

**CRYOGENETICS LTD**  
**TERMS AND CONDITIONS FOR**  
**EQUINE SEMEN STORAGE**  
**AND DISTRIBUTION**

These Terms and Conditions apply to the provision by Cryogenetics Ltd of the Services defined below.

**1. General**

1.1 In these terms and conditions the following words and expressions shall except where the context otherwise requires have the following meanings:

**'Booking Form'** means the Equine Semen Storage and Distribution booking form completed by the Customer

**'Conditions'** means these standard terms and conditions together with the Equine Semen Storage and Distribution Procedures as amended or modified from time to time.

**'Contract'** means the contract between you and us for the supply of Services in accordance with these Conditions.

**'Customer'** means the person who purchases Services from us.

**'Literature'** means catalogues, pamphlets, price lists and advertising literature provided by us and includes materials on our website.

**'Procedures'** means our published Equine Semen Storage and Distribution Procedures as amended from time to time and which form part of these Conditions.

**'Semen'** means the semen stored or distributed on your behalf by us as part of the Service.

**'Services'** means the work or services set out in the Booking Form to be provided by us under the Contract

**'Storage Centre'** means Twemlows Hall, Whitchurch, Shropshire SY13 2EZ or such other location used by us from time to time for the storage of equine semen.

**'Value Added Tax'** means value added tax chargeable under English law for the time being and any similar, equivalent or additional tax.

**"We", "us", "our"** means Cryogenetics Limited

**"You", "Your"** means the Customer named in the Booking Form.

1.2 Words importing the singular number shall include the plural and vice versa, words importing any gender shall include all other genders and words importing persons shall include bodies corporate, unincorporated associations, partnerships and individuals.

1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any

subordinate legislation for the time being in force made under it.

1.4 A reference to writing or written includes faxes and e-mail.

1.5 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. Orders, Acknowledgements, Conditions and Variations**

2.1 Although we may have given a detailed quotation or estimate either verbally or in writing, no Booking Form or request for provision of Services by us shall be binding on us unless and until it has been accepted in writing by us or the Services are provided by us pursuant to the Booking Form. All bookings are subject to availability and we reserve the right to refuse any booking in whole or in part.

2.2 These Conditions are incorporated in the Contract and contain the entire agreement between you and us in relation to the Services which are the subject of the Contract. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any order, letter or form of contract sent by the you us, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the event of us entering into the Contract without us having submitted a Booking Form written quotation or other letter or document incorporating or referring

to these Conditions but in circumstances where you have had prior notice of these Conditions then the Contract shall be subject to these Conditions.

2.3 No variation of the Contract by shall be binding on us unless we have accepted it in writing.

2.4 No representations or warranties made by us or on our behalf of prior to the Contract (whether verbally or in writing) shall form part of the Contract. You acknowledge that you have not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Contract.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## **3. Price**

3.1 The price payable for the Services shall be our current rate applicable at the date of provision of the Services. We may at our discretion vary such rate at any time but shall endeavour to give you not less than one week prior notice of the new rate. If such increase is not acceptable to you, you must notify us in writing within two weeks of the date of our notice and we shall have the right (without limiting our other rights or remedies) to terminate the Contract by giving you two weeks' written notice.

3.2 Any price set out in any quotation or estimate shall be considered to have been given solely for

information and shall not constitute an obligation on our part that we will provide the Services at that price.

3.3 All prices are exclusive of any applicable Value Added Tax which will be charged at the rate applicable at the date of invoice.

#### **4. Time of Performance**

Whilst we will make every reasonable effort to provide the Services by any date or dates specified in the Contract for provision of the Services such date or dates shall be estimates only and time for performance of the Services by us shall not be of the essence. Any failure by us to so provide by the due date or dates shall not constitute a breach of Contract and we reserve the right to wholly or partly suspend provision of the Services.

#### **5. Terms of Payment**

5.1 Notwithstanding any other provision of these Conditions we reserve the right to invoice and require payment for Services in advance.

5.2.1 Unless otherwise agreed the price for the Services shall be due and payable in full in cleared funds to us prior to the removal of the Semen from the Storage Centre. We reserve the right not to release the Semen or, if applicable, the Stallion to you until all monies due to us from you have been paid in full.

5.2.2 Should the period of the Contract exceed one calendar month we reserve the right to request interim payments which must be made on

receipt of an invoice and in any event before the end of the month referred to in the invoice.

5.3 If you do not pay the whole or any part of the price on the due date then you must pay to us interest on the amount outstanding from the due date until the actual date of payment (whether before or after judgement) at the rate of 5% per annum over the base rate of National Westminster Bank plc from time to time in force which shall accrue on a daily basis and which shall apply whether or not we exercise the right of sale under this Contract.

