

# **STALLION SERVICE AGREEMENTS**

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## **Introduction**

Frederico Tesio<sup>1</sup> dedicated his life to the art of selective breeding. At his farm in Dormello, Italy, on the banks of Lake Maggiore, he observed that the key to successful breeding was not in matching the best to the best, but in pairing the right good sire with the right good mare. Tesio created his own mare band and rarely kept a stallion at his farm. Instead, he would study every potential stallion available in Europe and send each of his mares to a preferred sire. Tesio changed the face of equine breeding forever because he insisted on one absolute rule: That mares must be bred to a stallion that matches and improves upon the mare's qualities, no matter where that stallion might be located.

With the advances in artificial insemination, breeding to the “right” stallion is now easier, in a practical sense, than in the past. However, contrary to past practices, whether it is live cover or AI, the subject of breeding one expensive large animal to another involves a number of complex issues making it more important than ever to have a comprehensive stallion service agreement.

## **Current Legal Cases**

Recently, three cases were decided at the state appellate level<sup>2</sup> which highlight the need for a thoughtful and clear stallion breeding contract. In *Valentino v. Davis*<sup>3</sup>, a New York Court held that a mare owner could not sue for contract damages at all because there was no written contract. In the second case decided in April, 2004, a Kentucky Court found in favor of the stallion farm when it held that payment provision did not

mean that the *exclusive* source of the breeding funds would come from the sales proceeds,<sup>4</sup> but only that payment was not due until after the sale of the foal.

A Texas court refused to re-open a case in July, 2004,<sup>5</sup> because it found that a stallion owner had no meritorious defense to a flagrant breach of breeding contract.

### **Types of Stallion Breeding Contracts**

In general, there are three major types of Stallion Service Agreements. They are:

1. Live Cover at the stallion station<sup>6</sup>;
2. Artificial Insemination at the stallion facility;
3. AI of Transported/Shipped Semen (Frozen<sup>7</sup> or Cooled<sup>8</sup>).

From the mare owner's perspective, a number of separate issues have greater relevancy for the success of a particular breeding, especially whether or not the mare owner will be entitled to a "live foal guarantee"<sup>9</sup>, or "in foal guarantee"<sup>10</sup>, or no guarantee at all. For more on the mare owner's negotiation points, see the Sidebar on Mare Owner Concerns.

In general, stallion service agreements should follow the basic rules of contract construction. They will be interpreted by courts to give effect to the mutual intention of the parties as those intentions existed at the time of contracting, and based on the conduct of the parties.

### **Basic Contract Law**

It is no secret that horsemen typically look askance at small type. Contracts are usually drafted by lawyers in air conditioned offices who don't live the business and haven't the faintest idea of where to find a fetlock. Nevertheless, contracts are meant to be negotiated. The responsibility for obtaining the level of protection sought and the desired terms and understandings is ultimately up to the parties, not the lawyers.

The following is a list of standard provisions that a reasonably good contract should always include:

1. Name, address and contact information of the parties.

2. Identity of the service provided or the goods being sold.
3. The Purchase Price, and terms and conditions of payment.
4. Representations and warranties about the goods and/or services being sold.
5. Provisions allowing the parties to cure any defaults.
6. Remedies available if one party defaults.
7. Limitations of liability.
8. A forum selection clause in the event of litigation or arbitration, and a consent to jurisdiction in that forum.<sup>11</sup>
9. A selection for arbitration or mediation to resolve disputes, or a waiver of a jury trial.
10. An attorney's fee clause if either party has to sue to enforce the contract.
11. Seller entitled to charge interest at the legal rate.<sup>12</sup>
12. An integration clause which supercedes all previous oral or written agreements between the parties.
13. No modifications of the agreement unless in writing.
14. A no assignment clause.
15. Signatures of all persons who are parties and the capacities in which they execute the contract (President, Owner, Agent).

