

HARTMOR

QUARTER HORSE STUD

SERVICING TERMS AND CONDITIONS

1. Servicing

1.1 Hartmor Quarterhorse Stud (SA & MC Hartwig t/as) ("the Stallion Owner") is the owner of the Stallion and the owner of the Land located at Leichhardt Highway, Theodore and described as Lot 22 on Crown Plan DW492 and Lot 318 on Crown Plan DW367.

1.2 The Mare Owner requests the service of the Mare by the Stallion ("the Service") and the Stallion Owner agrees to arrange for the Service.

1.3 The parties acknowledge that there are known risks associated with any servicing.

2. Pregnancy Test and Results

2.1 The Mare Owner agrees to allow a pregnancy test to be performed on the Mare by a veterinarian of the Stallion Owner's choice within 42 days from the date of the provision of the Service.

2.2 Any certificate of pregnancy shall be the property of the Mare Owner. The Mare Owner authorizes the Stallion Owner to retain a copy of any certificate of pregnancy.

2.3 If the Mare is found not to be pregnant, delivers a still born foal or the foal dies within 48 hours of birth, the Mare (or a substitute Mare) may return to the Stallion for the following season.

2.4 If a live foal is not produced in the following season the Service Fee is forfeited to the Stallion Owner.

3. Payment for Service

3.1 In consideration of the Stallion Owner arranging for the provision of the Service, the Mare Owner must pay to the Stallion Owner the Service Fee set out from time to time by the Stallion Owner in the following manner:

(1) Upon booking the Mare with the Stallion Owner, the Mare Owner will pay a booking fee, the amount of which will be set by the Stallion Owner from time to time.

(2) The balance of the Service Fee is payable by the Mare Owner within 7 days after the Mare Owner is notified by the Stallion Owner of a positive result from the pregnancy test.

3.2 The Stallion Owner must submit a GST tax invoice to the Mare Owner for the Service Fee.

3.3 Reference to "GST" and any other related terms means the same as set out in *A New Tax System (Goods and Services) Tax Act 1999* and includes other GST related legislation and regulations under the legislation.

4. Registration

4.1 The information from the Mare's registration papers and the Mare Owner's membership number will be used for the provision of a breeding certificate by the Stallion Owner.

4.2 Upon full payment of all fees payable to the Stallion Owner, the Stallion Owner will submit the necessary breeding certificate to the appropriate association.

5. Agistment and Payment

5.1 The Stallion Owner agrees to depasture the Mare on the Land ("the agistment") for the period as agreed between the parties and commencing on the date that the Mare is delivered to the Land.

5.2 For the agistment the Mare Owner must pay to the Stallion Owner the agistment fee as determined by the Stallion Owner from time to time.

5.3 The Mare Owner will pay to the Stallion Owner the equivalent of one month's agistment fee in advance on the date the mare is delivered to the Land.

5.4 The Mare Owner will pay the agistment fee monthly in advance.

5.5 The Stallion owner will issue the Mare Owner with a GST tax invoice for the agistment fee.

6. Provision of Veterinary Services

6.1 The Stallion Owner agrees to arrange veterinary services as required for the successful treatment of the Mare whilst the Mare is on the Land.

6.2 The Mare Owner agrees to pay for all necessary veterinary services.

6.3 The Stallion owner will issue the Mare Owner with a GST tax invoice for any veterinary services.

7. Collection of Mare

7.1 The Mare Owner is to collect the Mare within a reasonable time after the Mare Owner is requested to do so by the Stallion Owner. Failure to collect the Mare within 7 days (or any other reasonable time taking into account inclement weather conditions) of written notice from the Stallion Owner the Mare Owner irrevocably authorises the Stallion Owner to deal with the Mare in any way that the Stallion Owner considers necessary and reasonable including sale or surrender of the Mare to the pound keeper or police.

8. Mare Owner's Rights and Obligations

8.1 Subject to these Terms and Conditions the Mare Owner or any person whom the Mare Owner may appoint, will have the right (upon giving reasonable notice and in any event not less than 24 hours notice) to access the Land with all necessary vehicles for the purpose of delivering and removing the Mare at the cost and expense of the Mare Owner.

