

HILLYERS OF LINCOLN

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Terms & Conditions for Wholesale Account Holders of Hillyers of Lincoln

1. AGREEMENT; GOODS, PRICE TIME OF DELIVERY, PLACE OF PAYMENT

- 1.1 The Seller agrees to sell and the Buyer agrees to buy the goods and/or services referred to in the Order Form at the price stated in the Order Form to be delivered to the place stated in the Order Form at the time and manner stated in the Order Form for which payment is to be made at the time and manner stated in the Order Form and as set forth in this agreement.
- 1.2 The price shall be the price of the Seller current at the date of the delivery of the goods. The Seller may alter any prices without notice and the purchase price of the goods payable by the Buyer may be different from the price quoted, or the price current when the goods were ordered. Quoted prices may not be assumed to apply to variations.
- 1.3 All prices are inclusive of GST, other taxes and postage and packaging costs;
- 1.4 The Seller reserves the right to charge a bond for the goods and/or services at any time to hold as security against the non payment of the Seller's account. The Seller may at its discretion use the bond to reduce the value of any unpaid accounts. If the Seller requires a bond, it may require the Buyer to pay the bond to it immediately. The bond will be held in a separate account and will not accrue interest. The Seller will repay the balance of the bond (if any) when the Buyer no longer requires the Seller's goods and/or services.
- 1.5 Goods shall be paid for by the Buyer in full without deduction as follows:
 - (a) Invoices are payable by the 20th day of the month following the date which the invoice is issued.
- 1.6 Time for payment is of the essence. If the Buyer fails to make any payment on the due date or defaults on any term of this agreement, then without prejudice to any of the Seller's other rights the Seller may:
 - (a) suspend or cancel deliveries of any other goods and/or services to the Buyer without notice and/or treat this agreement as repudiated by the Buyer; and/or
 - (b) appropriate any payment made by the Buyer to such of the goods and/or services (or goods and/or services supplied under any other agreement with the Buyer) as the Seller may in the Seller's sole discretion think fit. The Seller may at its sole discretion apply payments made by the Buyer first in payment of default interest and secondly in reduction of invoiced amounts. The Seller is entitled to recover from the Buyer any discount given to the Buyer for any goods for which the Buyer is in default; and/or
 - (c) remove the goods which are subject to the default from the Buyer's premises or any other premises where the goods are situated in accordance with the Seller's rights under the Credit (Repossession) Act 1997.
 - (d) Events of default for the purposes of section 109 of the Personal Property Securities Act include: failure to pay amounts due, failure of the Buyer to comply with any other obligation owed to the Seller, or in the Seller's opinion the Buyer is likely to be unable to meet its obligations to the Seller, or the Buyer becomes insolvent or has a receiver appointed in respect of all or some of the Buyer's assets, or makes or is likely to make an arrangement with the Buyer's creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory management.
 - (e) In the event of a default, all amounts outstanding under all of the then current contracts between the Buyer and the Seller will, whether or not due for payment, immediately become due and payable.
- 1.7 All sums due from the Buyer to the Seller that are not paid on the due date (without prejudice to the rights of the Principal under this Agreement) will bear interest from day to day at the annual rate of 24% charged at 1.5% per month or part thereof. The Buyer must pay all amounts due without deduction or setoff.
- 1.8 The Buyer is deemed to have defaulted on this agreement where the Buyer fails to pay any sum owing under this agreement to the Seller by its due date.
- 1.9 Where the Seller has not received or been tendered the whole of the price for goods (or work or services done upon the goods), or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have rights that include:
 - (a) a lien on the goods;
 - (b) the right to retain them for the price while the seller is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,

(e) the foregoing right of disposal,

Provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the price having been obtained.

- 1.10 The Buyer indemnifies the Seller for full solicitor/client and other recovery costs relating to any default of the Buyer under this agreement.