### **Breeding Contracts**

Drafters of Breeding Contracts need to realize that they may be selling two different things. They are dealing with the provision of services or the sale of a good (the semen) under the Uniform Commercial Code.<sup>13</sup>

### **Mare bred on the Stallion Farm – Cover and Boarding Services**

When a mare owner sends a mare to a stallion to be bred by natural cover or AI on the farm, that is a transaction that sells the services of both the stallion and the facility. In addition to all the other provisions that the parties want in a standard contract as set

forth above, the following issues should be identified and addressed in clear, precise language in this type of services contract. Contracts should be customized as much as possible to be applicable to a particular transaction.

1. Name, breed, registration number, and registry of the stallion.
2. Name, breed, registration number, and registry of the mare.
3. Statement of Ownership of mare. Obtain copy of registration papers.
4. **Reps of Mare Owner.** Representation of soundness of mare for breeding and that she is in good health and free from all infectious diseases. Mare has had all current annual vaccinations and de-worming, negative coggins test, and a negative uterine culture in the last 30 days or has had a breeding soundness exam. Remember to obtain all certificates.
5. **Reps of Stallion Farm.** Representation that Stallion has passed a breeding soundness test for that breeding season.
6. **Breeding Season.** Explanation of the dates that breeding season is open for a particular stallion.
7. **Shipping of Mare.** Mare Owner must arrange all transportation of mare to stallion station.
8. **Service Fee.** Statement of the Stallion Service Fee and when it is due and payable. If its due when the mare arrives at the farm and before the stallion covers, then make all services conditioned on its payment. If its to be paid in installments, set forth the installment amounts and dates due.
9. **Booking Fee.** Demand a non-refundable booking fee to the stallion to reserve a breeding for a particular season to be credited against the Service Fee.
10. **Coverage Limitation.** Statement that in exchange for the Service Fee, stallion will make best efforts to settle the mare and will cover (X) number of times – or mare will be bred by AI (X) number of times or for (X) number of

heat cycles. (Usually – a good breeding stallion should be able to impregnate a mare after three attempts.

11. **LF Guarantees** – if any, regarding live foal standing and nursing, in foal status or no guarantee at all. If the mare owner sells the mare with a foal in utero, this should terminate any guarantees. The mare owner should have no right to abort the foal without the consent of the stallion farm, unless the mare's health and welfare are threatened. If the mare departs the breeding facility before she is checked safe in foal by the attending veterinarian, this should invalidate any guarantee given.
12. **Free Rebreding rights** – Statement regarding the mare owner's ability to re-breed to the stallion if the mare fails to conceive or fails to produce a live foal. (If there are no free re-breed rights you should also put this in the contract because custom and usage in the industry is to allow for at least one free re-breed the next season.) Re-breed rights should be contingent upon the presentation of a veterinarian's certificate that mare did not produce a viable foal through no fault of the mare owner.
13. **Right of First Refusal.** If the mare is well bred and the foal is intended for commercial sale, the stallion farm may want to take a right of first refusal to purchase the foal at a fixed negotiated price after it stands a nurses. The price could include a credit for the service fee.
14. **Authorization to Tranquilize and breed by AI.** The farm should obtain the mare owner's authorization to tranquilize and/or hobble the mare at any time if necessary. It should also obtain mare owner's consent to breed by artificial insemination if the mare will not accept natural cover or if it is deemed to be in the best interests of the stallion or the facility or as allowed by the pertinent breed association. (**Note. If you are breeding for Thoroughbred**

**racehorse, you should not agree to AI. The Jockey Club will refuse to register any foal born as a result of AI.)**

15. **Death of Stallion.** If stallion dies or becomes unfit for service, what do the parties do? Will the stallion owner fully reimburse mare owner? Does mare owner have the right to choose an alternate stallion at the farm?
16. **Death of Mare.** If the mare dies before conceiving but after payment of the booking fee or service fee, can a substitute mare be settled? What happens if the mare dies after conception? Will the stallion owner allow one free re-breed to another mare or not?
17. **Breeder's Certificate.** Statement that a stallion/breeder's certificate will not be issued to the mare owner unless all fees and expenses have been paid in full and the mare owner has notified the farm of the live birth of the foal.
18. **Statement of Insurance.** Farm should state that it does or does not have "care, custody, and control" insurance. Farm should state that it is mare owner's responsibility to carry insurance on the mare for injury and mortality.
19. **Indemnity Clause.** If the mare injures the stallion or causes personal injury or property damage, the mare owner agrees to reimburse the stallion farm for its damages. For this reason, the mare owner should carry liability insurance.
20. **Mare Care.** Farm should insert standard boarding agreement language which discusses what rights and responsibilities it will have for the mare and how it intends to care for the mare while on the property. This right extends to the removal of the mare from the property if the farm deems her to be dangerous to life or property. This section should also set forth with great specificity all charges that will be billed to the mare owner on a per day calendar basis including boarding, turn-out and farrier service while the mare is at the facility. If there is a veterinarian on the farm property at all times, or the vet is only on call, there should be a representation about the level of vet care

