



HORSE SALE AGREEMENT

BETWEEN the person or entity described in Item 1 of the Schedule (“the Vendor”);
AND the person or entity described in Item 2 of the Schedule (“the Purchaser”);
AND the person or entity described in Item 3 of the Schedule (“the Agent”).

WHEREAS:-

- A. The Vendor is the absolute owner of the thoroughbred horse described in Item 4 of the Schedule (“the Horse”).
- B. The Vendor has appointed the Agent as the Vendor’s agent for the purpose of negotiating a sale of the Horse.
- C. The Vendor wishes to sell and the Purchaser wishes to purchase the Horse upon and subject to the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSES as follows:-

1 SALE

- 1.1 In consideration of and subject to the payments to be made by the Purchaser pursuant to the Agreement, the Vendor hereby agrees to sell and the Purchaser hereby agrees to purchase the Horse.
- 1.2 Title to the Horse shall only pass to the Purchaser upon Completion (as hereinafter defined) notwithstanding any prior delivery of the Horse.
- 1.3 Risk in the Horse shall pass to the Purchaser from the time of Completion or delivery of the Horse to the Purchaser (whichever shall be the earlier). From that time, the Horse shall be at the Purchaser’s sole risk for any damage or injury suffered or caused by the Horse, whether as a result of natural causes or otherwise.

2 CONSIDERATION

- 2.1 Subject to the provisions of this Agreement, the Purchaser shall pay to the Vendor for the Horse the purchase price specified in Item 5 of the Schedule (“the Purchase Price”).
- 2.2 The Purchaser shall pay the Purchase Price to the Vendor as follows:
 - 2.2.1 immediately upon execution of this Agreement, the Purchaser shall pay to the Agent the deposit specified in Item 6 of the Schedule (“the Deposit”); and
 - 2.2.2. on or before the date specified in Item 7 of the Schedule, the Purchaser shall pay the balance of the Purchase Price to the Agent in cash or by unendorsed bank cheque or by other cleared and immediately available funds (the time of such payment being herein referred to as “Completion and in this respect time shall be of the essence).
- 2.3 Completion shall take place at the Agent’s address or at such other place or in such other manner as the parties may otherwise agree.
- 2.4 Unless otherwise specified in the Schedule, all amounts are expressed in Australian Dollars.

3 AGENT’S APPOINTMENT

- 3.1 The Vendor hereby confirms its appointment of the Agent as agent of the Vendor in respect of the sale of the Horse to the Purchaser.
- 3.2 The Agent shall be entitled to receive commission on the Purchase Price at the rate specified in Item 8 of the Schedule. The Vendor hereby irrevocably authorises and directs the Purchaser to pay the Deposit and the balance of the Purchase Price to the Agent and receipt by the Agent shall constitute full and sufficient receipt by the Vendor.
- 3.3 Upon Completion, the Agent shall be entitled to deduct and retain from the Purchase Price (including the Deposit) all commission and any other monies payable to the Agent in connection with the sale of the Horse and shall promptly account to the Vendor for the balance.

4 POSSESSION

- 4.1 The purchaser shall be entitled to possession of the Horse upon Completion and the Vendor shall make the Horse available for collection by the Purchaser at that time from the premises described in Item 9 of the Schedule.
- 4.2 Subject at all times to Clause 1.3, the Vendor shall ensure that all reasonable care is taken of the Horse and that it is provided with all proper accommodation, stabling, food and labour in accordance with normal industry practices, including all proper veterinary services, until such time as the Purchaser takes possession of the Horse.

5 INSPECTION

- 5.1 The Vendor shall allow the Purchaser and any representative of the Purchaser to inspect the Horse prior to Completion at such times as are mutually convenient to the parties.
- 5.2 The Vendor shall allow a veterinary surgeon or surgeons engaged by the Purchaser to inspect and examine the Horse prior to Completion at such times as are mutually convenient to the parties to the extent reasonably necessary to provide the certificates described in Clause 5.3. The cost of such inspections shall be to the sole account of the Purchaser.
- 5.3 Notwithstanding any provision to the contrary but subject to any Special Conditions, the Purchaser shall not be obliged to complete this Agreement unless the following pre-requirements have been satisfied:
 - *5.3.1.a veterinary inspection of the Horse has resulted in a clear certificate for insurance purposes that the Horse is a suitable subject for insurance;
 - *5.3.2. in the case of a stallion, a veterinary inspection of the Horse has resulted in clear certificate that the Horse is a suitable prospect as a stallion for stud purposes; and
 - *5.3.3. in the case of a mare which is purportedly in foal or has a foal at foot which is included in the sale, a veterinary inspection has resulted in a positive pregnancy test for the Horse or a clear certificate for insurance proposes that such foal is a suitable subject for insurance (as the case may be).

[*Delete as is appropriate.]

5.4 In the event that the pre-requirements described in Clause 5.3 are not satisfied prior to the date specified for Completion, then the Purchaser may elect to treat this Agreement as void from the beginning and, in such event, no party will have any liability to any other party arising from this Agreement and the Deposit shall immediately be refunded in full to the Purchaser.