5.4 So long as any payment due from you to us is outstanding (in this Condition, called "Your Debt"), whether under the same or any other Contract or transaction between you and us, we shall have a lien over any of your property in our possession and when this lien becomes exercisable by us, the following Conditions shall apply:

5.4.1 You shall pay us fees and charges at the same rates as under this Contract and if this Contract has been terminated, the relevant rate at which such fees and charges will be payable by you will be the rate which was payable immediately prior to termination; and in default of prompt payment of Your Debt, You authorise us to hold onto and/or ultimately dispose of some or all of your property including the Equine Semen.

5.4.2 In the event that Your Debt is not paid by the due date for payment or You fail to collect the Semen after we have required You to collect it or upon expiry or termination of this Agreement, we

may, subject to Condition 5.4.4 sell the Semen and pass all ownership to it and use the proceeds of sale to pay first the costs incurred by us in the sale and removal, and secondly in paying Your Debt and to hold any balance for you. Interest will not accrue to you on the balance.

5.4.3 If the proceeds of sale are insufficient to discharge all or any part of the costs of sale incurred by us and Your Debt, you must pay any balance outstanding to us within seven days of a written demand from us which will set out the balance remaining due to us after the net proceeds of sale have been credited to you. Interest will continue to accrue on Your Debt until payment has been made.

5.4.4 Before we sell the Semen, we will give you notice in writing by registered or recorded delivery post at your address overleaf or any address in England and Wales notified by you to us in writing prior to our notice, specifying the amount of Your Debt at the date of the notice (and, in our sole discretion, specifying any amount by which Your Debt is increasing after the date of that notice) and directing you to pay and that in default of payment within 20 days after the date of the notice, we will sell the Semen. We do not agree to give you any further notice of any intended sale.

5.4.5 We will sell the Semen by the best method(s) reasonably available to achieve the best selling price reasonably obtainable in the open market, taking into account the costs of sale.

5.4.6 If the Semen cannot reasonably and economically be sold (for any reason whatsoever), or it remains unsold despite our efforts, you authorise us to treat it as abandoned by you and to destroy or otherwise dispose of it at your cost.

5.5 You shall not be entitled to withhold payment of any amount due to us by reason of any disputed claim by you in connection with the Contract nor shall you be entitled to set off against any amount payable to us any amount which is not then due and payable by us or for which we dispute liability.

## **6. Suspension and Termination**

6.1 If you fail to make any payment when it becomes due (either under the Contract or under any other Contract or transaction between you and us) or if you commit any other breach of the Contract and fail to remedy the same within seven days of receiving our request in writing so to do or you act in such a way as to impede or interfere with our performance of the Contract or any distress or execution is levied upon any of your goods or property or you make any voluntary arrangement with your creditors or become subject to an administration order or (being an incorporated company) pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court makes an order to that effect or an encumbrancer takes possession, or an administrative receiver or receiver is appointed, of any of your property or

assets, or you cease, or threaten to cease, to carry on business or remove the Semen from the Storage Centre or if we have reason to believe that any of the events mentioned above is about to occur in relation to you and notify you accordingly, we may:-

6.1.1 suspend provision of the Services and/or

6.1.2 hold by way of lien all materials or other property of yours in our possession in respect of Services carried out or to be carried out by us for you for the general balance of account for the time being owing to us by you; and/or

6.1.3 terminate the Contract forthwith and, if the Services or any part of them have been provided but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary but this shall not affect our rights to any unpaid price for Services provided under the Contract and to damages for loss (both direct and consequential) suffered in consequence of such termination; and/or

6.1.4 exercise our rights under clause 5.4.

6.2 We may terminate the Contract at any time upon not less than one month's notice in writing to you and you may terminate the Contract at any time by giving not less than one month's notice (or such shorter period or notice as we may in our absolute discretion agree to accept) in writing to us. Such termination shall not relieve you of the obligation to pay to us all charges accrued under the Contract in respect of Services performed

prior to the date of termination and so that we shall have a lien as provided in Conditions 5.4 and 6.1.2. We shall within 10 working days after the date of termination refund to you any payment made by you under the Contract representing a prepayment for Services not yet performed prior to the date of termination but after deduction of any amount owing to us by you whether or not under the Contract.

6.3 In the event that we are (other than in any of the circumstances set out in Condition 6.1) prevented from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond our reasonable control including but not limited to a Force Majeure as defined in clause 14 below then further performance of the Contract shall be suspended for the period during which we are so prevented provided that in the event of the Contract being suspended for a continuous period of more than three months then either party may give the other notice in writing to terminate the Contract forthwith and in such circumstances you shall pay for all Services provided to the date of such termination in accordance with these Conditions. We shall be under no liability whatsoever to you for any direct or consequential loss or damage suffered by you as a result of our inability to perform our obligation under the Contract in these circumstances.

