

TERMS AND CONDITIONS OF TRAINING

1. Definitions

"GST" means any tax imposed on the supply of goods or services, consumption or value added tax, including without limitation and tax imposed in the *A New Tax System (C'th)*;

"Horse" means the horse or horses trained by the Trainer for the Owner from time to time;

"Owner" means an owner, part owner, lessee, syndicate, corporation or any manager of any of them or other person obtaining the Services;

"Services" includes training, maintenance, stabling, feeding, exercising, running, freighting, agisting including gear and additives, and prescribing treatment for the Horse;

"Terms" means these Terms and Conditions of Training; and

"Trainer" means any individual, corporation, trust or partnership operating a business which trains the Horse;

"Training Fee" means the amount specified by the Trainer to the Owner at the time of entering into the agreement and calculated on a daily basis or part thereof, per horse.

2. Application

2.1 All training in Australia conducted by a member of the Australian Trainers Association will be subject to the Terms. Unless otherwise agreed in writing by the Trainer, the Terms cannot be varied or supplanted by any other terms.

2.2 These Terms will be governed by the laws of the State or Territory in which the Trainer operates. Where there is more than one Owner the Terms will bind all Owners jointly and severally.

3. Rights and Obligations of the Trainer

3.1 The Trainer will provide the Services in such manner as the Trainer, in its absolute discretion, deems proper and appropriate.

3.2 The Trainer will have the right to nominate, enter, accept or withdraw the Horse from any race or trial he/she thinks fit unless he/she has received written instructions from the Owner to the contrary.

3.3 The Trainer may engage a Veterinarian, Farrier, Horse Dentist or other person thought by the Trainer to be necessary or advisable to attend and treat the Horse and the full cost thereof must be borne by the Owner.

3.4 The Trainer will engage or employ and instruct the race jockey unless prior arrangements have been made by the Owner with the full knowledge of the Trainer not less than 48 hours before the race or 24 hours before the time to declare the rider for the Horse in a race as required by the relevant Rules of Racing, whichever will be the earlier.

3.5 In the case of more than one Owner written instructions must come from the manager as recognised by the Rules of Racing.

4. Payment

4.1 All monies due to the Trainer are to be paid within 7 days of the issuing of an invoice.

5. Training Fees and Other Fees

5.1 The Owner must pay the Training Fee to the Trainer. The Training Fee includes (but is not limited to) any and all costs, expenses or charges levied by the Trainer in connection with the Services including those detailed in condition 5.2

5.2 The Owner is liable for all additional costs occasioned by the Horse being trained or transported away from the Trainer's address of its licence to train and is responsible for the cost of all veterinary, farrier, dentistry, race nominations, jockey fees, race day fees including the additional allowance as set out in any Industrial Agreement of Award relating to attendants or strappers and any other fees incurred by the Trainer.

5.3 Each amount specified as payable by the Owner to the Trainer under any Contract or Agreement is expressed net of GST. In addition to the amount payable, the Owner must pay to the Trainer on demand, the GST payable by the Trainer in respect of that amount.

5.4 Where there is any change in the costs incurred by the Trainer in relation to goods or Services, the Trainer may increase its price for goods or Services on order to take account of any such change.

5.5 The Training Fee may be varied from time to time by notice in writing to the Owner, whether it be by submission of an account or otherwise.

5.6 The Owner must pay for all bank fees and charges and agent/merchant fees associated with the payment of the Trainer's invoices.

6. Stakeholding

6.1 In addition to the Training Fee and any other monies payable to the Trainer, the Trainer is entitled to receive 10% of the advertised stakes earned by the Horse or 10% of the actual stakes earned, whichever is greater. The Trainer's right to a percentage of stakes continues for the period of two weeks after the Horse is transferred to another trainer.

