

Leisure Horse Ireland	Document No.: LHI Rules 004 G&GS	Revision No.: 1
Prepared & Approved By:	Directors	Date: 01/03/2023
<b>TITLE: General &amp; Genomics Service – Terms &amp; Conditions</b>		

## **1. Interpretation**

1.1 In these terms and conditions the following words have the following meanings:

1.1.1 Animal Data: such data relating to animals as LHI shall consider relevant including but not limited to data relating to an animal's DNA, genotype, performance, health, and genetic make-up and shall also include the herd details of the relevant animal.

1.1.2 Conditions: these terms and conditions as added to or amended from time to time by LHI.

1.1.3 Contract: any contract between LHI and the Customer for the supply of the Services.

1.1.4 Customer: the person who purchases the Services from LHI.

1.1.5 Know How: know how, trade secrets, confidential technical and proprietary industrial and commercial information and techniques in any form which may subsist anywhere in the world.

1.1.6; LHI: Leisure Horse Ireland.

1.1.7 Intellectual Property: trademarks, service marks, trade names, patents, inventions, design rights, copyrights (including rights in computer software), rights of extraction relating to data bases, data base rights and all other similar proprietary rights which may subsist in any part of the world.

1.1.8 Order: the application form for signing up for the Services whether located on LHI website or otherwise.

1.1.9 Price: unless otherwise agreed, the price stated in the Order or such amended price as LHI notified the Customer from time to time.

1.1.10 Sample: a sample of hair.

1.1.11 Services: the testing of Samples to generate genomic evaluations and, where applicable, parent verification and (including any part or parts of such services).

## **2. Application of Terms**

2.1 Subject to any variation under condition 2.3 the Contract shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained within the Customer's order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

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2.3 These Conditions apply to all the Services and any variation to these Conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by the Directors of Leisure Horse Ireland.

2.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of LHI which is not set out in the Contract.

2.5 Each order or acceptance of the Services by the Customer from LHI shall be deemed to be an offer by the Customer to purchase the Services subject to these Conditions.

2.6 No application made by the Customer shall be deemed to be accepted by LHI until an acknowledgement (written or otherwise) is issued by LHI or (if earlier) LHI supplies the Services to the Customer at which time the Contract shall be formed.

2.7 The Customer must ensure that it completes the Order accurately and LHI shall not be liable in any way for any failing of the Customer in this regard.

### **3. Services**

3.1 LHI agrees to supply and the Customer agrees to purchase the Services for the Price subject to these Conditions.

3.2 All examples, illustrations, descriptive matter or advertising issued by LHI or contained in LHI'S catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services. They will not form part of the Contract.

3.3 Upon receipt of the DNA kit order form, LHI shall issue the Customer with a registration and sampling kit. It shall be the Customer's responsibility to return the sampling kit to LHI within 2 months of the date issued. If the Customer fails to return the sampling kit within the 2 month period, LHI shall have no further obligation to the Customer and for the avoidance of doubt no refund of the Price paid shall be given.

3.4 LHI may terminate the Contract at any time (without liability to the Customer) by notice to the Customer:

3.4.1 if the Customer breaches these Conditions or uses the Services in an inappropriate manner, in which circumstances the Customer shall not be entitled to any refund;

3.4.2 without reason, in which case the Price paid by the Customer shall be refundable.

3.5 LHI will not be liable, for any direct, indirect or consequential loss (all three of which terms include without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any failure on the part of the Customer to comply with its obligations under these Conditions nor any delay in the delivery of the Services (even if caused by LHI'S negligence) nor will any delay entitle the Customer to terminate or rescind the Contract.

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#### **4. Payment**

4.1 Payment of the Price for the Services must be made by the Customer to LHI on receipt of the application to the provision of the Services.

4.2 Time for payment shall be of the essence of the Contract.

4.3 No payment shall be deemed to have been received until LHI has received cleared funds.

4.4 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.

#### **5. Limitation of Liability**

5.1 The following provisions set out the entire financial liability of LHI (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of: 5.1.1 any breach of these Conditions:

5.1.2 any use made by the Customer of any of the Services; and

5.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

5.2 All warranties conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract.

5.3 Nothing in these Conditions excludes or limits the liability of LHI:

5.3.1 for any matter which would be illegal for LHI to exclude or attempt to exclude as a liability; or

5.3.2 for fraud or fraudulent misrepresentation.

5.4 Subject to conditions 5.2 and 5.3:

5.4.1 LHI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid by the Customer; and

5.4.2 LHI shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of good will or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

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5.4.3 Without prejudice to conditions 5.4.1,5.4.2 or any other condition, the Customer acknowledges and agrees that: (i), given the nature of the Services, a result may not be produced and/or the result produced may not be accurate and therefore no warranty whatsoever is given in this regard and (ii) LHI's ability to provide the Services is dependent upon the Sample provided by the Customer being of a sufficient standard and where it is not LHI shall have no responsibility to provide the Services.

