

TERMS AND CONDITIONS OF AGISTMENT

1. Definitions and Interpretation

1.1 In this Agreement:

- (a) "Agistment Services" means taking in and feeding horses by way of grazing on the Property during the Term;
- (b) "Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of MHT's obligations under this Agreement;
- (c) "Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;
- (d) "Business Day" means a day which is not a Saturday, Sunday or public holiday in NSW;
- (e) "Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;
- (f) "Control" has the meaning set out in the Corporations Act 2001 (Cth);
- (g) "Costs" means any costs, penalties and all expenses including; court costs and legal fees reasonably incurred;
- (h) "Customer" means;
 - (i) the person who places an order with MHT for the provision of the Agistment Services and if more than one then jointly and severally; or
 - (ii) the entity, or corporation on who's authority the person placing an order with MHT for the provision of the Agistment Services ostensibly acts.
- (i) "Customer Information" means any details provided to MHT by the Customer including but not limited to; address and location of collection and delivery, Special Instructions, names and contact details of authorised persons, the gender, age, condition and any identifying features of the Livestock;
- (j) "Delivery Time" means the date the Livestock are delivered to the Property;
- (k) "Guidelines" means Australian Standards and Guidelines for the Welfare of Animals
- (l) "GST" means goods and services tax as defined in the A New Tax System (Goods & Services Tax) Act 1999 as amended.
- (m) "Laws" means acts, ordinances, regulations, rules, codes and by-laws of the Commonwealth or any state or territory;
- (n) "Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);
- (o) "Livestock" shall mean any and all livestock (together with any associated equipment or goods) to be agisted by MHT at the request of the Customer.
- (p) "MHT", "we" or "us" means MAGNIFICENT HORSE TRANSPORT PTY LTD (ABN 246 191 42899);

- (q) "Notice" means any notice or other communication by one party to the other party under the terms of this Agreement including but not limited to any request, demand, consent, waiver or approval;
- (r) "Order" means an order or direction communicated by the Customer to MHT enquiring as to the availability of Agistment Services;
- (s) "Order Method" means the system as used by MHT from time to time, to facilitate an order for Agistment Services;
- (t) "Payment Terms" means the terms of payment set out in the tax invoices issued by MHT to the Customer;
- (u) "Personnel" means any employee, servant, contractor, agent, partner, director or officer of a party;
- (v) "Property" means 154 Morrow Road, Nana Glen in the State of New South Wales
- (w) "Rates" means the rates to be charged by MHT and advised to the Customer from time to time;
- (x) "Related Entity" has the meaning set out in the Corporations Act 2001 (Cth);
- (y) "Special Instructions" means the special instructions set out in the Order;
- (z) "Taxes" means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any Authority including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalisation, business, occupation, excise, income, profits or receipts;
- (aa) "Term" means the date the Agistment Services commence until the date the Agistment Services come to an end pursuant to this Agreement. and

1.2 In this Agreement:

- (a) the headings will not affect interpretation of this Agreement;
- (b) a reference to "A\$", "\$A", "dollar" or "\$" is to Australian currency;
- (c) a reference to a party is to a party to this Agreement;
- (d) a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (e) a reference to any thing (including but not limited to any right) includes part of that thing;
- (f) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Engagement

- 2.1** The Customer wishes to engage MHT to provide the Agistment Services to the Customer and MHT agrees to provide the Agistment Services to the Customer, in accordance with the terms of this Agreement.
- 2.2** The Parties acknowledges that MHT will provide the Agistment Services to the Customer, as an independent contractor.
- 2.3** This Agreement does not create any partnership, joint venture, agency or relationship of employment between the parties.

2.4 The Customer acknowledges that MHT is authorised to provide the Agistment Services on the Property but that MHT is not the owner of the Property.

3. Orders

3.1 The Customer must utilise MHT's Order method to place an Order.

3.2 In placing an Order, the Customer warrants that it has read and agrees to be bound by the terms and conditions of this Agreement.

3.3 MHT's receipt of an Order shall not be deemed to be an acceptance of the Order.

3.4 Any quotation provided by MHT shall not be deemed to be an offer or promise to provide Agistment Services.

3.5 The Customer acknowledges that any quotation provided by MHT is only an estimate of fees and charges based on the Customer Information given at the time of completing the form and the Customer's liability for fees and charges shall be those set out in MHT's tax invoice.

3.6 The Customer Information provided to MHT must be sufficient for MHT to determine whether it is able to provide the Agistment Services.

3.7 An Order will only be accepted once the Customer has accepted in writing any quotations provided by MHT and has paid any fees or deposits as required by MHT in its absolute discretion.

