

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these conditions:

- (a) "Seller" means Equinat Pty Ltd (ACN 50635095966), trading as National Equestrian Wholesalers, of 36 Northgate Drive, Thomastown, Victoria 3074;
- (b) "Buyer" means the purchaser of the Goods;
- (c) "Goods" means the products specified on any account or tax invoice rendered by the Seller and given to the Buyer; and
- (d) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974* (Cth)) and which by law cannot be excluded, restricted or modified.

2. GENERAL

2.1 The Goods and all other products sold by the Seller are sold on these terms and conditions.

2.2 These terms and conditions (which may only be waived in writing by the Seller) will prevail over all terms and conditions of the Buyer's order to the extent of any inconsistency.

3. LOSS OR DAMAGE IN TRANSIT

3.1 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).

3.2 The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:

- (a) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of the Goods; and
- (b) lodges a claim for compensation with the carrier within three (3) days of the date of receipt of the Goods.

4. LIABILITY AND BUYER'S WARRANTY

4.1 The Seller's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding twelve (12) calendar months after the Goods have been dispatched so long as:

- (a) the defects have arisen solely from faulty materials or workmanship;
- (b) the Goods have not received maltreatment, inattention or interference;
- (c) accessories of any kind used by the Buyer are manufactured by or approved by Seller;
- (d) the seals of any kind on the Goods remain unbroken; and
- (e) the defective parts are promptly returned free of cost to the Seller.

4.2 If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

4.3 The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the

Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with clause 4.1 of these terms and conditions.

4.4 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

4.5 The Seller's liability for a breach of a condition or warranty implied by Division 2 of Pt V of the *Trade Practices Act 1974* (Cth) (other than s 69) is in the case of the Goods, limited at the discretion of the Seller to any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired.

4.6 The Seller's liability under s 74H of the *Trade Practices Act 1974* (Cth) is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired, whichever is the lowest amount.

4.7 If the Goods are resold by the Buyer, the Buyer agrees, represents and warrants to the Seller that it will instruct its customers in the proper use, operation and maintenance of the Goods (so far as it is reasonably necessary and possible).

4.8 The Buyer will indemnify and save the Seller harmless from any claim or liability arising out of or in any way connected with a failure by the Buyer to comply with its obligations under clause 4.7.

5. PAYMENT

The purchase price in relation to the Goods is payable net and exclusive of GST and payment of the price of the Goods must be made within thirty days following the delivery of the Goods unless other terms of payment are expressly agreed between the Seller and the Buyer in writing.

6. RIGHTS IN RELATION TO GOODS (RETENTION OF TITLE)

6.1 The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:

- (a) ownership of the Goods;
- (b) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) to keep or resell any Goods repossessed pursuant to clause 6.1(b).

6.2 If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.