2. SALE BY DESCRIPTION AND/OR SAMPLE

- 2.1 If it is a condition of this agreement that the goods shall correspond with the description then such description shall be set forth on the Order Form.
- 2.2 The Buyer is responsible for providing correct details of specifications of goods on the Order Form to enable the Seller to accurately advise a price for the goods ordered. Any losses arising from incorrectly specified orders are the liability of the Buyer.
- 2.3 If the sale is by sample as set forth on the Order Form, as well as description, it is sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

3 LIMITATION OF LIABILITY

3.1 Product Warranty

(a) Where the goods and/or services or any of them are subject to an express warranty given by a manufacturer thereof or the parties supplying the same to the Seller in either case being a warranty upon which the Seller relies, then the terms of such express warranty shall be deemed to be incorporated herein but without creating any privity of contract between the Buyer and such manufacturer or supplier to the Seller and in such case where a claim is made by the Buyer under such warranty the judgment of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon the Seller and the Buyer.

3.2 Subject to the Order Form and clause 3.1 herein:

- (a) all terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its agents or employees or otherwise relating to the quality and/or fitness for purpose of the goods and/or services or any of the goods and/or services are excluded.
- (b) the Seller shall be under no liability whatsoever (whether direct, indirect or loss of profit) to the Buyer for any loss, damage, liability or injury suffered by the Buyer or a customer of the Buyer arising out of a breach by the Seller of this agreement.

4 PASSING OF RISK AND TRANSFER OF TITLE

- 4.1 The goods remain at the Seller's risk until the delivery to the Buyer, but when title passes to the Buyer the goods are at the Buyer's risk whether delivery has been made or not. Where delivery has been delayed through the fault of either Buyer or Seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.
- 4.2 Title in the goods then passes to the Buyer when the goods are delivered to the Buyer.

5 PPSR: SECURITY FOR PAYMENT

- 5.1 The Buyer (debtor) grants a security interest to the Seller, and the Seller may register the security interest, in all goods supplied by the Seller (secured party) to the Buyer (debtor) from time to time, together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory), to secure payment of the purchase price.
- 5.2 Words herein have the same meaning as that which is given to them in Section 16 of the Personal Property Securities Act ("the PPSA"). The Seller does not have to provide a Verification Statement to the Buyer. The Buyer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and conditions. The Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA shall not apply to these terms and conditions.
- 5.3 The Buyer will immediately notify the Seller in writing of any change in the Buyer's name or other material identifying characteristics of either the Buyer or the goods purchased.
- 5.4 The Buyer must reimburse the Seller for all costs, expenses and other charges incurred, expended or payable by the Seller in relation for registration of a financing statement or financing change statement.
- 5.5 The Buyer agrees that if at any relevant time, the secured party does not have priority over all other secured parties in relation to any collateral, then the Buyer and the Seller will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and for the purposes of this security agreement and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into.

6 DELIVERY

- 6.1 Subject to the Order Form, where the Seller agrees to send the goods to the Buyer, then:

- (a) Delivery of the goods is deemed complete when the goods are unloaded from the carrier at the Buyer's nominated delivery address.
 - (b) The Seller will insure the goods during carrying against loss due to any cause or deterioration, at the cost of the Buyer.
 - (c) The Seller is bound to send the goods to the Buyer within a reasonable time.
- 6.2 Where there is no agreement that the Seller shall send the goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer
- 6.3 Subject to the Order Form:
- (a) When the goods at the date of this agreement are in possession of a third person there is no delivery by Seller to Buyer unless and until such third person acknowledges to the Buyer that the goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the goods.
 - (b) The expenses of and incidental to putting the goods into a deliverable state for transit within New Zealand shall be borne by the Buyer.
- 6.4 Subject to the express terms of this agreement, where the Seller delivers to the Buyer the goods the Seller agreed to sell mixed with goods of a different description from that ordered the Buyer may accept the goods which are in accordance with this agreement and reject the rest or the Buyer may reject the whole.
- 6.5 The Buyer shall inspect the goods upon receipt of goods at the Buyer's address and shall within five (5) working days of receipt of goods notify (quoting docket number and date of receipt of goods) the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Buyer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the goods and the Buyer shall be deemed to have accepted the goods. Any credits sought for goods returned under this clause are at the Seller's discretion and:
- (a) Must be returned by the Buyer within ten (10) days of delivery;
 - (b) The Buyer shall bear all costs of return freight;
 - (c) The goods must be in good saleable condition in the manufacturer's or supplier's original containers, unsoiled and undamaged;
 - (d) The goods must be accompanied by the number and date of the supplying invoice;
 - (e) No goods which have been specifically ordered by the Seller at the request of the Buyer may be returned;
 - (f) The returned goods will be subject to a handling charge of up to 15% of the net price of the goods (excluding GST);
- 6.6 The Buyer shall notify the Seller of any non-delivery of a full consignment of goods within seven (7) days of the date of dispatch (as stated on the Order Form). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of goods indicated on the advice sheet.
- 6.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the goods (or any of them) promptly or at all. Notwithstanding that the Seller may have delayed or failed to deliver the goods (or any of them) promptly, the Buyer shall be bound to accept delivery and to pay for the goods in full provided that delivery shall be tendered at any time within one (1) month of the delivery date specified in the Order Form.
- 6.8 The Buyer must notify the Seller of any query the Buyer has relating to the services or the tax invoice for the services within five (5) working days of receipt of the invoice by the Buyer at the Buyer's postal address. If the Buyer fails to comply with these provisions then the services and tax invoice shall be conclusively presumed to be in accordance with the agreement.
- 6.9 Subject to the Order Form:
- (a) The Buyer is not bound to accept delivery of goods by instalments.
 - (b) Where it is agreed that the Seller shall deliver goods by stated instalments which are to be separately paid for then if the Seller makes defective deliveries in respect of an instalment or the Buyer refuses to take delivery of or pay for an instalment, then the breach is at the choice of the Seller a severable breach, which gives rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

7 ENFORCEMENT

- 7.1 Subject to this agreement, in the event that:
- (a) the Seller retains possession or control of the goods; and
 - (b) payment of the price of the goods (or work or services done upon the goods), or any other goods, ordered from the Seller is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the price in terms of this agreement; and
 - (d) the Seller has not received the price of the goods;
- THEN**, whether the property in the goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of any goods and may claim from the Buyer the loss to the Seller on such disposal.
- 7.2 The Seller reserves the foregoing right of disposal of the goods until the price is received by the Seller.

- 7.3 Where the goods are shipped and by the bill of lading the goods are deliverable to the order of the Seller or the Seller's agent the Seller reserves the right of disposal.
- 7.4 Subject to this agreement the Buyer's obligation to pay the price is not discharged by the mere exercise of an unpaid Seller of the right of lien or retention or stoppage in transit or sale of the goods or part of them.
- 7.5 A transferee acquires a good title as against the Buyer where an unpaid Seller has exercised the right of lien or retention or stoppage in transit and resells the goods.
- 7.6 Where the goods are of a perishable nature, or where the unpaid Seller gives reasonable notice to the Buyer of the intention to resell, and the Buyer does not within a reasonable time pay or tender the price, the unpaid Seller may resell the goods and recover from the Buyer damages for any loss.
- 7.7 The sale by the Seller in terms of the lien or stoppage in transit or rights of resale for non-payment are always without prejudice to any claim the Seller may have for loss, and the Seller may claim from the Buyer for any other loss after payment of all expenses, directly or indirectly resulting from the breach of this agreement by the Buyer.

8 COPYRIGHT AND INTELLECTUAL PROPERTY

- 8.1 The Buyer acknowledges that copyright in all works, drawings, specifications relating to any goods or services supplied by the Seller under this agreement ("the copyright") is owned by the Seller.

