

## AGISTMENT TERMS AND CONDITIONS

Last Updated on 1 April 2022

### IMPORTANT NOTES:

- These terms and conditions (Terms) set out the terms on which we will agist your horse at the Property. These Terms form a legally binding contract between you and us.
- You may accept these terms by signing and returning this document to us or by delivering your horse to the Property.
- These Terms may be changed from time to time. Please look at the Last Updated date at the top of these Terms as published on our Website. If you are agisting a horse at the Property at the time of a change, the new Terms will not apply to you until after we have given you 7 days written notice. You may terminate the agistment during that 7 day notice period. Continuing to agist your horse at the Property after the end of the 7 day notice period, means that you agree to our new Terms.
- You grant us a lien and charge over your horses agisted at the Property to secure your obligations under these Terms – see clause 7.
- You agist your horse at the Property at your risk and you release us from liability as set out in clause 8.1.

### 1 Definitions

- 1.1 **Claim** means any action, claim, suit or demand of any nature whatsoever.
- 1.2 **Rates** means the rates and fees for our Standard Services and Boxed/Special Care Services as published on our Website or otherwise notified to you in writing.
- 1.3 **Loss** means any costs, losses, penalties, damages, liabilities and expenses and in relation to a Claim, includes amounts payable on a Claim (whether or not the Claim is successful) and legal costs and expenses on a solicitor and own client basis.
- 1.4 **PPSA** means the Personal Property Securities Act (2009), any regulations made under it and any amendments made to other legislation by them, and **PPSR** means the Personal Property Securities Register established under the PPSA.
- 1.5 **Property** means the property located at 67A Abundance Road Medowie NSW 2318.
- 1.6 **Services** means and includes both **Standard Services** and **Boxed/Special Care Services** which have the meanings set out in clause 3 and any additional services which we agree in writing to provide, for example transport costs to deliver your horse to you, special dietary or veterinary requirements, hand feeding.
- 1.7 **we/us/our** means JAM Traffic Solutions Pty Ltd t/as Chanix Lodge (ABN 77 603 658 788).
- 1.8 **Website** means our website at <https://www.chanixlodge.com.au/>.
- 1.9 **you/your** means the owner or lessee or trainer of the horse.

### 2 Authorisations and multiple party arrangements

- 2.1 These Terms legally bind each owner of a horse that is delivered to the Property, both individually and collectively.
- 2.2 If the agistment of a horse at the Property is arranged by a trainer or lessee of the horse each of those persons (and if more than one):
  - 2.2.1 is also legally bound by these Terms, both individually and collectively; and
  - 2.2.2 represent and warrant that they have the written authority of or have power of attorney from the owners of the horse to enter into a contract with us on these Terms.

### **3 Our Services**

#### **3.1 We will provide the following Standard Services:**

- 3.1.1 the agistment of your horse at the Property, subject to a maximum stocking rate of 15 horses agisted at the Property at any time;
- 3.1.2 group yarding;
- 3.1.3 provision of large fully turfed paddocks with post and rail fencing;
- 3.1.4 paddock and fencing care and maintenance, paddock rotation, fertiliser, weed and pest control;
- 3.1.5 provision of shelter from weather and water troughs in each paddock;
- 3.1.6 daily hay feeds and one daily hard feed;
- 3.1.7 provision of wash bays and horse weighing scales;
- 3.1.8 full-time on site management at the Property;
- 3.1.9 daily visual inspection of your horse;
- 3.1.10 promptly notifying you if we become aware that your horse is suffering from any significant or noticeable sickness, disease or injury, or if the Property becomes unsuitable for the agistment of your horse, for example due to the presence of other diseased horses, drought and flood;
- 3.1.11 drenching your horse on arrival and at monthly intervals;
- 3.1.12 trimming of feet every 4 - 6 weeks by a farrier;
- 3.1.13 providing you with access to the Property on receipt of reasonable notice for on-site inspections and horse viewing;

#### **3.2 By prior written agreement with you, we will provide one or more of the following Boxed/Special Care Services:**