## **6. Acknowledgement and Consent**

6.1 The Customer acknowledges and accepts that LHI intends to obtain Animal Data which the Customer (as a Genomics Service user) either owns now, has previously owned or acquires in the future from various sources and to use such Animal Data in providing its services and carrying out its activities.

6.2 By applying to enter into a Contract for the Services the Customer specifically consents to, authorises and agrees to LHI obtaining such Animal Data from any source, including the Customer, and using such Animal Data in any way and for any purpose it deems appropriate.

6.3 In particular and without limiting the provisions of conditions 6.1 and 6.2, the Customer specifically consents to, authorises and agrees to LHI:

6.3.1 using the Animal Data for research activities (including in the publication of any such research) and for providing its various services; and

6.3.2 making the Animal Data publicly available and sharing or passing on the Animal Data to any third party it deems appropriate as part of the services it provides to industry including without limitation making the Animal Data available online on LHI'S website etc.

6.4 The Customer releases LHI, its officers, employees, sub-contractors and agents from any claims, losses, liabilities, damages, costs, expenses or the like that arise as a result of the use of the Animal Data (including where such Animal Data is shared with third parties) and acknowledges that LHI shall not have any liability to the Customer in this regard

## **7. Assignment**

7.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of LHI.

7.2 LHI may assign the Contract or any part of it to any person, firm or company.

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## **8. Force Majeure.**

LHI reserves the right to defer delivery of the Services, to cancel the Contract or to vary or reduce the Services provided to the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of LHI including without limitation acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, storm, epidemic, disease, blackouts, strikes or other labour disputes provided that if the event in question continues for a continuous period of in excess of 90 days the Customer shall be entitled to give notice in writing to LHI to terminate the Contract without any refund of the Price being due.

## **9. Intellectual Property**

9.1 The Customer acknowledges and accepts that (i) all rights to any Know How or Intellectual Property that LHI uses in providing the Services are the property of LHI or other third parties and the Customer has no rights whatsoever in or to such Know How or Intellectual Property and (ii) unauthorised use of such Know How or Intellectual Property is strictly forbidden.

9.2 The Customer may, with the written authorisation of LHI, reproduce the information provided by LHI by way of the Services subject to such conditions as LHI may impose including, without limitation, that acknowledgment is given as to the source of the information.

## **10. Indemnity**

In consideration for LHI providing the Services, the Customer agrees to indemnify and keep indemnified LHI and its officers, employees, sub-contractors and agents (all together the “Indemnitees” and each an Indemnatee”) from and against all proceedings, actions, costs, charges, claims, expenses, damages, liability, losses and demands whatsoever and howsoever arising as a result of the Customer availing of the Services or that the Indemnitees, or any of them, may incur as a result of (i) any act, neglect, default or omission of the Customer, (ii) any breach by the Customer of the Contract or these Conditions, or otherwise howsoever.

## **11. Data Protection**

11.1 Notwithstanding, but without prejudice to, the terms of LHI’s Privacy Statement (set out at LHI web site [www.lhi.ie](http://www.lhi.ie)), which the Customer should review and without prejudice to Conditions therein, the Customer (where the Customer is an individual) acknowledges and agrees that certain of his/her personal data comprising name, address, phone numbers, email addresses (“Personal Data”) will be retained and used by LHI when Animal Data is being compiled or assessed and also for the purpose of communicating with him/her. LHI’s lawful basis for doing this is: the performance of the Contract, its legitimate interest in administering its business, compliance with its legal and regulatory obligations and/or your consent (where this is provided).

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11.2 When applying to enter into a Contract for the Services the Customer therefore:

11.2.1 confirms that he/she understands and acknowledges the basis upon which LHI collects, retains and uses his/her Personal Data; and

11.2.2 to the extent that such consent may be required, specifically consents to his/her Personal Data being used in this way.

11.3 The Customer further acknowledges that he/she understands that the consent which he/she gives in Condition 11.2.2 may be withdrawn by him/her at any time by emailing LHI at info@lhi.ie.

## **12. General.**

12.1 Each right or remedy of LHI under the Contract is without prejudice to any other right or remedy of LHI whether under the Contract or not.

12.2 If any provision of the Contract is found by any Court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality invalidity, voidness, voidability unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.3 Failure or delay by LHI in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

12.4 Any waiver by LHI of any breach of or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way effect the other terms of the Contract.

12.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Irish Law.

12.6 These Conditions shall continue to bind each party insofar as and as long as may be necessary to give effect to their respective rights and obligations