



TERMS OF TRADE

EFFECTIVE 1 NOVEMBER 2010

The following terms will be incorporated into every agreement (the "Agreement") entered into between the client (the "Client") and Xcell Breeding Services Limited ("XBS") for the supply of products and/or Services.

1. Definitions

"Agreement" means the agreement entered into between the Client and XBS in respect of the provisions of the Services and/or supply of the Products by XBS to the Client including the Terms of Trade.

"Confidential information" includes all intellectual property and other information belonging to or held by XBS which by designation or which by its nature is intended to be treated as confidential information.

"Price" means the price for the Products and Services as specified by XBS from time to time.

"Products" means the products to be supplied by XBS to the Client whether independently or as part of the Services or as a result of the Services.

"Services" means the services to be provided by XBS to the Client pursuant to the Agreement.

"Terms of Trade" means these terms of trade.

2. Agreement and Price

XBS agrees to sell and the Client agrees to purchase the Products and/or Services for the Price.

The Client agrees that all Prices are excluding GST, other taxes and duties, which may be applicable and any insurance/freight/handling charges, unless otherwise specified in writing by XBS

Any additional charges shall be at the expenses of the Client, and XBS will invoice the Client for such additional charges.

The Client agrees and acknowledges that the Price may be increased by XBS from time to time.

3. Time and manner of payment

XBS will provide an invoice to the Client from time to time in respect of the Products and/or the Services provided to the Client by XBS. Unless otherwise specified in writing by an authorized officer of XBS, the Client shall pay any invoice provided to the Client by XBS without deduction or set-off to XBS on the 20th day of the month following the date of invoice for the Product and Services.

The time for payment within which the Client is to pay for the Products and/or Services will be an essential term of this Agreement.

If XBS at any time deems the credit of the Client to be unsatisfactory, it may require security for payment and the Client will make such security available. The Client hereby authorizes XBS to conduct all credit checks and searches of the Client, and its financial and business affairs XBS deems necessary. The Client will provide all necessary written authorization for such credit checks and searches as requested by XBS from time to time.

4. Interest and costs on overdue accounts.

If the Client fails to pay any monies on the due date, XBS may (at XBS sole discretion):

- (a) charge interest all overdue accounts at a rate of 3% per month calculated on a daily basis until payment is received in full by XBS but without prejudice to all or any of XBS's rights and remedies under the Agreement. Any payments received by XBS will be applied firstly against such interest;
- (b) obtain reimbursement for any legal costs (including all costs between solicitor and client), and debt collection fees and any other costs incurred in the recovery of an overdue debt;
- (c) revoke, without notice, any previously agreed entitlement to any discount; and
- (d) refuse to supply any further Products, and/or Services to the Client.

5. Delivery

Delivery of the Products will be made pursuant to the Agreement or as otherwise agreed between the parties.

Any time or date for delivery of the Products will be an estimate only.

6. Passing of risk

On delivery of the Products by XBS to the Client, risk in the Products shall pass from XBS to the Client and the Client shall carry the full risk of liability with no recourse to XBS.

7. Retention of title provisions

XBS will retain ownership of all Products until payment has been made by the Client in full. The Client shall ensure that all Products are stored in a way that clearly identifies the Products as the property of XBS.

The Client acknowledges that it is in possession of the Products solely as bailee for XBS until payment for the Products has been made in full. The Client shall hold the proceeds of sale of all products that have not yet been paid for in trust for XBS.

The Client agrees that XBS, its agents or servants (without the need to give notice) may enter onto any premises under the ownership or control of the Client for the purpose of inspecting and/or repossessing any such Products not paid for in full.

8. Replacement of Products/Repeat of Services

Subject to clause 11, in the event of any defects in the Products or there is an unsatisfactory outcome to the Services, XBS may elect (in its sole discretion);

- (a) to replace the Product or
- (b) repeat the provision of the Services; or
- (c) provide a refund to the Client for any Product and/or Service

The Client agrees and acknowledges that XBS will not be liable for any Products that are incorrectly stored, maintained or handled by the Client or that are damaged in transit.

9. No Warranty

The Client agrees and acknowledges that:

- (a) any information provided to the Client by XBS is intended as a guide only by XBS and any such information is relied on by the Client at its own risk;

- (b) the provision of the Products and the outcome of the Services are subject to events and variables which are outside the control of XBS and which may affect the results achieved through the use of the Products and/or Services;
- (c) XBS, its employees, servants and agents do not give any representation or warranty of any sort, whether express or implied, as to the results and/or performance to be achieved or expected from the Products and/or Services supplied by XBS.
- (d) XBS will not be liable for any losses caused to the Client or any failure of the Products or unsatisfactory outcome of the Services that are beyond the reasonable control of XBS.

