AGREEMENT FOR SALE AND PURCHASE

in respect of a horse named (Horses name)



Warning

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This is a binding legal document. The content of this document will not be suitable for all situations, for example if the buyer or seller is ‘in trade’, the horse is high value, the buyer requires robust warranties etc.

If you have any doubts, independent legal advice should be sought prior to signing this document.

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Release Date: 10 November 2017

**AGREEMENT** dated this  day of  2017

PARTIES

1. **(Seller’s name, location and occupation)** (**Seller**)
2. **(Buyer’s name, location and occupation)** (**Buyer**)

AGREEMENT

The Seller agrees to sell the horse described in Schedule One (**Horse**) to the Buyer, and the Buyer agrees to purchase the Horse from the Seller, on the terms and conditions set out in Schedule Two.

**SIGNED**

|  |  |  |
| --- | --- | --- |
| **Signed** by **[Seller]** |  |  |
| in the presence of: |  |  |
|  |  |  |
| Witness signature |  |  |
| Witness name |  |  |
| Occupation |  |  |
| Address |  |  |

|  |  |  |
| --- | --- | --- |
| **Signed** by**[Buyer]** |  |  |
| in the presence of: |  |  |
|  |  |  |
| Witness signature |  |  |
| Witness name |  |  |
| Occupation |  |  |
| Address |  |  |

**SCHEDULE ONE**

**HORSE INFORMATION**

|  |  |
| --- | --- |
| **Registered Name of Horse:** |  |
| **ESNZ/thoroughbred/standardbred Registration number:** |  |
| **Breed Registration number:** |  |
| **Brands:** |  |
| **Height:** (Height certificate to be attached) |  |
| **Sex:** |  |
| **Breed:** |  |
| **Breeding:** | Sire:Dam:Dam sire: |
| **Colour:** |  |
| **Date of Birth:** |  |
| **Microchip:** |  |
| **FEI Passport Number:** |  |
| **Performance History:** | (Records to be attached) |
| **Vaccination history:** | (Records to be attached) |
| **Prior Use** | Racing/sport horse/other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_(circle one or complete) |
| **Horse Location:** | Seller’s address/Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**PURCHASE PRICE, CONDITIONS AND SETTLEMENT**

|  |  |
| --- | --- |
| **Total Purchase Price** (including Deposit, if any) | $ (including GST, if any) |
| **Deposit** | $ |
| **Conditions:** | Finance/Vet report/Other:\_\_\_\_\_\_\_\_\_\_\_\_  (circle those that apply) |
| **Conditions Date** |  |
| **Settlement Date** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or as otherwise agreed by the parties in writing |

**SELLER INFORMATION**

|  |  |
| --- | --- |
| **Seller legal name:** |  |
| **Seller address:** |  |
|  |  |
|  |  |
| **Seller phone number:** |  |
| **Seller email address:** |  |
| **Seller’s Account:** | Account number:  Account name: |

**BUYER INFORMATION**

|  |  |
| --- | --- |
| **Buyer legal name:** |  |
| **Buyer address:** |  |
|  |  |
|  |  |
| **Buyer phone number:** |  |
| **Buyer email address:** |  |

**SCHEDULE TWO**

**TERMS OF AGREEMENT**

# DEFINITIONS AND INTERPRETATION

## **Definitions:** In this Agreement, the following definitions shall apply:

## **Agreement** means the Agreement for Sale and Purchase of Horse, together with all attached schedules.

## **Horse** means the horse described in Schedule One.

## **Buyer’s Vet** means a registered veterinarian appointed by the Buyer, that is not the Seller’s veterinarian.

## **Signing Date** means the date that the last party signs this Agreement.

**Settlement** means the moment in time when the Buyer and the Seller have fulfilled their obligations pursuant to clauses 5.1 and 5.2.

**Working Day** has the meaning set out in the Property Law Act 2007.

## **Schedule One Definitions:** Whenever words appear in this Agreement that also appear in Schedule One, then those words shall mean and include the details supplied after them in Schedule One.

## **References:** In this Agreement, unless the context requires otherwise, or specifically stated, reference to:

* + - 1. the plural includes reference to the singular, and vice versa;
      2. any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the date of this Agreement; and
      3. reference to a party, person(s) or entity includes without limitation:

##### means a reference to any natural or artificial person and includes an individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state, or other entity, in each case whether or not having separate legal personality; and

##### an employee, agent, successor, permitted assigns, executor, administrator and other representative of such party, person or entity.

* 1. **Headings:** Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

## **Schedules:** All schedules, annexures or other attachments to this Agreement form part of this Agreement.

* 1. **Payment:** Any reference to, or obligation in this Agreement which requires payment of money will be a reference to, or deemed to be an obligation requiring payment of money in immediately available cleared funds, without deduction or set off.
  2. **GST:** All amounts payable pursuant to this Agreement include GST, if any.

## **Conflict:** If any provision in Schedule One (**Other Provision**) conflicts with the provisions in Schedule Two, the Other Provision shall prevail.

