

## TRADING TERMS AND CONDITIONS

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### 1. THE PARTIES

The Supplier: Northern Herd Development Co-operative Limited (A.C.N. 507 718 663) trading as National Herd Development

The Customer: \_\_\_\_\_

### 2. DEFINITIONS

- 2.1. The Customer includes any person engaging the Supplier on behalf of and with the authority of the Customer that the Order is provided for.
- 2.2. The Order shall be defined as any request for the provision of Goods and Services by the Customer with the Supplier which has been accepted by the Supplier.
- 2.3. The Services are the artificial breeding, herd recording, freeze branding and associated stock services and installation services to be provided by the Supplier, including any advice or recommendations given with respect to livestock.
- 2.4. The Goods are the livestock, semen and associated products and agricultural and dairy equipment provided by the Supplier for use by the Customer or used up by the Supplier when performing Services for the Customer.
- 2.5. The Goods and the Services as defined above are hereinafter referred to collectively as the "Goods and Services" and where the context requires should be read to include the Goods or the Services.
- 2.6. The Premises are the land or land and buildings where the Services are to be carried out, or which are the subject of the Services to be performed.
- 2.7. The Price is the amount invoiced for the Goods and Services supplied.
- 2.8. Reference to loss and damage includes Indirect, Special or Consequential loss and/or damage. Indirect, Special or Consequential loss and/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. Major failure and Consumer is as defined under the *Competition and Consumer Act 2010*.
- 2.10. GST refers to Goods and Services tax under the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") and terms used herein have the meanings contained within the *GST Act*.

### 3. GENERAL

- 3.1. These Terms and Conditions together with the Supplier's quotation and credit application form (if any) constitute the agreement between the Supplier and the Customer (**"the Agreement"**).
- 3.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order 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 Parties.
- 3.4. The Terms and Conditions are binding on the Customer, and the Customer's 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 failure by the Parties to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect a Party's' right to subsequently enforce that provision.
- 3.9. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. 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. QUOTATIONS AND PLACEMENT OF ORDERS**

- 4.1. Any quotation given by the Supplier will expire thirty (30) days unless stated otherwise in the quotation.
- 4.2. The Supplier does not represent that it will provide any Goods and Services unless it is included in the quotation.
- 4.3. Orders placed by the Customer with the Supplier will be considered valid when placing the Order verbally and/or in writing.
- 4.4. The Customer may be required to provide the Supplier with a Purchase Order, Work Order or other confirmation of acceptance of a quotation before any Goods and Services are supplied.
- 4.5. The Supplier may agree to provide, on request from the Customer, additional Goods and Services not included or specifically excluded in the quotation or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Goods and Services include, but is not limited to additions alterations or amendments to the Order ("**a variation**").
- 4.6. All prices are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

#### **5. PRICE**

- 5.1. GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 5.2. The Supplier reserves the right to change the Price in the event of a variation.
- 5.3. At the Supplier's sole discretion the Price shall be either:
  - 5.3.1. The Supplier's quoted Price for the Order (subject to clause 5.2); or
  - 5.3.2. As detailed on invoices provided by the Supplier to the Customer in respect of the Goods and Services supplied.

#### **6. THE GOODS AND SERVICES**

- 6.1. At any time before payment is made by the Customer, the Supplier reserves its right to:
  - 6.1.1. Decline requests for any Goods and Services requested by the Customer.
  - 6.1.2. Cancel or postpone appointments at its discretion.

- 6.2. Unless specified by the Supplier to the contrary in the Order or quotation, the Supplier does not warrant that it will be capable of providing the Goods and Services at specific times requested by the Customer.
- 6.3. Subject to otherwise complying with its obligations under the Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Good and Services and of satisfying the Customer's expectations of the Goods and Services.
- 6.4. The Supplier may license or sub-contract all or any part of its obligations to provide the Goods and Services without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 6.5. The Customer grants full access to the Supplier and its employees, servants and agents to the Premises and shall ensure a supply of water and/or electricity (at no cost) to enable the Supplier to carry out the Services.
- 6.6. The Customer is responsible for ensuring that all necessary permits are obtained and to mark out the site of any installations at the Premises for the provision of Services.
- 6.7. The Customer covenants that it is either the owner of the Premises or is acting with the express authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier thereto; including in respect of any claims for loss and damage by the owner of the Premises against the Supplier.