9 GENERAL

- 9.1 Subject to the Seller's order form which incorporates by reference the Terms and Conditions contained herein, where the terms of this agreement are at variance with the other documents relating to the order of the goods specified herein, this agreement shall prevail. Any usage of trade, special agreement, or course of dealing between the parties at variance with the terms of this agreement is excluded.
- 9.2 If any term of this agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this agreement on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of this agreement it may give notice in writing to the other to terminate this agreement immediately.
- 9.3 Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this agreement must be in writing. Time is of the essence.
- 9.4 The Seller may also delay delivery due to force majeure conditions including an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of the Seller.
- 9.5 The law of New Zealand including the Sale of Goods Act 1908 and its amendments shall apply to this agreement except to the extent expressly negated or varied by this agreement.
- 9.6 Interpretation:
- (a) "Buyer" means the person, persons, company or organisation purchasing the Seller's goods and services, together with the Buyer's staff, agents and people acting on its behalf.
 - (b) "Manufacturer" means producers of Equine Excellence Limited's goods and services.
 - (c) "Order Form" means the order form and/or tax invoice used by the Seller. If there is a conflict between the order form and tax invoice, the tax invoice prevails.
 - (d) "Price" means the cost of the goods as agreed between the Buyer and the Customer subject to clause 2 of this agreement.
 - (e) "Seller" means Equine Excellence Limited together with the Seller's staff, agents and people acting on its behalf.
 - (f) Headings are inserted for convenience and reference only and shall not affect the meaning or interpretation of this agreement.
 - (g) Reference to any enactment includes any replacement or substitute enactment.

10 PRIVACY AND CONFIDENTIALITY

- 10.1 The Buyer authorises and directs the Seller to seek and obtain from and supply any information concerning the credit or business standing of the Buyer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from the Seller. While the Buyer continues to be a customer or an amount is due from the Buyer to the Seller, the Seller is authorized to obtain repeat credit checks from time to time.
- 10.2 All information acquired by the Buyer under this agreement shall be treated as confidential and shall not be disclosed in whole or in part by the Buyer to any third person without the prior written consent of the Seller, except: (a) where it is necessary to disclose information to a bank or other lending agency to arrange finance; (b) to ensure the expedient operation of this agreement; (c) to the extent required to be disclosed by law applicable to the Buyer, or by any authority or regulatory body having jurisdiction over the Buyer (including any stock exchange);

- (d) where such information becomes part of the public domain;
- (e) where it is reasonably required for the purpose of review by any adviser, consultant, expert, contractor or subcontractor employed or retained by the party; or
- (f) where prior to disclosure to a third person such information is disclosed to a related company of that third person.

10.3 If any such information is reasonably required by employees of either the Buyer or the Seller in the course of their employment that person shall keep such information confidential, and the parties may require any such person to give a written undertaking in a form acceptable to the parties to keep such information confidential.

11 CONSUMER GUARANTEES ACT 1993

11.1 If the Buyer is acquiring goods or services from the Seller for the purposes of a business, as defined in the Consumer Guarantees Act 1993, then the Seller excludes the guarantees contained in the Consumer Guarantees Act.

12 RESOLUTION OF DISPUTES

12.1 Consumer arbitration agreement:

- (a) This agreement contains an arbitration agreement.
- (b) You, if purchasing as a consumer as defined in the Arbitration Act 1996, certify that: having read and understood the arbitration agreement, and the variation of the default rules in the 2nd Schedule to the Arbitration Act 1996, you agree to be bound by the arbitration agreement.

12.2 If the parties are unable to resolve any question, dispute or difference arising under this agreement, by discussion and negotiation, the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement, to be nominated by the president of the New Zealand Law Society PROVIDED HOWEVER that the Seller has the right to refer any dispute to the Disputes Tribunal for determination in which case the total amount in respect of which an order of the Tribunal is sought will not exceed \$7,500.00.

13 GUARANTEE

13.1 Where a company is the Buyer, the Directors of the Company or such other person or persons as required by the Seller, shall guarantee the obligation of the Buyer to the Seller and shall be liable in all respects as if the Guarantor were the Buyer.

I/We confirm that I/we agree to the terms and conditions in the abovementioned agreement and we authorise Hillyers of Lincoln 2006 Limited to obtain all necessary credit and financial checks for the purposes of assessing and determining the credit account application.

Name of Company/Person: _____

Registered Office of Company: _____
(if applicable)

Postal Address of Company/Person: _____

Delivery Address: _____

Email Address: _____

Telephone No: _____ Facsimile No: _____

Credit References:

- 1. _____ Phone _____
- 2. _____ Phone _____
- 3. _____ Phone _____

Hillyers of Lincoln

(Buyer – position within the Company,
if applicable)

Date: _____

Where the Buyer is a Company:

I/We _____ in consideration of the
Seller providing goods to the Buyer, hereby guarantee in all respects the performance of the Buyer
in terms of the attached terms and conditions.

Date: _____