# DEPOSIT

## **Deposit:** The Buyer shall pay the Deposit to the Seller’s Bank Account by 5pm on the third Working Day after the Signing Date.

## **Failure to pay:** If the Buyer fails to pay the Deposit as required by clause 2.1, the Seller may cancel this Agreement by providing notice in writing to the Buyer. The Buyer’s right to cancel this Agreement shall expire on the Buyer’s receipt of the Deposit.

## **Stakeholder:** TheSeller shall hold the Deposit received from the Buyer as stakeholder until this Agreement is unconditional. For the avoidance of doubt, the Seller shall not spend, transfer or otherwise use the Deposit while it holds it as stakeholder.

## **Deposit refund:** If this Agreement is terminated pursuant to clause 3.6, 4.2or 4.5, the Seller shall immediately refund the Deposit to the Buyer’s nominated bank account.

# CONDITIONS

## **Operation:** If Schedule One indicates that this Agreement is subject to a condition, this clause 3 shall apply.

## **Vet Report:** IfSchedule One indicates that this Agreement is conditional on a vet report, then this Agreement shall be conditional on the Buyer obtaining a report detailing the condition of the Horse from an Buyer’s Veterinarian, which is satisfactory to the Buyer in all respects within 10 Working Days of the date of this Agreement.

## **Finance:** IfSchedule One indicates that this Agreement is conditional on finance, then this Agreement is conditional on the Buyer arranging finance from a lender, and with terms and conditions, that are satisfactory to the Buyer in all respects, within 10 Working Days of the date of this Agreement.

## **Effect of conditions:** The conditions set out in clauses 3.2, 3.3 and 3.4 are, to the extent applicable (**Applicable Conditions**), conditions subsequent, inserted for the sole benefit of the Buyer. The last date for fulfilment of each of the Applicable Conditions shall be the Conditions Date. An Applicable Condition shall not be fulfilled or waived until notice of fulfilment is provided by the Buyer to the Seller in writing.

## **Termination:** If any one or more of the Applicable Conditions are not fulfilled or waived (as provided for in clause 3.5) on or prior to the Conditions Date, either party may terminate this Agreement by giving notice in writing to the other. Termination is without prejudice to either party’s rights or remedies pursuant to this Agreement.

# BETWEEN SIGNING AND SETTLEMENT

## **Care:** For the period between the Signing Date and Settlement, the Seller will care for the Horse in accordance with standards of animal husbandry generally accepted for a horse used for the Prior Use.

## **Death Notice:** If between the Signing Date and the Settlement, the Horse dies, the Seller shall immediately notify the Buyer in writing, and this Agreement shall automatically terminate.

## **Illness or injury notice:** If, in the Seller’s reasonable opinion, the Horse becomes injured or ill, so that it is incapacitated to the extent that it is, or is reasonably unlikely to be, unable to be reasonably used for the Prior Use immediately prior to the Settlement Date (**Incapacitated**), then the Seller shall immediately notify the Buyer in writing.

## **Report:** The Buyer may, at its cost, engage an Buyer’s Vet to inspect the Horse on one occasion prior to the Settlement Date and prepare a report (**Condition Report**). A copy of the Condition Report shall be provided to the Seller in writing.

## **Termination:** If the Condition Report confirms that the Horse is Incapacitated, then the Buyer may, prior to the Settlement Date, terminate this Agreement by giving the Seller notice in writing.

## **Effect:** Termination pursuant to clause 4.5 shall be without prejudice to each party’s rights and remedies pursuant to this Agreement.

# SETTLEMENT

## **Buyer:** On the Settlement Date, at a time mutually agreed by the Buyer and Seller or if no such time can be agreed at 12pm, the Buyer shall:

#### pay the Purchase Price, less any Deposit paid, to the Seller by way of:

##### cash or bank cheque on the Buyer’s collection of the Horse;

##### electronic transfer to the Seller’s Account, provided that such payment is received by the Seller prior to Buyer’s collection of the Horse; and

#### at the Buyer’s cost, collect and remove the Horse from the Horse Location. The Buyer may engage a third party (**Horse Transporter**) to collect the Horse from the Horse Location provided that the Buyer has notified the Seller in writing at least two Working Days’ prior to the Settlement Date.

## **Seller:** On the Settlement Date, the Seller shall:

#### at the Seller’s cost, make the Horse available for collection by the Buyer at the Horse Location;

#### deliver to the Buyer, in either physical or electronic form, copies of the following documents:

##### all documents of registration;

##### a transfer of ownership form, signed by the Seller, for each breed registry that the Horse is registered on; and

##### reasonable evidence that all security interests that relate to the Horse have been discharged or released;

#### sign all documents reasonably necessary to record the transfer of ownership to the Buyer on any breed register.

## **Interdependence:** All obligations set out in clauses 5.1 and 5.2 are interdependent.

## **Title and risk:** Title and risk in the Horse shall transfer to the Buyer upon the Buyer, or the Horse Transporter, taking care and control of the Horse at the Horse Location. For the avoidance of doubt, the Buyer shall be responsible to insure the Horse as soon as risk in the Horse transfers to the Buyer.