4. Property & Risk

4.1 The Parties expressly agree that:

- (a) MHT's provision of the Agistment Services is subject only to the terms of this Agreement;
- (b) MHT shall not be held liable for any loss or damage suffered by the Customer arising out of the provision of the Agistment Services;
- (c) MHT has (at its sole discretion) the right to refuse or accept Livestock for agistment;
- (d) MHT may provide Agistment Services on the Property to other Customers during the duration of this Agreement.

4.2 The Customer acknowledges and agrees that any Livestock in the possession or control of MHT shall be and will remain so, at the risk of the Customer and further MHT shall not be required to effect insurance over the Livestock whilst in its possession or control.

4.3 MHT shall not be liable for any claim for loss or damage, resulting from a delay in, or failure by, MHT to perform its obligations, if such delay or failure arises from;

- (a) the Customer's failure to comply with any term of this Agreement and/or;
- (b) an event (or the effect of an event) of *force majeure* including but not limited to; extreme weather events, flood or fire, war, epidemics, strikes or lockouts, an Act of God, physical disability, the conduct, legislation or regulations of public

authorities, changes in relevant legislation, civil tumult or disturbance, terrorism, interruption or delay caused by motor vehicle accident, the conduct of public authorities in management of road and transport infrastructure, or any cause beyond the reasonable control of MHT.

- 4.4 MHT accepts no responsibility at law in tort, contract or otherwise for any loss, damage, death to persons or Livestock or expense incurred by Customer, in the course of MHT providing the Agistment Services
- 4.5 The Customer hereby indemnifies MHT at all times against all Claim's, Cost's and Liabilities whatsoever; which may be taken against MHT or incurred or become payable by MHT, arising from the provision of the Agistment Services.
- 4.6 In the event of a breach by MHT of a Statutory Warranty under Australian Consumer Law, MHT's Liability is limited to a refund of any monies paid under this Agreement by the Customer.

5. Compliance, Safety and Livestock Health

- 5.1 The Customer must ensure that prior to delivery to the Property, the Livestock are in good health in accordance with the requirements of the Guidelines.
- 5.2 If at any time MHT determines (at its sole discretion) and acting reasonably, that the Livestock fail to meet the minimum standards as set out in the Guidelines, then MHT reserves the right to refuse to agist any or all of the subject Livestock.
- 5.3 MHT reserves the right to transport lame, injured or sick Livestock, for the purposes of accessing emergency veterinary treatment and further; the costs of such transport and treatment shall be the responsibility of the Customer.
- 5.4 MHT will take all reasonable steps to obtain the Customer's prior written or verbal consent to take such action as contemplated pursuant to Clause 5.3, however; in the event the Customer's consent cannot be readily obtained, the Customer authorises MHT to seek veterinary intervention or treatment and further indemnifies MHT against any costs or liability arising from MHT's decision to exercise its rights under Clause 5.3.
- 5.5 MHT shall not be liable for any loss or damage arising from its refusal to agist Livestock under this clause [5].

6. Fees, Invoicing and Payment

- 6.1 The Customer acknowledges that any quotation given by MHT is based on the Customer Information provided at the time of placing an Order.
- 6.2 The Customer shall be liable to pay the amount as set out in MHT's tax invoice.
- 6.3 If requested to do so by MHT, the customer must pay a deposit in the amount required by MHT prior to the commencement of the Agistment service;

- 6.4 Any variation to the Customer Information provided subsequent to the placing of the Order, may give rise to further fees and charges payable by the Customer. MHT shall use its best endeavours to communicate any additional fees and charges to the Customer at the time of amendment.
- 6.5 The Customer acknowledges that additional fees and charges may become payable in the event the Livestock are required to be quarantined and/or in the event the Livestock are not collected from the Property promptly following the termination of this Agreement.
- 6.6 Subject to MHT's satisfactory provision of the Agistment Services and compliance with the terms of this Agreement, the Customer must pay MHT's issued tax invoices in accordance with the Payment Terms detailed on the tax invoice.
- 6.7 In the event that MHT should (at its discretion) offer credit to the Customer, such credit shall be conditional upon the Customer entering into a separate credit agreement with MHT on terms satisfactory to MHT in its absolute discretion.
- 6.8 The Customer's failure to pay the fees and charges set out in MHT's Tax Invoice, in accordance with the Payment Terms, shall entitle MHT to charge interest on any unpaid monies at the rate of 10% per annum on the outstanding balance; calculated and compounding daily, until the date of repayment.
- 6.9 The Customer grants to MHT a general lien upon the whole of the Livestock for any sum owing under this Agreement at any time by the Customer to MHT and such lien may be enforced by MHT by the sale by auction or private contract of any of the Livestock.

