request Form** means Beljay's Chilled Semen Request Form signed by the Client, which incorporates these general trading terms.

**Services** means all or any of the following:

- supply chilled or frozen semen of a Stallion to breed a Mare;
- breed a Mare to a Stallion by natural service or artificial insemination;
- foal down a Mare and re-breed her to a Stallion by natural service or artificial insemination; and
- agist the Mare for the purposes of breeding her.

**Stallion** means a stallion standing at Beljay and selected to breed to the Mare, as indicated by the Client in the Breeding Contract.

**Stallion Owner** means the owner of a Stallion not owned by Beljay but standing at Beljay's Farm.

### CHILLED AND FROZEN SEMEN SUPPLY

Beljay will supply 1 dose of Semen to the Client. The Client must give Beljay at least 48 hours prior notice of the day the Semen is due at the Delivery Address.

The Semen must be used to breed 1 foal to the Mare and not used to breed any other mare or to breed more than 1 foal. Any breeding by embryo transfer using the Semen which results in more than 1 foal will incur a Breeding Fee for each additional foal. On request by Beljay, the Client must give Beljay any information and material concerning the use and whereabouts of the Semen.

When the Semen begins its journey to the Delivery Address, ownership of it and the risk of its loss and damage passes to the Client.

### BREEDING THE MARE AT BELJAY

The Client must ensure that on arrival at Beljay, the Mare is (and the Client warrants she is): halter broken, able to be led, currently vaccinated for tetanus and strangles, currently wormed, free of illness, injury or disease (save as expressly

disclosed in writing to Beljay), totally unshod and (to the best of the Client's knowledge) fertile and capable of breeding.

If the Mare's suitability for breeding was not established by production of a negative clitoral swab taken within the last 28 days prior to her arrival, Beljay may swab the Mare, at the Client's cost. If Beljay decides that the Mare is not a likely breeder for any reason, the Client must either remove the Mare within 3 days after a request to do so or, if Beljay consents, agist the Mare until she becomes likely to breed – and in either case pay Beljay's agistment costs.

The Client authorises Beljay, its staff and agents to do all things necessary or incidental to breeding the Mare such as scan, swab, inseminate and administer medicines.

The Mare will be covered by the Stallion the number of times that are likely to result in a positive pregnancy test. If Beljay believes, however, that the Mare poses an unacceptable risk to her handlers or the Stallion, or that any further attempts to cover the Mare would be unlikely to result in a positive pregnancy test, it may stop and desist from breeding the Mare and request the Breeder to remove her. In such a case, the breeding fee is not refundable in whole or part.

### FREE RETURN (LIVE FOAL GUARANTEE) – SEMEN SUPPLY

Beljay will supply the Client with 1 further dose of Semen, but may supply more than 1 dose in its absolute discretion.

The Client may re-book the Mare for the next breeding season only.

The Client is not liable to pay a further Breeding Fee, but must pay the costs and expenses of collection and shipment of the Semen.

The free return is personal to the Client and may not be transferred or assigned to anyone.

The free return is conditional on:

- the Client having used a qualified and experienced AI vet or technician to inseminate the Mare;
- the Client maintaining the Mare's pregnancy with proper care and veterinary attention as required;
- the Client giving Beljay within 1 week of the death of the foal (1) satisfactory evidence (autopsy report) that the Mare failed to produce a live foal (one that stands and sucks for 48 hours) and (2) a vet certificate stating that the Mare is suitable for re-breeding by artificial insemination;
- the Client retaining no unused Semen;
- assuming the Mare is alive, the Client remaining the owner of the Mare;
- Beljay possessing, or being able to arrange collection of, Semen for re-breeding the Mare in the next breeding season;
- the Client owing no money to Beljay; and
- nothing occurring which prevents collection of Semen or renders it inadvisable, such as the Stallion's death, injury, illness or disease.

### FREE RETURN (LIVE FOAL GUARANTEE) – MARE BRED AT BELJAY

Beljay will supply the Client with 1 further live cover but may supply more than 1 live cover in its absolute discretion.

The Client may re-book the Mare for the next breeding season only.



The Client is not liable to pay a further Breeding Fee, but must pay a new non-refundable booking fee, agistment and veterinary fee and charges.

The free return is conditional on:

- the Client maintaining the Mare's pregnancy with proper care and veterinary attention as required;
- the Client giving Beljay within 1 week of the death of the foal: (1) satisfactory evidence (autopsy report) that the Mare failed to produce a live foal (one that stands and sucks for 48 hours) and (2) a vet certificate stating that the Mare is suitable for re-breeding by artificial insemination;
- assuming the Mare is alive, the Client remaining the owner of the Mare;
- Beljay standing the Stallion the next breeding season;
- the Client owing no money to Beljay; and
- nothing occurring which prevents standing the Stallion in the next breeding season such as the Stallion's death, injury, illness or disease.

