

AGISTMENT APPLICATION



To Be Completed By Applicants

Please complete all sections and read the Terms and Conditions of Trade overleaf.

DATE: _____ REF No. AA00010

CLIENT'S FULL / LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

State: _____ Postcode: _____ State: _____ Postcode: _____

Emergency Alternative Contact _____ Phone _____

HORSE

Name: _____ Colour _____ Sex _____

Height: _____ Age: _____ Brand N/S: _____ O/S _____

Markings: _____

Type of agistment Required: _____ Weekly Agistment Fee: \$ _____

Any Medication or special care to be given to the Horse by our staff (handling fee applies): _____

Handling/Medication Fee's \$ _____ Per Day

CARE PROVIDERS

Preferred Vet: _____ Phone: _____

Farrier: _____ Phone: _____

Equine Dentist: _____ Phone: _____

Date Horse Arrived: _____ Date Horse Departed: _____

PLEASE BE AWARE ALL HORSES COMING ONTO SERENDIPITY SPELLING MUST BE WORMED ON ARRIVAL EITHER WITH YOUR OWN WORMER AS PROVIDED BY SERENDIPITY SPELLING AT THE COST TO THE OWNER OF \$25 PER WORMER.

SERENDIPITY SPELLING WILL AGIST THE HORSE DESCRIBED ABOVE ON THE TERMS OF TRADE AS SET OUT OVERLEAF.

THE CLIENT MUST PROVIDE ONE WEEKS NOTICE OF THEIR INTENTION TO BRING THE HORSE ON TO SERENDIPITY SPELLING AND ONE WEEKS NOTICE OF THEIR INTENTION TO REMOVE THE HORSE FROM SERENDIPITY SPELLING.

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of R.G Munn & S.J Valentine T/A Serendipity Spelling which form part of, and are intended to be read in conjunction with this Agistment Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (SERENDIPITY SPELLING): _____ **SIGNED (CLIENT):** _____

Name: _____ Name: _____

Position: _____ Position: _____

ID: _____ DOB: _____

WITNESS TO CLIENTS SIGNATURE:

Signed: _____ Name: _____ Date: _____

R.G Munn & S.J Valentine T/A Serendipity Spelling – Terms & Conditions of Trade

1. Definitions

- 1.1 "Serendipity Spelling" shall mean R.G Munn & S.J Valentine T/A Serendipity Spelling its successors and assigns or any person acting on behalf of and with the authority of R.G Munn & S.J Valentine T/A Serendipity Spelling.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Serendipity Spelling to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean the agistment and/or spelling of the Horse (as defined below) along with the provision of any other services in relation to care and maintenance of the Horse.
- 1.5 "Horse" shall mean the Horse or Horse(s) admitted to the care of Serendipity Spelling by the Client and as described on the Agistment Application or Spelling Application completed by the Client.
- 1.6 "Fee" shall mean all charges payable for the Services and any other remuneration due to Serendipity Spelling for their ensuring the well being of the Horse under Serendipity Spelling's care (including, but not limited to, veterinary costs, medications, the farrier, drenching etc) as agreed between Serendipity Spelling and the Client.

2. Acceptance

- 2.1 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Fee.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Serendipity Spelling.
- 2.3 The Client shall give Serendipity Spelling not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Serendipity Spelling as a result of the Client's failure to comply with this clause.
- 2.4 The Client agrees to adhere to any other instructions provided by Serendipity Spelling during the period that the Horse is under the care of Serendipity Spelling.

3. Fee And Payment

- 3.1 At Serendipity Spelling's sole discretion the Fee shall be either:
 - (a) as indicated on invoices provided by Serendipity Spelling to the Client in respect of the provision of the Services and the care of the Client's Horse; or
 - (b) Serendipity Spelling's quoted Fee (subject to clause 3.2 which shall be binding upon Serendipity Spelling provided that the Client shall accept Serendipity Spelling's quotation in writing within thirty (30) days.
- 3.2 Serendipity Spelling reserves the right to amend the Fee in the event of changes to what was agreed in the quotation. Serendipity Spelling shall provide four (4) weeks' notice of their intention to amend the Fee.
- 3.3 Serendipity Spelling may submit a detailed payment claim at either weekly, fortnightly or monthly intervals Fees incurred up to the end of each week, fortnight or month.
- 3.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 Payment will be made by cheque/bank cheque or by direct credit, or by any other method as agreed to between the Client and Serendipity Spelling.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Fee except when they are expressly included in the Fee.

4. Duty Of Care

- 4.1 The Client authorises Serendipity Spelling to take all steps necessary to ensure the well being of the Horse placed with Serendipity Spelling for the provision of Services and agrees to be liable for all charges thereby incurred. Any charges incurred by Serendipity Spelling in maintaining the Horse health and wellbeing (including burial fees) shall be charged to the Client and must be paid within fourteen (14) days of the date of the invoice.
- 4.2 In the event that an emergency situation arises involving the Horse and Serendipity Spelling has made every effort to contact the Client but is unable to do so, the Client authorises Serendipity Spelling to euthanise the Horse. Serendipity Spelling shall not do so unless acting on the advice of a veterinarian.
- 4.3 The Client acknowledges that Serendipity Spelling is the expert and that the provision of care shall be at Serendipity Spelling's sole discretion however the Client shall immediately advise Serendipity Spelling if they believe that Serendipity Spelling is failing in their Duty of Care in any way whatsoever in order that Serendipity Spelling shall be given the opportunity to rectify that duty and/or to explain any actions they have taken.