## **7. PAYMENT AND CREDIT POLICY**

- 7.1. **Non-Account Customers** must make full payment to the Supplier within seven (7) days from the date of issue of the invoice for the Goods and Services, unless otherwise specified or agreed between the Parties in writing.

### **Credit**

- 7.2. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.
- 7.3. On the acceptance by the Supplier of a completed credit application form, **Account Customers** must make full payment to the Supplier within thirty (30) days from the end of the month of issue of the Supplier's invoice for the Goods and Services, unless otherwise specified in the credit application form or agreed between the Parties in writing.
- 7.4. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
- 7.5. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms and 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.
- 7.6. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

### **Account Customer's Privacy**

- 7.7. The Customer agrees;
  - 7.7.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
  - 7.7.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
  - 7.7.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

## 8. DEFAULT

- 8.1. The “**default date**” is the day after the date by which payment of the Price in full was due to be made by the Customer to the Supplier in accordance with the agreement.
- 8.2. The “**outstanding balance**” is the Price, less any payments made by the Customer prior to the default date. After the default date, the outstanding balance shall include, all applicable fees and charges under this Agreement;
- 8.3. To the extent permitted by law, if the Supplier does not receive the outstanding balance on or before the default date the Customer acknowledges and agrees that:
- 8.3.1. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each occasion a cheque issued by the Customer is rejected.
- 8.3.2. The Customer will be liable for interest on the outstanding balance at the rate of thirty per centum (30%) per annum to be calculated on a daily basis on the expiry of a further thirty (30) days from the default date and applied to the account of the Customer at the end of each month until the outstanding balance has been paid in full.
- 8.3.3. In the event the Supplier engages a debt collection agency and/or law firm to recover the outstanding balance, the Customer shall be liable for the recovery costs incurred by the Supplier, and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\frac{\text{Total Debt including Commission and GST} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}} = \text{Original Debt}$$

- 8.3.4. In the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on [www.prushka.com.au](http://www.prushka.com.au)
- 8.3.5. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

## 9. RISK AND LIABILITY

- 9.1. The Customer acknowledges that there are risks associated with performing the Services that cannot be foreseen or mitigated in every instance. Provided that Services are performed in a workmanlike manner and in accordance with industry accepted practices the Supplier will not be liable for loss and damage, including but not limited to the following:
- 9.1.1. The Customer's livestock not falling pregnant as a result of performing the Services;
- 9.1.2. Any false reading returned by a pregnancy test undertaken by the Supplier as a part of the Services;
- 9.1.3. Any death or injury caused to livestock as a result of the Supplier performing the Services.
- 9.2. The Customer will ensure when placing Orders that there is sufficient information and specifications to enable the Supplier to execute the Order.
- 9.3. The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 9.4. The Supplier will not be held responsible and the Customer releases the Supplier from any loss and damage in connection with any delay or failure to provide the Goods and Services or to observe any of these conditions due an event of force majeure, inclement weather, failure

of the Customer to provide required information and/or specifications or in any circumstances beyond the Supplier's reasonable control.

- 9.5. The Customer will ensure the Premises are in a safe condition for the Supplier's employees, servants or agents to perform the Services, and the Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Premises safe to work in, including but not limited to injury caused by any feature or condition of the Premises, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.
- 9.6. Subject to the Supplier's warranty provisions for the Goods and Services supplied, the Supplier's liability for any loss and damage associated with, arising from or in connection with the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

## **10. WARRANTY**

- 10.1. The Supplier warrants that the Customer's rights and remedies in the Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 10.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) as may be amended from time to time.

### **Warranty for Goods and Services**

- 10.3. Provided that the Customer reports any defect in any Goods and Services provided, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify the defect.
- 10.4. The Supplier provides the following warranty to Customers who are Consumers in respect of Goods supplied:
- "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure."
- 10.5. In respect of all claims under warranty, the Supplier reserves its right to make an inspection of the Goods and Services alleged to be defective.
- 10.6. To the extent permitted by law the Supplier's liability to a Customer who is a Consumer in respect of defective Goods and Services that does not constitute a major failure will be limited to:
- 10.6.1. The rectification by the Supplier of the defective Goods and Services; or
- 10.6.2. The payment of the reasonable costs of having the defective Goods and Services rectified or supplied again; or
- 10.6.3. The refund of the Price paid by the Customer in respect of the defective Goods and Services.
- 10.7. The Supplier shall not be liable to compensate the Customer for any reasonable delay in rectifying any defective Goods and Services or in assessing the Customer's claim.
- 10.8. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

### **Claims made under Warranty**

- 10.9. Claims for warranty should be made in one of the following ways:

- 10.9.1. The Customer must send the claim in writing to the Supplier's address 44 Western Road, Cohuna VIC 3568;
- 10.9.2. The Customer must email the claim to the Supplier to info@nationalherd.com.au.
- 10.9.3. The Customer must contact the Supplier on the Supplier's business number (03) 5456 2366.