- 3.2.1 individual spelling programs;
- 3.2.2 spelling options include rugging, specialised feeding (cost of buying the special feed is at your expense), activity restrictions and rest;
- 3.2.3 fully secured horse boxes if you want your horse locked in a box overnight or for special care reasons;
- 3.2.4 individual paddock
- 3.2.5 provision of bedding such as straw or sawdust or other suitable material in boxes;
- 3.2.6 daily removal of manure and urine affected bedding in boxes;

#### **3.3 We will provide the Services in a proper and efficient manner and exercising reasonable care, skill and diligence.**

#### **3.4 We represent and warrant that we have the exclusive right to occupy the Property and to provide the Services from the Property.**

### **4 Your acknowledgements, representations, warranties and other obligations**

#### **4.1 You acknowledge that before delivering your horse to the Property you have inspected the Property and its facilities and have satisfied yourself as to their fitness for purpose.**

#### **4.2 You represent and warrant that:**

- 4.2.1 you are not aware of any behavioural, physical or health problem with your horse; and
- 4.2.2 before delivering your horse to the Property, your horse is not carrying any disease and is fully vaccinated against Hendra virus, tetanus and strangles, and that you will keep your horse fully and periodically vaccinated against those things at all times while agisted at the Property.

- 4.3 You must:
- 4.3.1 provide to us on request the vaccination records for your horse; and
  - 4.3.2 comply with any reasonable directions we give when you are at the Property.
- 4.4 Except for the Services to be provided by us under these Terms or except as may be otherwise agreed with us in writing, you are responsible for:
- 4.4.1 delivering your horse to the Property and collecting it; and
  - 4.4.2 caring for your horse and paying all associated costs.
- 4.5 For the duration of the agistment of your horse in the Property, you must:
- 4.5.1 insure your horse for mortality and other insurable risks; and
  - 4.5.2 hold public liability insurance in an amount of \$20 million for any one event, covering any damage that you or your horse may cause to any property or the injury to or death of any person; and
  - 4.5.3 provide on request, certificates of currency for the insurances required under this clause.
- 4.6 While any money is owing to us, you must not:
- 4.6.1 remove your horse from the Property; or
  - 4.6.2 grant any security interest over your horse; or
  - 4.6.3 sell or attempt to sell your horse.

## **5 Treatment by specialist service providers**

- 5.1 If we reasonably believe that the condition of your horse or its foals (if any) requires immediate attention, you authorise us to engage such specialist service providers as we consider necessary, including veterinarians, chiropractors and farriers for the purposes of examining, diagnosing and treating your horse.

## **6 Rates and expenses**

- 6.1 Our Rates for Standard Services and Boxed/Special Care Services are published on our website.
- 6.2 We may change our Rates by giving you 7 days prior written notice. You may terminate the agistment during that 7 day notice period. Continuing to agist your horse at the Property after the end of the 7 day notice period, means that you agree to our new Rates.
- 6.3 The price for additional services which are not Standard Services or Boxed/Special Care Services will be quoted on request in advance.
- 6.4 We may incur third party and other expenses on your behalf, such as veterinary, chiropractic, dentistry, and farrier fees. All third party expenses are incurred by us as your agent. You agree to reimburse us for all third party expenses plus a 15% markup.
- 6.5 Your obligation to pay our Rates and expenses continues whilst ever your horse remains at the Property, even if the agistment has been terminated in accordance with clause 10 or if we exercise our rights under our lien and charge under clause 7.
- 6.6 We will issue tax invoices for our Rates and expenses monthly in arrears. All tax invoices are due and payable 14 days from the date of the tax invoice. You consent to us sending our tax invoices to you electronically to your usual email address or mobile phone number. Regardless of invoicing arrangements, liability for our Rates and expenses is as set out in clause 2.
- 6.7 We may also require you to advance to us sufficient money to cover the estimated cost of surgery or extraordinary veterinary treatments and will not be obliged to incur the expense until that money is received.
- 6.8 All consideration for our Services as published on a Website or for any taxable supply under or in connection with these Terms is exclusive of GST. If GST is payable for our Services or for any taxable supply under or in connection with these Terms, the GST is payable by you at the same time as our tax invoices.
- 6.9 We may charge you interest on all overdue payments at the rate of 2% per month from the due date for payment until the date that payment is actually made.