6.4 If we are prevented from providing Services in accordance with the Contract as a result of (a)

delay or default on your part or (b) any other reason beyond our reasonable control and the Contract is not terminated in accordance with the other provisions of these Conditions we shall be entitled to reschedule the date or dates for the provision of the Services to such time or times as we shall reasonably require taking into account our commitments to third parties and in the event of (a) shall be entitled to make a reasonable charge in respect of losses or costs incurred by us by reason of provision of the Services being so prevented.

6.5 Storage and distribution of frozen Equine Semen shall be subject to and in accordance with our Equine Semen Storage and Distribution Procedures.

## **7. Warranties and Limitation of Liability**

7.1 We undertake to use all reasonable care and skill in performance of the Services and to comply with relevant legislation and regulations for the time being in force applicable to our performance of the Contract. We reserve the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement and if in our reasonable opinion any such change in legislation or regulation results in our performance of the Services becoming unduly onerous we shall be entitled to terminate the Contract by giving you notice in accordance so far as possible with clause 6.2 above.

7.2 Notwithstanding the provisions of Condition 7.1 and having due regard to the inherent risks

and uncertainties involved in all biological processes we do not guarantee or warrant that a particular outcome will occur as a result of our provision of the Services. In particular but without limitation we give no warranty that any semen, stored or distributed will result in the recovery of any usable semen or that insemination of a mare with such semen will result in a pregnancy.

7.3 Except as set out in in these Conditions all warranties, terms, conditions or undertakings whether express or implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

7.4 Our liability to you (whether for breach of contract, negligence, breach of statutory duty or otherwise) in relation to the provision of Services by us under this or any other Contract shall (except as set out in conditions 7.5 to 7.7) be limited as follows:-

7.4.1 In respect of any loss or destruction of or damage to Semen during the provision of storage Services by us under this or any other Contract our total liability to you shall in no circumstances exceed the higher of £250 or the total amount paid by you to us during the preceding 12 month period in respect of storage Services under this or any other Contract with us.

7.4.2. Unless we have specifically agreed to do so in writing, we will not undertake the delivery of Semen to or from the Collection Centre or any other location and will under no circumstances be

responsible for any loss or damage occasioned during transit and however caused whether consequential or otherwise.

7.43. If, at your request, we agree to arrange for the transport of Semen to or from the Collection Centre to a location specified by you, all such arrangements shall be at your sole risk regardless of whether such collection and/or transport is carried out by you or your agents or representatives or by us or our agents or representatives or by a third party. You are strongly advised to effect insurance cover for any loss or damage occasioned during the transport of Semen. We will not arrange for the transport of Semen unless you have confirmed your instructions in writing.

7.4.4 Time of delivery shall not be of the essence. Any time or date for delivery given by us or on our behalf is given in good faith, but is an estimate only.

7.54. You will bear the cost of all transport (and any related insurance) of Semen to and from the Collection Centre or other premises as appropriate. If we arrange for the transport of Semen at your request we shall be entitled to immediate payment from you of any costs incurred in relation to such transport together with the cost of obtaining suitable insurance cover (if we have agreed to arrange insurance at your request).

7.4.6 We may from time to time offer you the opportunity to take out insurance using a policy

available through us and you may apply for such insurance by completing a separate application form. We will not give any advice regarding insurance and it is for you to make your own judgment whether such insurance is appropriate to cover your property and risks to it (including storage and distribution of Semen).

7.4.7 You must notify us as soon as you become aware of any event which may give rise to a claim against us in respect of the provision of Services and if such notification is oral you must confirm it in writing within 7 days. No claim in relation to the provision of Services shall be accepted by us unless notified to us by you in accordance with this Condition.

7.4.8 In no circumstances and notwithstanding any other provision of these Conditions shall we be liable for any loss (whether direct or indirect) of profits, business, loss of contract, loss of use or anticipated savings or for any indirect or consequential loss or damage whatsoever.

7.5 If and to the extent that s.6 and/or s.7(3A) of the Unfair Contract Terms Act 1977 applies to the Services no provision of these Conditions shall operate or be construed to operate so as to exclude or restrict our liability for breach of the express warranties contained in Condition 5 of that Act or for breach of the applicable warranties as to title and quiet possession implied into these Conditions by s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982 whichever Act applies.

7.6 Nothing in these Conditions shall operate or be construed to operate so as to exclude or restrict our liability for death or personal injury to any human being caused by reason of our negligence or negligence of our servants, employees or agents.