## **11. TERMINATION AND CANCELLATION**

### **Cancellation by Supplier**

- 11.1. The Supplier may cancel any Order to which these Terms and Conditions apply at any time before payment is made by the Customer by giving written notice to the Customer. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 11.2. 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:
  - 11.2.1. Any money payable to the Supplier becomes overdue for payment; or
  - 11.2.2. 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
  - 11.2.3. 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**

- 11.3. The Customer may cancel any Order by providing no less than twenty-four (24) hours notice to the Supplier before the Goods and Services were due to be provided.
- 11.4. In the event that the Customer cancels the Order without providing the requisite notice to the Supplier the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits and items purchased by the Supplier to perform the Services at cost) up to the time of cancellation.

## **12. RETENTION OF TITLE FOR GOODS**

- 12.1. While the risk in Goods shall pass to the Customer on receipt of the Goods (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:
  - 12.1.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
  - 12.1.2. 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 Goods whilst they are in the Customer's possession.
  - 12.1.3. The Customer should store the Goods separately and in such a manner that it is clearly identified as the property of the Supplier and keep the Goods insured to full replacement value.
  - 12.1.4. The Customer must not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.
  - 12.1.5. The Customer may sell and/or use the Goods in the ordinary course of business.
  - 12.1.6. If the Goods are resold before all monies are paid to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment of the Price for the Goods.

- 12.2. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

**13. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (“PPSA”)**

- 13.1. The Customer acknowledges that these Terms and Conditions will constitute a Security Agreement which creates a security interest in favour of the Supplier over all present and after acquired Goods supplied by the Supplier to the Customer to secure the payment of the Price or any other amount owing under this agreement from time to time including future advances.
- 13.2. The Customer acknowledges that the security interest is a purchase money security interest (“PMSI”) as defined under Section 14 of the PPSA for all present, after acquired Goods including any Commingled Goods.
- 13.3. The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.
- 13.4. The Supplier may register the security interest as PMSI on the Personal Property Securities Register (“PPSR”) under the PPSA without providing further notice to the Customer.
- 13.5. The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier’s security interest to an interest party unless required to do pursuant to PPSA or under the general law.
- 13.6. The Customer agrees and undertakes:
- 13.6.1. To sign any documents and/or provide further information reasonably required by the Supplier to register Financing Statement or Financing Change Statement on the PPSR;
- 13.6.2. To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Change Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;
- 13.6.3. Not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;
- 13.6.4. To provide the Supplier with seven (7) days written notice of any change or proposed change to the Customer’s business name, address, contact details or other changes in the Customer’s details registered on the PPSR;
- 13.6.5. To waive any rights of enforcement under Section 115 of the PPSA for Collateral not used predominantly for personal, domestic or household purposes;
- 13.6.6. To waive any rights to receive Verification Statement in respect of any Financial Statement or Financing Change Statement under Section 157 of the PPSA.

**14. ENTIRE AGREEMENT**

- 14.1. The Agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 14.2. The Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 14.3. 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.
- 14.4. 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: .....

NAME: .....

POSITION HELD:.....

POSITION HELD:.....

SIGNATURE: .....

SIGNATURE: .....

DATE: ...../...../20...

DATE: ...../...../20...



## **DEED OF GUARANTEE AND INDEMNITY**

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 been advised to consult our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Deed.**

**EXECUTED AS A DEED on this**

**day of**

20

■

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 1:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**SIGNED SEALED AND DELIVERED BY:**

Guarantor 2:

Name: .....

Address: .....

.....

Contact Number (H) .....

Contact Number (M) .....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

.....

SIGNATURE: .....

**IN THE PRESENCE OF:**

Witness Name: .....

Address: .....

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SIGNATURE: .....