5. Limitation of Liability

- 5.1 The Client acknowledges that Horse handling is a dangerous activity and that the Horse and any associated equipment left at Serendipity Spelling is done so at the Client's own risk. The Client recognises that there is inherent risk in handling horses and that horses may act unpredictably. Knowing the inherent risk the Client accepts Serendipity Spelling shall not be liable for any loss, accident, damage or injury involving any the Horse or any other horses, persons or property whatsoever and the Client agrees to indemnify Serendipity Spelling (and Serendipity Spelling's agents, employees, veterinarians, farriers and dentists) against any claim that may arise from any party in relation to the Services.

6. Client's Responsibility

- 6.1 It is the Client's responsibility to ensure that the Horse is wormed immediately or prior to their arrival at Serendipity Spelling's property and is wormed every 6 to 8 weeks. Where required Serendipity Spelling can provide the medication and can worm the Horse but this shall incur an additional charge. In the event that the Client fails to worm the Horse Serendipity Spelling will do so on the Client's behalf and at the Client's expense.
- 6.2 The Client may ride the Horse on Serendipity Spelling's property and whilst in the care of Serendipity Spelling however any persons riding the Horse must first sign Serendipity Spelling's Rider Indemnity Form.

7. Risk

- 7.1 Serendipity Spelling reserves the right to suspend or cancel (in accordance with clause 12.1) the provision of Services at any time for any reason including, without limitation, reasons of the Horses health or behaviour or if natural disasters such as flood or fire pose a threat to the Horse. Serendipity Spelling may under such circumstances be required to move the Horse to another property in which case any costs associated with the transportation and maintenance of the Horse off site shall be added to the Client's account.

8. Title

- 8.1 Client agrees that they shall be liable for all Fees incurred until:
 - (a) the Client has paid Serendipity Spelling all for Fees due; and
 - (b) the Client has met all other obligations due by the Client to Serendipity Spelling in respect of all contracts between Serendipity Spelling and the Client.
- 8.2 Receipt by Serendipity Spelling of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then all Serendipity Spelling's rights in respect of payment shall continue.

9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Default & Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Serendipity Spelling from and against all costs and disbursements incurred by Serendipity Spelling in pursuing the debt including legal costs on a solicitor and own client basis and Serendipity Spelling's collection agency costs.

- 10.3 If any account remains overdue after sixty (60) days then an amount of the greater of one hundred dollars (\$100.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

- 10.4 Without prejudice to Serendipity Spelling's other remedies at law all amounts owing to Serendipity Spelling shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Serendipity Spelling becomes overdue, or in Serendipity Spelling's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Security And Charge

- 11.1 Despite anything to the contrary contained herein or any other rights which Serendipity Spelling may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Serendipity Spelling or Serendipity Spelling's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Serendipity Spelling (or Serendipity Spelling's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Serendipity Spelling elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Serendipity Spelling from and against all Serendipity Spelling's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Serendipity Spelling or Serendipity Spelling's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

12. Cancellation

- 12.1 Serendipity Spelling may cancel any contract to which these terms and conditions apply at any time by giving written notice to the Client. On giving such notice Serendipity Spelling shall repay to the Client any sums paid in respect of Fee not yet earned. Serendipity Spelling shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Client wishes to cancel the contract then the Client shall be liable for any loss incurred by Serendipity Spelling (including, but not limited to, any loss of profits) up to the time of cancellation.

13. Privacy Act 1988

- 13.1 The Client and/or the Guarantor/s agree for Serendipity Spelling to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Serendipity Spelling.
- 13.2 The Client and/or the Guarantor/s agree that Serendipity Spelling may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 13.3 The Client consents to Serendipity Spelling being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Client agrees that personal credit information provided may be used and retained by Serendipity Spelling for the following purposes and for other purposes as shall be agreed between the Client and Serendipity Spelling or required by law from time to time:
 - (a) provision of the Services; and/or
 - (b) marketing by Serendipity Spelling; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of the Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Service.
- 13.5 Serendipity Spelling may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

14. Unpaid Seller's Rights

- 14.1 Where the Client has left the Horse or equipment with Serendipity Spelling for the provision of Services in relation to the Client's Horse and Serendipity Spelling has not received or been tendered the whole of the Fee, or the payment has been dishonoured, Serendipity Spelling shall have:
 - (a) a lien on the Horse and equipment;
 - (b) the right to retain the Horse as security for the Fee due while Serendipity Spelling is in possession of the Horse and equipment;
 - (c) a right to sell the Horse and equipment; and
 - (d) the right to retain all or part of the proceeds of the sale of the Horse and equipment in payment of the Fee and any interest due to Serendipity Spelling and any costs associated with such sale.
- 14.2 The lien of Serendipity Spelling shall continue despite the commencement of proceedings, or judgment for the Fee having been obtained.

15. General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 15.3 Serendipity Spelling shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Serendipity Spelling of these terms and conditions.
- 15.4 In the event of any breach of this contract by Serendipity Spelling the remedies of the Client shall be limited to damages which under no circumstances shall exceed the amount Charged to the Client.
- 15.5 The Client shall not be entitled to set off against or deduct from the Fee any sums owed or claimed to be owed to the Client by Serendipity Spelling.
- 15.6 Serendipity Spelling may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 Serendipity Spelling reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Serendipity Spelling notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by Serendipity Spelling to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Serendipity Spelling's right to subsequently enforce that provision.