7.7 No provision of these Conditions shall have effect or operate so as to exclude any liability of either party in respect of fraud or a fraudulent misrepresentation made by that party to the other or to restrict or exclude any remedy which the other party may have in respect of such fraud or fraudulent misrepresentation.

## **8. Your Obligations**

8.1 You shall comply with the Procedures.

8.2 You shall keep and provide to us all such records and information as are relevant to the provision of the Services by us.

8.3 Where you are not the owner of the Semen, you must notify us in writing of that fact and warrant that you have full authority to accept these Conditions on behalf of the owner or any other joint owner. Where the ownership of any of the Semen stored by us changes during the term of the Contract you must notify us immediately in writing of that fact and undertake to us to procure the acceptance by the new owner of these Conditions. You agree to indemnify us against any loss or damage suffered by us for breach of this warranty including any loss, damage or expenses incurred by us (including reasonably incurred legal fees) arising from any step or action

taken by any person who owns or has an interest in the Semen.

8.4 You must co-operate with us in all matters relating to the Services.

8.5 Any failure on your part to comply with the obligations in this Condition 8 shall entitle us at our discretion to refuse to provide the Services and the provisions of Condition 6.4 in respect of event (a) shall then apply.

## **9. Description**

9.1 We undertake to use all reasonable care and skill in the compilation of our Literature.

9.2 Notwithstanding the provisions of Condition 9.1, any figures, statements, descriptions, illustrations, photographs, drawings or any other matters contained in the Literature are not guaranteed to be accurate and are intended merely as guidance of products and services and shall not form part of the Contract.

## **10. Severance**

10.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal provided always that it shall be modified to the minimum extent possible and in accordance with the



intentions of the parties at the time of the creation of the Contract.

10.3 The parties agree, in the circumstances referred to in condition 10.1 and if condition 10.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

#### **11. Jurisdiction**

These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with English law and we and you hereby agree to submit to the exclusive jurisdiction of the English Courts.

#### **12. Notices**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number or email address given in the Contract (or such other address, fax number or email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or email sent by pre-paid, first class post or recorded delivery. A notice is deemed to have been received, if delivered personally, 24 hours after delivery, in the case of fax or email, 24 hours after the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under

this condition 12 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted, or, in the case of email that such email was successfully sent to the specified email address of the addressee.

#### **13. Waiver**

No waiver by us of any breach of any provision of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision and we shall not be prejudiced by any forbearance or indulgence granted by us to you.

#### **14. Force Majeure**

We shall have no liability to you under the Contract if we are prevented from or delayed in performing our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of

plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (a 'Force Majeure').

### **15. Assignment**

15.1 You shall not, without our prior written consent assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.

15.2 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.

### **16. No Partnership or Agency**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **17. Rights of third Parties**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

## **A. EQUINE SEMEN STORAGE AND DISTRIBUTION PROCEDURES**

**These procedures apply to the provision of long term storage of frozen semen and the distribution of semen.**

A1. We will store semen at the Storage Centre or at such other premises that we may in our absolute discretion determine for such purpose.

A2. We will arrange for the storage of semen to be overseen by a person experienced in such work.

A 3. We will store Semen in such quantity as may be agreed between you and us.

A 4. We shall be entitled in our absolute discretion to refuse to receive any Semen for storage at the Collection Centre for any reason.

A 5. Where we are providing only storage and distribution Services, you shall deliver the Semen to the Collection Centre on a date and at a time to be agreed with us. The container in which the Semen is delivered must be suitable for this purpose and we shall be entitled in our absolute discretion to refuse to receive any Semen delivered in a container which is not considered of a satisfactory standard.

A 6. You agree to us carrying out all necessary tests and procedures on the Semen as appropriate for its storage or distribution.

A 7. In respect of Semen delivered to us a straw (being part of a single dose) of Semen will be thawed and examined under a microscope for motility and morphology. This is a guide only as to the quality of the Semen but we give no guarantee in respect of any tests carried out on the Semen regarding the fertility or suitability of the Semen or otherwise.

A 8. If it appears to us that the Semen is not suitable for storage or distribution then, without prejudice to any other rights or remedies we may have, we may give you seven days notice requiring you to remove the Semen from the Collection Centre and following such notice you shall arrange for the Semen to be removed within seven days, unless otherwise agreed between you and us. We shall be entitled in our absolute discretion and without notice or compensation to you to destroy or dispose of any Semen which is the subject of such notice and has not been removed by you in accordance with this paragraph A8.

A 9. Subject always to the Terms and Conditions you may remove the Semen from the Collection Centre at any time on a date and at a time agreed with us after giving seven days notice to us provided that such removal is not in breach of any relevant statutory or regulatory requirement.