6 DOCUMENTATION

6.1 Upon Completion, the Vendor shall provide to the Purchaser all Stud Book and racing documentation and passports of the Horse together with any other documents indicating title to the Horse.

7 VENDOR'S WARRANTIES

7.1 The Vendor warrants that it is or upon Completion will be the absolute owner of the Horse free and clear from all mortgages, claims, liens or encumbrances and that, at Completion, it will have the full and unrestricted right to sell, assign, transfer and deliver the Horse to the Purchaser in accordance with this Agreement, free and clear of all encumbrances and restrictions as above whatsoever.

7.2 The Vendor warrants that there is no fact or circumstance preventing it for any reason from validly executing this Agreement.

7.3 The Vendor warrants that at Completion all Stud Book returns in relation to the Horse will be current and all racing and other fees will have been paid.

8 PURCHASER'S WARRANTIES

8.1 The Purchaser warrants that there is no fact or circumstance preventing it for any reason from validly executing this Agreement.

8.2 The Purchaser acknowledges and agrees that neither the Vendor nor the Agent (nor any of their employees, agents or other representatives) have made any representation to the Purchaser in respect of the health, condition, suitability, quality, fitness, safety, soundness or fertility of the Horse. The Purchaser acknowledges and agrees that, in entering into this Agreement, it has relied solely on its own inspections and investigations in relation to the Horse, has had a reasonable opportunity to exercise those rights of inspection conferred upon the Purchaser pursuant to Clause 4 above and takes the Horse subject to any defects or imperfections, whether latent or patent.

8.3 The Purchaser acknowledges and agrees that it shall not be entitled to rescind or terminate this Agreement or make any claim for compensation, damages or rebate of any kind whatsoever due to any error, omission or misdescription in respect of:

8.3.1. the condition, soundness, fitness, quality, pedigree or performance (including racing performance) of any horse mentioned in the pedigree of the Horse;

8.3.2. the relationship of the Horse or of a horse mentioned in the pedigree of the Horse to any other horse;

8.3.3. the number of foals which the Horse (being a mare) has had; or

8.3.4. any progeny of the Horse or of any horse mentioned in the pedigree of the Horse. and in this respect the Purchaser has relied on its own enquiries and investigations.

9 SPECIAL CONDITIONS

9.1 This Agreement and the sale of the Horse shall be subject to any special conditions set out in Item 10 of the Schedule ("the Special conditions"). To the extent that there is any inconsistency between the provisions of this Agreement and the Special Conditions, then the Special Conditions shall prevail.

10 DEFAULT

10.1 In the event that the Purchaser defaults in the punctual payment of any part of the Purchase Price or otherwise does not comply with

this Agreement in any material respect, then the Vendor may by giving written notice to the Purchaser to that effect:

10.1.1 charge and recover from the Purchaser interest on so much of the Purchase Price as remains due but unpaid at the rate of twelve per cent (12%) per annum calculated on daily rests from the due date until the date of payment;

10.2.1 terminate this Agreement;

10.3.1 keep or recover the Deposit;

10.4.1 hold or instruct the Agent to hold any other monies paid by the Purchaser as security for any amounts which may be recoverable by the Vendor from the Purchaser;

10.5.1 bring proceedings against the Purchaser to recover damages for breach of contract; and/or

10.6.1 sell the Horses to another person and bring proceedings against the Purchaser to recover any deficiency on such sale (with credit for the Deposit or any other monies kept or recovered by the Vendor), together with the reasonable costs and expenses of such sale or attempted sale or otherwise arising out of the Purchaser's default.

Any exercise of the above rights shall be without prejudice to any rights at law or in equity which the Vendor may have as a result of any breach of this Agreement by the Purchaser.

11 DISPUTES

11.1 Any disputes relating to the sale of the Horse under this Agreement shall be resolved between the Vendor and the Purchaser only. The parties acknowledge that the Agent has acted only as an agent and, provided that the Agent has not acted in bad faith, the Agent shall not be joined to any dispute and the horse shall not be returned to the Agent or its premises. The description, pedigree and other information furnished in respect of the Horse has been supplied by the Vendor and, subject to the limitations set out in this Agreement, the Vendor alone shall be responsible for the truth and accuracy of such information.

12 FURTHER ASSURANCES

12.1 The parties agree to do all acts, matters and things and complete all documents reasonably necessary for effecting the provisions of this Agreement.

13 COSTS AND STAMP DUTY

13.1 Each party shall bear its own costs in relation to the preparation and execution of this Agreement. Any stamp duty in respect of this Agreement shall be paid by the Purchaser.

14 GST

(a) Amount otherwise payable do not include GST

To the extent that a party makes a *taxable supply* in connection with this agreement the *consideration* payable by the party under this agreement represents the value of the *taxable supply* for which payment is to be made.