#### BREEDING CERTIFICATE

If:

- all money payable by the Client to Beljay and to any third person relating to collection and shipment of the Semen and medical attention given to the Mare is paid; and
- Beljay receives a true copy of a positive 42 day pregnancy scan of the Mare showing she is in foal –

Beljay will issue a breeding certificate to the Client.

#### FOALING DOWN

If requested by the Client, Beljay will collect the Mare from the Client and transport her to Beljay's farm to be foaled down. If not, the Client will deliver the Mare.

Beljay will monitor the Mare and when she commences foaling, supervise the foaling process.

The health and welfare of the Mare is paramount. The Client appoints Beljay, its staff and agents individually with full power to take all steps for and on behalf of the Client that are necessary or convenient to protect the Mare and to achieve a successful foaling.

The Client acknowledges: foaling down entails risk of failure as well as the potential for harm (including death) to the Mare; there could be foaling complications for the Mare and/or foal; and there is no guarantee a foal will stand and suck.

The Client further acknowledges that even with the exercise of all due care and skill by Beljay, its staff and agents, it is not possible to eliminate these risks and complications and that a successful foaling is not guaranteed.

#### FEES AND CHARGES

The Client must pay Beljay a non-refundable booking fee with the return of the Breeding Contract. The booking fee will be deducted from the Breeding Fee.

The balance of the Breeding Fee and all money owing to Beljay is due and payable on confirmation of a 14 day positive pregnancy test.

All money paid to Beljay is forfeited if the Client decides not to serve the Mare for any reason including if the Mare cannot be bred, or does not deliver the Mare in the chosen breeding season.

Overdue money accrues interest at the rate of 17% per year compounded monthly. Money due is payable by the Client without set-off, counterclaim or deduction of any kind.

Credit card payments incur an additional 2.5% surcharge.

Fees and charges accrue and are payable during any period of

suspension of Services for any cause.

#### OVERDUE MONEY

If any money owing to it is overdue or the Client is liable to indemnify Beljay:

- Beljay may apply any money due or owing to the Client at any time in reduction or extinction of the Client's debt or withhold payment of the money until the Client's liability is quantified and then so apply the money; and
- the Client irrevocably appoints Beljay, its staff and agents individually as his/her/its agent with full authority and power to sell or dispose of the Mare and/or personal property of the Client either together or separately by any means, to any person, on any terms that he/she/it considers appropriate in his/her/its sole absolute discretion, including without papers.

Proceeds of sale or disposal will be applied towards (in this order): costs and expenses associated with the sale or disposal; money owing to Beljay; liability to indemnify Beljay, its staff and agents; and the remainder to the Client.

#### LIEN

The Client grants Beljay a lien over the Mare and any other horse that the Client has delivered into Beljay's possession, custody or control, as security for all and any indebtedness or liability to Beljay (as well as the performance and observance of the Client's obligations) and Beljay may detain them until such debt or liability is paid or satisfied in cleared funds and the obligations are fulfilled or discharged.

The Stallion Owner must pay all money owing to Beljay before removing its Stallion and grants Beljay a lien over the Stallion as security for all and any indebtedness or liability. Beljay may detain the Stallion until such debt or liability is paid or satisfied in cleared funds.

#### VETERINARY ATTENTION

Beljay, its staff and agents are appointed individually by the Client for and on his/her/its behalf to:

- engage a vet to examine the Mare and to give the vet the Client's contact details for instructions; and
- in the event of an emergency or if the Client is not readily available to provide instructions – instruct the vet to examine and treat the Mare and to administer medicines (whether oral, intra-muscular or intra-venous).

The Client is liable for and must pay when due all veterinary fees and charges incurred.

The Client and Stallion Owner understand and accept the risk that if the Mare or Stallion is not effectively vaccinated for Hendra virus, a vet may not be prepared to attend the Mare or Stallion irrespective of the urgency or seriousness of the Mare's or the Stallion's medical condition.

#### CLIENT'S REPRESENTATIONS & OBLIGATIONS

The Client represents and warrants to Beljay that the Mare:

- has no vices, bad behaviours, illness, injury or disease;
- is currently wormed and vaccinated for tetanus and strangles; and
- if the Client is not the owner or sole owner of the Mare, he/she/it is expressly authorised by the owner or all other owners of the Mare to book the Mare for breeding.