10. Limitation of Liability

XBS shall be under no liability whatsoever to the Client for any loss or damage of any kind arising directly or indirectly from the Products, Services or this Agreement including any loss of profit, or consequential loss and whether actionable in contract, tort (including negligence), equity or otherwise. Notwithstanding this clause, in the event that XBS is found liable, XBS's liability shall not exceed the value of the relevant Product and/or Service provided by XBS to the client.

11. Indemnity

The Client shall indemnify XBS against all liabilities, costs (including full costs between solicitor and client), losses, claims or demands incurred by XBS arising out of or incidental to any of the Products, Services and/or this Agreement.

12. Force majeure

XBS will not be liable for any delay or failure in the performance of any of the obligations imposed by the Agreement or these Terms of Trade, provided that such failure is occasioned beyond the reasonable control and without the fault or negligence of XBS.

13. Variation

No alteration or variation of the Agreement of these Terms of Trade will be binding upon XBS unless authorized by XBS in writing.

14. Termination

If the Client fails to pay monies, commits any act of bankruptcy, has a receiver appointed over its property or being a company does any act, which would render it liable to be wound up, XBS may (without prejudice to any other remedies available to it) suspend or terminate the Agreement and the proportion of the Price, calculated according to the Products, and/or Services supplied to date, shall immediately become due and payable to the Client.

15. Dispute resolution

In the event of any dispute between the parties in relation to the terms and conditions of the Agreement or these Terms of Trade, the parties shall first seek to resolve such dispute by giving notice in writing to the other party and in good faith endeavoring to resolve the dispute. If the dispute remains unresolved, the parties shall first seek a resolution through the use of mediation or other informal method of resolution before pursuing resolution through the Courts.

16. Notices

Every notice given under the terms of the Agreement and these Terms of Trade will be sufficiently given if delivered personally, posted or successfully transmitted by facsimile or email to the intended recipient at his, her or its last known address/facsimile number or email.

17. Individual liability and guarantees

Where the client comprises more than one person carrying on business in partnership, each and every individual partner will be jointly and severally liable to XBS in respect of all or any indebtedness or liability of the Client arising out of the Agreement and these Terms of Trade. Where the client is a limited liability company or other corporation, each of the directors thereof will, upon demand, and in writing interpose and bind themselves as sureties and co-principal debtors with the Client, jointly and severally, for the due and principal payment of all monies and performance of all obligations due by the Client arising out of the Agreement and these Terms of Trade.

18. Intellectual Property

18.1 The Client acknowledges that XBS is the owner and/or licensee of the intellectual property rights in certain products and systems which may be utilized in the provision of the Products and/or Services provided to the Client, and that the Client obtains no rights and/or interest in such intellectual property by virtue of its purchase of the Products and/or Services from XBS.

18.2 This clause 18 shall survive termination of the Agreement and these Terms of Trade.

19. Confidentiality

The Client shall not disclose any Confidential Information to any third party without XBS's prior written consent.

This clause 19 shall survive termination of the Agreement and these Terms of Trade.

20. Use of information

The Client agrees that XBS may obtain information about the Client from the Client or any other person in the course of XBS's business, including for the purpose of credit assessment, debt collection and direct marketing activities, and the Client consents to any person providing XBS with such information.

The Client agrees that XBS may use the information it has about the Client relating to the Client's credit worthiness for its own reference purposes.

The Client must notify XBS of any changes in circumstances that may alter the information provided by the Client to XBS.

If the Client is an individual, the client has rights under the Privacy Act 1993 to access information held by XBS on the individual and requests that correction of such personal information.

The Client agrees and acknowledges that XBS will be entitled to use any information or results obtained from the provisions of the Products, and/or Services by XBS for its own records and for statistical and marketing purposes provided XBS ensures that confidentiality is maintained in respect of all personal information relating to the Client.

21. Miscellaneous

Assignability: The Client will not assign or otherwise transfer or encumber its right or obligation under the Agreement or these Terms of Trade except with the prior written consent of XBS.

Entire agreement: The Agreement including these Terms of Trade constitutes the sole understanding of the parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.

Applicable law: The Agreement and these Terms of Trade will be deemed to be made in New Zealand and will be construed and governed by the laws of New Zealand.

Waiver: No waiver of any provision of the Agreement and/or these Terms of Trade will serve as a waiver of any other provision of the Agreement or these Terms of Trade and XBS will not have waived or be deemed to have waived any provision of the Agreement or these Terms of Trade unless such waiver is in writing and executed by XBS.

22. Counterparts

The Agreement and these Terms of Trade may be executed in counterparts (which may be facsimile copies) and all of which taken together constitute the one document.