(b) Liability to pay GST

Subject to paragraph (c), if a party makes a taxable supply in connection with this agreement for a consideration which, under paragraph (a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

(c) Tax invoice

A party's right to payment under paragraph (b) is subject to a valid tax invoice being delivered to the party liable to pay for the *taxable supply*.

(d) Horse for export

The Purchaser acknowledges that if the Horse is being purchased for export in circumstances which may qualify for an exemption from GST the Purchaser will still be required to pay GST pursuant to this agreement though a refund of GST may be available to the Purchaser on application to the Australian Taxation Office if its criteria for a refund have been satisfied.

15 NOTICES

15.1 Any notice or other communication of any nature required or permitted to be given by a party to another party arising out of this Agreement:

15.1.1 shall be in writing in order to be valid;

15.1.2 shall be signed by the party giving, serving or making the same or by its solicitor or other duly authorised agent; and

15.1.3 shall be deemed to have been duly served, given or made in relation to a party if it is:

(a) delivered by hand or sent by pre-paid post to the address of that party set out herein (or to such other address as may be notified in writing by that party to the other party from time to time as its address for service of notices under this Agreement); or

(b) sent by facsimile transmission to the facsimile number of that party.

15.2 A notice or other communication shall be deemed to be received:

15.2.1 if delivered by hand, on the date of delivery if the same takes place before 5.00 p.m. on a business day or if it take place at any other time on the next following business day after the day of delivery;

15.2.2 if sent by pre-paid post, at the expiration of forty-eight (48) hours after the time of posting or, if sent by pre-paid post to an overseas address, at the expiration of seven (7) days after the date of posting; or

15.2.3 if sent by facsimile transmission, upon receipt by the sender of a satisfactory transmission control report, indication transmission without error or, where such successful transmission does not take place before 5.00 p.m. on a business day, on the next following business day.

16 ENTIRE AGREEMENT

16.1 This document constitutes the full and complete understanding between the parties in respect of the subject matter of this document. Except to the extent necessarily required by law, any warranties, representations, guarantees or other terms or conditions of whatever nature which are not contained and recorded herein are expressly negated and shall be of no force or effect.

17 GOVERNING LAW

17.1 This agreement shall be construed in accordance with the laws of the State specified in Item 11 of the Schedule and each party hereby submits to the exclusive jurisdiction of the Courts of that State.

18 MISCELLANEOUS

18.1 No variation or consensual termination of this Agreement shall be of any force or effect unless reduced to writing and signed by the parties.

18.2 No extension of time, latitude or indulgence given or granted shall operate as a waiver of the rights of any party.

18.3 Where any time limit pursuant to this document falls on a Saturday, Sunday or public holiday, then that time limit shall be deemed to have expired on the next business day thereafter.

18.4 In the interpretation of this Agreement, unless the context otherwise requires:

(a) clause headings shall be disregarded;

(b) wordings importing the singular shall include the plural and vice versa;

(c) words importing one gender shall include the other genders;

(d) any reference to a person shall include a reference to a company or firm;

(e) the parties to this Agreement shall include their heirs, successors, executors, administrators and permitted assigns;

(f) any reference to a month shall mean a calendar month;

(g) each clause in this Agreement is severable one from the others of them and if any one or more is found to be unenforceable, it shall not affect the validity of the others of them; and

(h) where the Vendor or the Purchaser is comprised of more than one person, the expression "the Vendor" or "the Purchaser" (as the case may be) shall be construed so as to refer to those persons both individually and collectively and so as to bind them jointly as well as severally.

SCHEDULE

Item 1: (the Vendor): Name: _____ ABN # _____
Address: _____

Postcode: _____
Telephone: _____ Fax No: _____

Item 2: (the Purchaser): Name: _____ ABN # _____
Address: _____

Postcode: _____
Telephone: _____ Fax No: _____

Item 3: (the Agent): Name: _____ ABN # _____
Address: _____

Postcode: _____
Telephone: _____ Fax No: _____

Item 4: (the Horse): Name/Description _____ Foaled in 20 _____
Sire _____ Dam: _____
Sex: _____ Colour: _____ ASB: YES/NO
If the Horse is mare in foal or with a foal at foot which is included in this sale:
Mare served by: _____
Date of last service: _____ 20 _____ Result of last service: Positive/Negative
Foal at foot by: _____ Sex of foal: _____
Foaling date of foal: _____ 20 _____ Colour of foal: _____

Item 5: (the Purchase Price (total including the Deposit) Clause 2.1): \$ _____ plus any GST

Item 6: (the Deposit - Clause 2.2.1): \$ _____

Item 7: (Date for Completion - Clause 2.2.2): _____ 20 _____

Item 8: (Agent's commission- Clause 2.2.2): _____ per cent (_____ %) plus any GST

Item 9: (Premises from which Horse to be collected - Clause 4.1): _____

Item 10: (Special Conditions (if any) - Clause 9.1):

*The purchaser requests the Agent to arrange insurance over the Horse from Completion: YES/NO

If yes, amount to be insured: \$ _____