7. Payment Default

7.1 If the Owner defaults in payment by the due date of any amount payable to the Trainer, then all money which would become payable by the Owner to the Trainer at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Owner, and the Trainer may, without prejudice to any other remedy available to it:-

- (a) charge the Owner compounding interest on any sum due at the rate of 2% per month for the period from the due date until the date of payment in full;
- (b) charge the Owner for; and the Owners must indemnify the Trainer from, all expenses and costs (including without limitation all legal costs and expenses)

incurred by it resulting from the default and in taking action to enforce compliance with the Terms;

- (c) retain possession of any horse until all Training Fees and other fees have been paid;
- (d) cease or suspend for such period as he/she thinks fit supply of goods or Services to the Owner;
- (e) by notice in writing to the Owner, terminate any agreement with the Owner so far as unperformed by the Trainer, without liability for any direct or indirect loss or damage that may be caused to the Owner or any third party;
- (f) retain possession of all papers and documents including registration papers of the Horse or pertaining to the Horse notwithstanding that such retention will have the effect of preventing the Horse from racing and the Trainer further may retain any gear, trophies and, other items the property of the Owner in the Trainer's possession; and
- (g) may direct any race club to pay any prize money won by the Horse to it and will have the right to apply any prize money in the manner described in condition 7.3 coming into its possession which was won by the Horse as if such prize money were the proceeds of sale of the Horse.

7.2 Conditions 7.1(d) and (e) may also be relied upon, at the option of the Trainer:

- (a) where the Owner becomes bankrupt; or
- (b) enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution.

7.3 Where the Training Fee or any other amount remains outstanding for a period of 30 days after the same was due for payment, the Trainer may offer for sale the Horse by public auction and to apply the proceeds of sale (after deduction of commissions etc. directly associated therewith) firstly against all Training Fees outstanding in relation to the Horse to the date of sale together with any interest accrued and any costs of the Trainer associated with the sale and secondly against any other training fees outstanding from the Owner in relation to any other horse with the Trainer with the balance, if any, to be paid by the Trainer to the Owner or as the Owner may direct.

8. Sale of the Horse and First Right of Refusal

8.1 In the event that an Owner intends to sell a Horse while in the care of a Trainer or within a period of 60 days following the transfer of the Horse from the Trainer (including if the Horse is spelling or on agistment unless the Owner has notified the Trainer in writing of its intention not to return the Horse to the Trainer's stable) the Owner must first give the Trainer an offer to purchase the Horse on no less favourable terms than it would to a third party. Where the offer is accepted, the following conditions apply:

- (a) the offer must be in writing and state the terms and conditions of the transfer;
- (b) the Trainer may accept the offer by notifying the Owner of its acceptance in writing within 14 days of receiving the offer; and
- (c) the Owner must not proceed with the transfer until the 14 day period has expired.

8.2 If the offer in condition 8.1 is rejected by the Trainer, the Owner must forthwith upon the sale to any third party pay the Trainer an amount of 10% of the proceeds of sale after deduction only of expenses directly relating thereto including commission.

9. Insurance

The Owner must at all times advise the Trainer of any insurance policies affecting the Horse and if so requested by the Trainer, must produce to the Trainer evidence of any insurance policy as required. Nothing in this condition requires the Trainer to take out any insurance in relation to the Horse.

10. Owner Warranties and Indemnities

10.1 The Owner warrants to the Trainer that the Horse is sound, well handled and not dangerous or diseased.

10.2 The Trainer must not be liable to the Owner, and the Owner indemnifies the Trainer, against all actions, loss, damage, costs, or expenses arising out of any accident, loss, injury, damage or death to any horse, any person or any property howsoever caused even if the same is directly or indirectly caused by the negligent act or omission of the Trainer, his contractors, employees or agents.

11. Liability

11.1 All conditions and warranties implied into contracts for the supply of services at law or pursuant to any Federal or State legislation are excluded to the maximum extent permitted.

11.2 The Trainer is not liable for any indirect or consequential losses or expenses suffered by the Owner or any third party however caused, including but not limited to loss of turnover, profits, business or goodwill.

11.3 The Trainer is not liable to the Owner for any loss, damage, cost or expense incurred and arising out of any injury, damage or death to any horse placed with it for training or any injury, damage or death caused to any person howsoever that injury, damage or death may arise or be caused even if the same is directly or indirectly caused by the negligent act or omission of the Trainer, its contractors, employees or agents.