7. Warranties

- 7.1 The Customer represents and warrants to MHT that:
 - (a) The person placing the Order with MHT is duly authorised to do so on behalf of the Customer;
 - (b) The Customer's Livestock to be agisted by MHT, are not subject to any injury, infection, disease, or underlying health condition which is communicable and/or liable to cause the Livestock (and any other Livestock in MHT's possession or control); pain, discomfort, injury, death or misadventure during the course of Agistment;
 - (c) The Customer's Livestock have been wormed within the last three (3) months prior to placing the Order and the Livestock will be wormed at least once every three (3) months for the duration of this Agreement.
 - (d) The Customer's Livestock have bare hooves or will have bare hooves prior to the commencement of the Agistment Services being provided by MHT.
 - (e) The Customer has complied with all relevant state and federal laws, codes and or regulations applicable to the care and control of the Livestock.
 - (f) It shall promptly pay to MHT all fees, expenses and charges due and payable;
 - (g) The Customer Information provided to MHT at any time; was, and remains, at the date of communication of that information to MHT, true and correct and that it further places no obligation on MHT to further investigate the accuracy or deficiency in the information provided;

8. Termination

- 8.1 The Customer may terminate this Agreement without penalty up to 48 hours prior to the Delivery Time.
- 8.2 The Customer may terminate this Agreement at any time upon providing not less than seven (7) days notice in writing to MHT whereupon the Customer shall be liable to pay the Cancellation Fee as set out in MHT's quotation and/or tax invoice.
- 8.3 MHT may terminate this agreement at any time, if the Customer;
- (a) is in breach of this Agreement;
 - (b) fails to give MHT adequate Customer Information;
 - (c) provides any false or misleading warranties under Clause 7;
 - (d) commits an act of dishonesty, fraud, wilful disobedience, misbehaviour, or wilful neglect;
- 8.4 MHT shall not be liable for any actual or consequential loss or damage suffered by any party, person or entity arising from the termination of this Agreement;
- 8.5 The Customer shall indemnify (and keep indemnified) MHT against any claim (inclusive of costs) arising from Clause [8.3] and [8.7] and this clause shall not merge on completion or following termination of this Agreement;
- 8.6 Notwithstanding any other term of condition of this Agreement, the Customer acknowledges that MHT may terminate this Agreement for any reason upon providing not less than forty-eight (48) hours notice to the Customer.
- 8.7 It is hereby expressly agreed by and between MHT and the Customer that:
- (a) notwithstanding anything herein contained or implied, if and whenever the fees payable hereunder or any part thereof shall be in arrears and unpaid for a period of fourteen (14) days after the due date for payment, whether legally demanded or not, or if the Customer shall neglect or fail to perform and observe any of the covenants, conditions or agreements contained or implied in this Agreement which on the part of the Customer are to be performed and observed, or if a sequestration order shall be made against the Customer under the *Bankruptcy Act 1966* (Cth) or if the Customer being a company shall go into liquidation whether voluntary or otherwise, except for the purpose of reconstruction, then and in any or either of the said events, MHT may (in addition to any other rights he may have at law) at its option either:
 - (i) immediately or at any time thereafter terminate this Agreement and remove the Livestock from the Property in accordance with the rights available for impounding of stock not lawfully on a property; or
 - (ii) allow the Livestock to remain on the Property and maintain a lien on the Livestock as provided in Clause 6.9;and in either event the Customer shall be and remain liable for the whole of the fees and for any other monies due under this Agreement and any loss costs or expenses incurred by MHT due to the Customer's breach.
 - (b) The Customer shall pay all reasonable legal costs, stamp duty and other expenses incurred by MHT in connection with any default under this Agreement.

9. Severability

9.1 Any provision of this Agreement which is held to be invalid or unenforceable, is only invalid or unenforceable to that extent, without invalidating or affecting the remaining provisions of this Agreement.

10. Waiver

10.1 Any waiver of a right under this Agreement must be in writing and will not operate as a waiver in relation to any subsequent matter.

10.2 Any failure, delay, forbearance or indulgence by a party in an exercise, or partial exercise, of a right arising under this Agreement will not result in a waiver of that right or prejudice or restrict the rights of the party.

11. Variations

11.1 Any variation of, or amendments to, any terms of this Agreement must be in writing (inclusive or email, electronic messaging or Text Message Services) and agreed by both parties.

12. Governing Law

12.1 This Agreement will be governed by the laws of NSW, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of, that state.

ACCEPTANCE OF TERMS AND CONDITIONS

I, (insert name of customer) hereby expressly acknowledge that I have read, understood and accept the terms and conditions of this Agreement.

Date.....

Name.....

Signature.....

SCHEDULE OF CUSTOMER INFORMATION

DETAIL

Customer:

Livestock Name:

Description of Livestock:

Duration of Agistment:

Fees:

Date Livestock last Wormed:

Livestock Vaccinated for Hendra Virus (Y/N)

Livestock has Bare Hooves (Y/N):