8.2 The Mare Owner warrants that it has appropriate insurance for the Mare in the event of accident, injury, disease, illness, sickness and/or death.

- 8.3 The Mare Owner will not be entitled to assign the Mare Owner's rights under these Terms and Conditions.
- 9. Stallion Owner's Rights and Obligations**
- 9.1 The Stallion Owner must keep all fences, tanks, dams, windmills, pumps and equipment in good order and condition.
- 9.2 The Stallion Owner will use all reasonable endeavours to protect the Mare from disease and injury.
- 10. Breach by Mare Owner**
- 10.1 If the Mare Owner commits any breach or default of any of these Terms and Conditions and that breach or default continues for 14 days from the date the Stallion Owner has served a notice on the Mare Owner specifying the breach or default, the Stallion Owner (in addition to any other rights which may be conferred upon the Stallion Owner by law or in equity) may sue the Mare Owner for damages.
- 10.2 Until the Stallion Owner receives full payment of all fees payable to the Stallion Owner from the Mare Owner, the Stallion Owner has a lien over the Mare and may enforce that lien by the sale of the Mare. The Stallion Owner may deduct all fees and costs owing to the Stallion Owner by the Mare owner from the proceeds of sale. The balance of any sale proceeds will be paid to the Mare Owner.
- 11. Indemnity by Mare Owner**
- 11.1 The Mare Owner indemnifies the Stallion Owner against:
- (1) all losses suffered by the Stallion Owner; and
 - (2) all liabilities incurred by the Stallion Owner .
- arising directly or indirectly as a result of or in connection the Service or the Agistment under these Terms and Conditions whether express or implied, except to the extent that such losses are suffered or liabilities incurred as a result of the negligence or wrongdoing of the Stallion Owner or the breach of these Terms and Conditions by the Stallion Owner.
- 12. Indemnity by the Stallion Owner**
- 12.1 The Stallion Owner shall indemnify the Mare Owner for losses suffered by the Mare Owner as a result of the Stallion Owner failing to comply with its obligations under clause 7. For the purposes of clarity, the Stallion Owner shall not be liable for any losses suffered by the Mare Owner resulting from the death of or injury to the Mare due to:
- (1) natural causes (unless caused by a breach of obligations in clause 7);
 - (2) act of God; or
 - (3) weakness or illness of the Mare.
- 13. Further Assurance**
- 13.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to these Terms and Conditions.
- 14. Severability**
- 14.1 If anything in these Terms and Conditions is unenforceable, illegal or void then it is severed and the rest of these Terms and Conditions remain in force.
- 15. Miscellaneous**
- 15.1 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.
- 15.2 An amendment or variation to these Terms and Conditions is effective if provided to the Mare Owner.
- 15.3 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 15.4 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 15.5 A waiver is not effective unless it is in writing.
- 15.6 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 16. Communications to and from the Parties**
- 16.1 The parties agree that all communications to and from the Stallion Owner are to be directed to and through Michelle Hartwig via the contact details on the application form.
- 16.2 The parties agree that all communications to and from the Mare Owner are to be directed to and through the person named and the contact details provided on the application form
- 17. Notices**
- 17.1 A notice or other communication ('Notice') connected with this Agreement has no legal effect unless it is in writing and:
- (1) delivered by hand at the address of the addressee set out in this Agreement or subsequently notified;
 - (2) sent by post, postage prepaid, to that address; or
 - (3) sent by facsimile to the facsimile number of the addressee.
- 17.2 A Notice is deemed given and received:
- (1) if delivered, upon delivery;
 - (2) if sent by post, on the second Business Day (at the address to which it is posted) after posting; or
 - (3) if sent by facsimile, upon the receipt of a successful facsimile transmission report and before 5.00 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 18. Governing Law and Jurisdiction**
- 18.1 The law of Queensland governs this Agreement.
- 18.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.
- 19. Definitions and Interpretation**
- 19.1 Definitions**
- Unless the context otherwise requires:
- (1) **'Agreement'** means the Application Form and these Terms and Conditions;
 - (2) **'Business Day'** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- 19.2 Interpretation**
- (1) Reference to:
 - (a) one gender includes each other gender;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (2) All monetary amounts are in Australian dollars, unless otherwise stated.

- (3) If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- (4) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (6) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (7) If an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day.