



www.come-bye.com

**Terms and Conditions
on the
Sale of Goods**

Terms and Conditions of Sale

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**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF
CONDITION 9**

1 INTERPRETATION

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

“the Buyer”	the person(s), firm or company from whom an Order to supply Goods is received by the Seller;
“Carrier”	Fed-ex or such other third party as the Seller shall nominate from time to time to deliver the Goods to the Buyer;
“Conditions”	these terms and conditions together with any additional terms and conditions agreed in writing by the Seller;
“Contract”	any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
“Delivery Point”	the place where delivery of the Goods is to take place under Condition 3 ;
“Goods”	any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them);
“Order”	an order placed by the Buyer for the supply of Goods whether placed on the Website or otherwise and whether verbally or in writing;
“Participating Vet”	any veterinary practice which obtains, stores, handles or delivers semen samples on behalf of the Seller;
“the Seller”	Michael Northwood, Scott Elwell and Andrew Hall of East Cottage, East Woodburn, Hexham, Northumberland, NE48 2SL trading as “Come-bye”;
“Website”	www.come-bye.co.uk . www.come-bye.com



- 1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires and references to persons shall include individuals; unincorporated associations; partnerships; and bodies corporate wherever incorporated or situate.
- 1.4 In these conditions headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

- 2.1 All orders for Goods from a Buyer accepted by the Seller on the Website or otherwise will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer 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 in the Buyer's purchase 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.
- 2.3 These conditions apply to all the Seller's sales and any variation to these Conditions and any warranties or representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller, which is not set out in the Contract. Nothing in this **Condition 2.3** will exclude or limit the Seller's liability for fraudulent misrepresentation.
- 2.4 Each Order placed by the Buyer on the Website or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.5 No Order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.
- 2.6 The Buyer must ensure that the terms of its Order and any applicable specification are complete and accurate.
- 2.7 All Orders are subject to availability and the Seller reserves the right without incurring any liability whatsoever to refuse an Order in whole or in part.



3 DELIVERY

- 3.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the Seller's place of business or the Participating Vets place of business as the case may be at the time of despatch of the Goods to the Carrier.
- 3.2 Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time and in any event within 30 days.
- 3.3 Subject to the other provisions of these Conditions the Seller 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 delay in the delivery of the Goods (even if caused by the Seller's negligence).
- 3.4 If for any reason the Seller or the Participating Vet is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions delivery details, documents, licences or authorisations:
 - 3.4.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 3.4.2 the Goods will be deemed to have been delivered; and
 - 3.4.3 the Seller or the Participating Vet may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4 NON-DELIVERY

- 4.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.2 The Seller shall not be liable for any non-delivery partial loss, damage or defects of Goods (even if caused by the Seller's negligence) unless written notice is given to the Seller within 7 days of the date when the Goods have been received.
- 4.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate at the sole discretion of the Seller.



5 RISK/TITLE

- 5.1 The Goods are at the risk of the Buyer from the time of delivery.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 5.2.1 the Goods; and
 - 5.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.
- 5.3 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

6 PRICE

- 6.1 Unless otherwise agreed by the Seller in writing the price for the Goods shall be the price contained on the Website or such other price list as the Seller shall specify to the Buyer prior to the Buyer entering into the Contract.
- 6.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

7 PAYMENT

- 7.1 Payment of the price for the Goods and all applicable delivery fees, costs, charges and expenses in relation to the Goods payable by the Buyer is due in pounds sterling immediately upon placement of an Order by credit or debit card. [All payments unless otherwise directed by the Seller shall be payable to the Participating Vet].
 - 7.2 Time for payment shall be of the essence.
 - 7.3 No payment shall be deemed to have been received until the Seller has received cleared funds.
 - 7.4 All payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.
 - 7.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
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7.6 All payments by the Buyer in respect of an Order are non-refundable except where the Seller has failed to deliver the Goods provided always that the Buyer has provided all necessary instructions, delivery, details, documents, licences or authorisations.

8 WARRANTY

8.1 The Seller undertakes to use all reasonable care and skill in the supply of the Goods and the Seller undertakes to comply with all legislation and regulations for the time being in force applicable to the Seller's performance of the Contract.

9 LIMITATION OF LIABILITY

9.1 Having due regard to the inherent risks and uncertainties involved in all biological processes, the Seller does not guarantee, warrant or represent that a particular outcome will occur as a result of the supply by the Seller of any Goods. In particular, but without limitation to the generality of the foregoing the Buyer agrees and acknowledges that:

9.1.1 the Seller does not guarantee, warrant or represent that any Goods supplied will result in a viable pregnancy;

9.1.2 any information published by the Seller in respect of the past performance of any dog semen does not constitute a representation or warranty by the Seller as to the future performance of such dog or its semen; and

9.1.3 the Seller makes no representation or warranty that any dog semen supplied under the Contract is free from any recessive genes which may lead to genetic abnormalities or contribute to disease, impairment or death or is free from any infection or disease.

9.2 Subject as otherwise expressly provided in these Conditions and subject always to the provisions of the Unfair Contract Terms Act 1977 the warranty set out in Condition 8 shall be in lieu of and to the exclusion of any other warranties, terms, conditions or undertakings, whether express or implied by statute, common law or otherwise howsoever arising.

9.3 The Seller's liability to the Buyer (whether for breach of contract, negligence, under statute or otherwise howsoever arising) under the Contract shall (subject to the provisions of Condition 9.5) be limited to the current published selling price of (or replacement with) alternative semen which is in the Seller's reasonable opinion of as near as possible equivalent genetic merit to the semen in question.

9.4 In no circumstances and notwithstanding any other provision of these Conditions shall the Seller be liable for any loss or for any loss of profits business or anticipated savings



or for any indirect or consequential loss or damage whatsoever arising out of the Sellers obligations under this Agreement.

9.5 Nothing in these Conditions shall exclude or limit any liability of the Seller for death or personal injury of any human being resulting from the Seller's negligence or any other liability which it is illegal to exclude or limit or to attempt to exclude or limit.

10 ASSIGNMENT

10.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

10.2 The Seller may assign the Contract or any part of it to any person, firm or company.

11 FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

12 GENERAL

12.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller 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, void ability, 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 the Seller 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 the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.



- 12.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13 COMMUNICATIONS

- 13.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 13.1.1 (in case of communications to the Seller) to [insert address] or such changed address as shall be notified to the Buyer by the Seller; or
 - 13.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a Seller) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Seller by the Buyer.
- 13.2 Communications shall be deemed to have been received:
- 13.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - 13.2.2 if delivered by hand, on the day of delivery;
 - 13.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 13.3 Communications addressed to the Seller shall be marked for the attention of Michael Northwood.



Termination

You can cancel this agreement at any time *prior* to Come-byee receiving an offer from a customer to purchase your dog's semen on 14 days written notice.

In the event that you cancel this Agreement in accordance with the above terms, Come-byee shall use all reasonable endeavours at your cost to return all semen samples on request.

Title

You acknowledge that title to all semen stored by Come-byee, or any other intermediary used by Come-byee for the collection and storage of semen from your dog, will transfer to Come-byee:

- a) Immediately upon Come-byee agreeing to sell such semen to a third party; or
- b) six months following the date of the death of the dog owner provided that before the expiry of such six month period the next of kin of the dog owner has not requested in writing the return of the dog's semen.

Indemnity

You agree and undertake to keep Come-byee indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Come-byee as a result of or in connection with any claim made against Come-byee in respect of any liability, loss, damage, injury, cost or expense sustained by Come-byee's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the collection, storage or supply of your dog's semen or as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of any of your obligations pursuant to this agreement.