The Client must:

- co-operate with and be courteous and respectful towards Beljay, its staff and agents;
- give Beljay any information or material relating to the Mare if requested;



- comply with biosecurity measures for the containment and elimination of equine influenza or any other infectious or contagious disease affecting horses or humans and continue to pay all fees, costs and charges despite such measures even if movement of horses or humans is prohibited or restricted;
- remove the Mare or arrange for her removal promptly if she dies;
- take care at all times to avoid harm to him/herself; and
- if not the owner or sole owner of the Mare, give Beljay (if requested) full and accurate ownership details.

In the event of actual or threatened bush fire, the Client appoints Beljay, its staff and agents individually with full authority and power to take all necessary or convenient steps to protect the Mare.

#### STALLION OWNER'S REPRESENTATIONS

The Stallion Owner represents and warrants to Beljay that the Stallion is currently wormed and vaccinated for tetanus and strangles.

#### INSURANCES

Beljay does not guarantee the safety, security or health of the Mare. It is the Client's responsibility and choice to insure the Mare for mortality, veterinary fees, loss of use, theft and/or damage.

The Client must obtain and maintain indemnity insurance in case he/she is liable to any person for personal injury or property damage caused by the Mare, including if she escapes from Beljay's farm. The Client will give Beljay a copy of the current policy schedule and wording if requested.

#### LIABILITY

Horses are potentially dangerous. They can bite, kick out behind and sideways with their hind legs and can strike out with their forelegs. The Client touches and goes near a horse (including the Mare) at his or her own risk.

Beljay, its staff and agents will not be liable to the Client for:

- loss of or damage to the Semen after it begins its journey to the Delivery Address;
- death, injury, illness or disease of the Mare arising from or relating to agistment, breeding, foaling, foaling down or from any other cause; and
- any other direct, indirect or consequential loss or damage of any kind, however caused, including (but not limited to) the negligence or fault of Beljay, its staff and agents, arising from or relating to the collection, supply and/or shipment of the Semen or to breeding the Mare.

If the above exclusion of liability is held void or unenforceable by a Court or Tribunal, liability is limited to the cost of re-supplying the Services or the amount of the Breeding Fee paid by the Client (in Beljay's discretion).

Beljay, its staff and agents will not be liable to the Stallion Owner for:

- death, injury, illness or disease of the Stallion arising from or relating to agistment, handling, collecting semen and serving mares or from any other cause; and
- any other direct, indirect or consequential loss or damage of any kind, however caused, including (but not limited to) the negligence or fault of Beljay, its staff and agents, arising from or relating to agistment, handling, collecting semen and serving mares or from any other cause.

If the above exclusion of liability is held void or unenforceable by a Court or Tribunal, liability is limited to a refund of the

money paid to Beljay for agistment of the Stallion.

#### INDEMNITY

The Client indemnifies and holds Beljay, its staff and agents harmless from and against all claims, actions, damages, losses, costs and expenses (including solicitor/own client legal fees) caused by, contributed to or arising from:

- sickness, injury or death of the Mare;
- non-observance or performance of his/her/its obligations under the Agreement;
- personal injury to him/herself or anyone accompanying the Client onto Beljay's farm, however caused, including negligence;
- a representation/warranty that is false or misleading or which is likely to be so in the sole opinion of Beljay;
- failure to pay money when it falls due for payment;
- damage caused by the Mare to any person or property;
- suspension or termination of the Services by reason of the Client's non-observance or non-performance of his/her/its obligations under the Agreement; and
- the exercise or attempted exercise by Beljay of any of its right and powers under the Agreement or general law.

#### ENTIRE UNDERSTANDING

The Agreement constitutes the entire understanding and agreement between Beljay and the Client. Unless a prior representation, warranty or promise is expressly stated in those documents, it is of no force or effect, was not relied on by the Client and does not constitute any collateral agreement, warranty of understanding between the parties

#### GENERAL

- If the Client or Stallion Owner comprises 2 or more persons, the Agreement binds them together and individually.
- No change or addition to the Agreement is valid or binding unless it is in writing and signed by Beljay and the Client.
- The law of Queensland applies to the Agreement and the parties submit unconditionally to the exclusive jurisdiction of the courts and tribunals of that State in respect of any dispute relating to the Agreement and the Services.
- The Admission Form and the Semen Request Form may be executed by electronic signature which shall be considered an original signature and have the same force and effect as an original signature. An "electronic signature" includes electronically scanned and transmitted versions of an original signature.