# DEFAULT

## **Default:** If a party (**Defaulting Party**) fails to comply with their obligations set out in clauses 5.1 or 5.2 on the Settlement Date (**Settlement Obligations**), then the other party may, provided that the other party has complied with, or is ready, willing and able to comply with, their Completion Obligations, give a notice to the Defaulting Party requiring the Defaulting Party to comply with their obligations (**Settlement Notice**).

## **Compliance:** The Defaulting Party shall have 10 Working Days after the date that the Settlement Notice was given (**Rectification Period**) to comply with their Completion Obligations.

## **Termination:** If the Defaulting Party has not complied with their Completion Obligations prior to the expiry of the Rectification Period, then the other party may immediately terminate this Agreement by issuing notice in writing to the Defaulting Party.

## **Deposit:** If the Seller terminates this Agreement pursuant to clause 6.3, then the Seller may retain the Deposit. If the Buyer terminates this Agreement pursuant to clause 6.3, then the Seller shall, immediately on termination, refund the Deposit to the Buyer’s nominated bank account.

## **Effect:** Termination pursuant to clause 6.3 shall be without prejudice to each party’s rights and remedies pursuant to this Agreement.

# WARRANTIES

## **Express:** The Seller warrants as at the Signing Date, and repeats each warranty on Settlement that:

#### the Horse Information set out in Schedule One is true and correct;

#### the Seller is not ‘in trade’, and the Horse is not supplied or acquired ‘in trade’ as defined in Consumer Guarantees Act 1993;

#### the Horse will be sold free and clear of any and all security interests or other encumbrances;

#### the Horse is solely or jointly owned by the Owner, and where the Horse is jointly owned by the Owner, all owners of the Horse have signed this Agreement;

#### the Seller has used the Horse for the Prior Use; and

#### the Horse is not Incapacitated.

## **No implied warranties:** Except as expressly set out in this Agreement, to the extent permitted by law, the Horse is provided “as is”, without any other guarantees, warranties, conditions or representations (whether express, implied by law, statute, trade custom or otherwise) including without limitation in relation to title, quality, merchantability, suitability or fitness for purpose, compliance with description, or otherwise.

# DISPUTE RESOLUTION

* 1. **Dispute resolution:** In the event of any dispute under this Agreement, the parties will:
     + 1. promptly give full written particulars of this dispute to the other; and
       2. cooperatively enter into discussions to try and resolve the dispute.
  2. **No Resolution:** If the dispute is not resolved within 10 Working Days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to the disputes tribunal or the Courts, as applicable.
  3. **Exception:** This clause does not apply to:
     + 1. any dispute arising in connection with any attempted re-negotiation of this Agreement; or
       2. an application by either party for urgent interlocutory relief.

# MISCELLANEOUS

* 1. **Governing law:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
  2. **Force majeure:** No failure or omission by any party to carry out or observe any of the terms or conditions of this Agreement will, except as expressly provided to the contrary in this Agreement, give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of such party, provided that this clause will not extend to excuse the consequences of insolvency, financial difficulty, or the non-payment of monies due.

## **Relationship:** This Agreement does not create a joint venture, partnership, agency, or employer/employee relationship between the parties.

## **Notices:** Notices, communications, documents or demands required to be made or served pursuant to this Agreement shall be in writing and signed by the party giving the notice. Notices shall be sent to the applicable party’s registered address, address set out this Agreement, which may be updated from time to time by a party by sending written notice to the other parties. Any notice or document shall be deemed to be duly given or made if delivered by hand, when so delivered; if sent by post, on the fifth working day following posting; if communicated by facsimile or email, when transmitted to the recipient's last known facsimile number and/or email address, provided that the sender does not receive any indication of incomplete transmission.

## **Costs:** Each party shall pay their own costs arising from the drafting, negotiation and execution of this Agreement.

## **Severance:** If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

## **Survivorship:** Termination or expiry of this Agreement for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the parties that are intended to survive such termination, and any other provision to the extent required in order to give effect to such provisions.

* 1. **No waiver:** No delay, neglect or forbearance by either party in enforcing against the other party any provision of this Agreement will be a waiver, or in any way prejudice any right, of that party.

## **Variation:** Any modification to or variation of this Agreement must be in writing and signed by each party.

## **Non-circumvent:** The parties will not circumvent or attempt to circumvent the provisions and/or intent of this Agreement.

## **Assignment:** Neither party shall assign or otherwise transfer the rights or benefits of this Agreement to any third party without the prior written consent of the other party.

## **Short form:** The parties acknowledge that this is a short form Agreement. It may not deal with, or adequately deal with, some matters that may arise. Because of this the parties will work with each other co-operatively to determine how this Agreement is to apply to such matters on a case by case basis, having regard to the broad intentions of the parties in entering into this Agreement.

## **Entire Agreement:** This Agreement constitutes the entire Agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.

## **Counterparts:** This Agreement may be executed in counterparts (which may be electronic or facsimile copies) and all of which, when taken together constitute the one document.