## **7 Lien and charge**

- 7.1 As security for your obligations under these Terms, you grant to us:
- 7.1.1 a lien over your horse and its foals (if any) and all of your other horses on agistment at the Property (**Security Livestock**); and
  - 7.1.2 a charge over your Security Livestock and any money earned from racing your Livestock (including breeders' bonus and incentive scheme payments and other bonuses) and the proceeds of sale or of any insurance claim paid in relation to your Security Livestock (**Proceeds**).
- 7.2 The lien and charge:
- 7.2.1 entitles us to possession of your Security Livestock (including related horse ID cards and any replacement cards until all amounts due and payable to us are paid; and
  - 7.2.2 irrevocably authorises us to give directions for the payment of any Proceeds to us.
- 7.3 If you default in payment of any money owing to us we may enforce the lien and charge by sale of your Security Livestock at public auction (without reserve) or by private treaty.
- 7.4 The proceeds of sale of your Security Livestock will be applied in the following order:
- 7.4.1 to pay all costs and expenses in connection with the sale including transportation costs, provision of veterinary certificates and auctioneers fees;
  - 7.4.2 to pay all monies owing to us;
  - 7.4.3 to pay the balance (if any) to you.
- 7.5 For valuable consideration, you irrevocably appoint us as your attorney to do all things required to enforce our rights under these Terms, including the sale of your Security Livestock and registration of the transfer of ownership of your Security Livestock with the relevant horse racing authority.

## **8 Release, limitation of liability and indemnities**

- 8.1 You agist your horse at the Property at your own risk and you release us from all Claims and Loss which you may suffer or incur in connection with the agistment of your horse at the Property, including Loss that you suffer if your horse dies or its value is diminished because of any accident, illness, injury, infertility or misadventure of any cause. However this release does not cover Claims or Loss caused by our intentional or negligent misconduct.
- 8.2 You indemnify us against all Claims and Loss which we may suffer or incur (including Claims by third parties), in connection with:
- 8.2.1 enforcing our rights under these Terms if you breach these Terms, including anything done as your attorney pursuant to clause 7.5; and
  - 8.2.2 damage to any property or the death of or injury to any person or any other horse which is caused or contributed to by you or your horse.
- 8.3 Certain legislation, including the *Competition and Consumer Act 2010 (Cth)* may impose consumer guarantees or implied warranties or conditions which cannot be excluded, restricted or modified. These Terms must be read subject to these statutory provisions. If the statutory provisions apply, then to the extent that we may limit our liability, our liability is limited to, at our election:
- 8.3.1 in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
  - 8.3.2 in the case of services, supplying the services again or payment of the cost of having the services supplied again.

## **9 Term and termination**

- 9.1 The agistment of your horse will continue until terminated in accordance with these Terms.
- 9.2 Either party may terminate the agistment of your horse by giving 7 days written notice to the other party, expiring at any time.

- 9.3 We may also terminate the agistment of your horse by written notice in the event of an emergency.
- 9.4 Upon termination of the agistment of your horse, you must immediately remove your horse from the Property unless any money is owing to us.

## **10 General**

- 10.1 These Terms are governed by the law in force in NSW. Subject to clause 11.2, each party submits to the exclusive jurisdiction of the Courts of NSW and the Court of Appeal from those Courts.
- 10.2 If a dispute arises in relation to these Terms or the agistment of your horse (**dispute**), a party may not commence court proceedings or arbitration relating to the dispute without first following the procedure set out below, except if that party seeks urgent interlocutory relief:
- 10.2.1 the party claiming a dispute has arisen must give a notice to the other party setting out the nature of the dispute (**dispute notice**); and
- 10.2.2 within 2 weeks after the date of a dispute notice, the parties must meet in person to discuss whether the dispute can be resolved. The parties must engage in good faith negotiations in doing so.
- 10.3 If any part of these terms and conditions is held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.
- 10.4 You may not assign or novate any of your rights or obligations under these Terms without our prior written consent which will not be unreasonably withheld. We may withhold our consent during any period that money is owing to us.
- 10.5 These Terms may be signed by you electronically (for example by DocuSign).
- 10.6 A reference to any party to these Terms includes that party's executors, administrators, substitutes, successors and permitted assigns.

**Signed by the owners of the horse or by their duly authorised lessee(s) or trainer(s), each of whom warrants that they are authorised to sign these Terms:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date of signing

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

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Date of signing