available. There should be a provision to pass-through all charges to the mare owner for care of the mare, including all palpation and rectal exams. The mare owner should have the right to inspect the farm and to visit the mare at all reasonable times. However, the farm should obtain a waiver of premises liability from the mare owner. The farm must obtain the mare owner's authorization and release to provide special (versus normal) medical care and attention to the mare at any time, including surgery for colic. The farm should encourage mare owner's to inspect the property and facilities.

21. **Ordinary Standard of Care.** The farm should make sure that its agreement includes a statement that at all times that it is in the "custody, control and possession" of the mare, that it will exercise the "ordinary care of a prudent horse owner," and that it will not be liable for any injury or death to the mare while on the property except if it results from the farm's negligence.
22. **Warning of Equine Activity Statute.** Many states now have an EAS or EALA which limits the liability of those involved in equine activities due to the inherent risks of such conduct. If your state has such a statute,<sup>14</sup> then you should have a statement that any liability of the farm is limited to the full extent provided by the statute.
23. **Right of Lien.** Almost every state provides a statutory right called an agister's lien. Your agreement should contain a statement that the farm will retain possession of the mare under the agister's right of lien until all amounts have been paid in full for the mare's care and board.
24. **Limit on Time to bring Suit.** The parties should agree to a limit of time to bring claims and lawsuits under the terms of the contract fixed on the signature date and not when the foal is born.

### **Breeding by Artificial Insemination with Shipped Semen**

Although artificial insemination has been a common breeding practice for decades for cattle, pig and chicken operations, it has only recently taken the equine industry by storm. Except for racing Thoroughbreds, AI is now the preferred method of choice for breeding horses.<sup>15</sup>

Because of its rapid widespread employment, shipped semen contracts have generally been whipped up quickly using the standard live cover agreements as a model. As a general rule, it is not a wise idea to attempt to convert such contracts because one sells a “service” and the other sells a “good” under the Uniform Commercial Code.<sup>16</sup>

Because contracts subject to the separate legal framework of the UCC are slightly different than service contracts, special attention should be given to shipped semen contracts. As an example, under Section 2313 of the California UCC, express and implied warranties (guarantees) are created by statute and imposed on the seller of the semen. Unless the contract provides that the warranties are waived by the purchaser, the seller will be liable for any semen that does not conform to minimum standard in the industry or which is not fit for insemination when it arrives. Accordingly, unless the parties either waive the warranties or agree in writing upon a certain minimum straight line progressive motility rate for spermatozoa within a particular period of time, it could lead to litigation for the stallion owner if the mare does not become pregnant.

In addition to the standard contract provisions set forth above, shipped semen contracts should contain the following. Contracts should be customized as much as possible to be applicable to a particular transaction.

1. Name, breed and registration number of the stallion. Stallion is registered with a particular registry.
2. Name, breed and registration number of the mare.
3. **The Stallion Fee.** The stallion fee should be non refundable (except for section 13 below) and payment is due in full before shipment of the

semen. (There is no need for a “booking fee” in AI contracts because a stallion is collected rather than making an appointment to cover a mare.)

4. **Statement of Ownership of Mare.** Obtain copy of registration papers.
5. The contract should specify if the semen will be cooled or frozen.
6. **Collection Dates.** Stallion farm should set forth a notice of its collection dates.
7. **Mare Owner Notice Requirement.** Stallion farm should require at least 24 hours notice of the mare’s expected ovulation and need for shipment of semen.
8. **Initial Shipment of Semen.** In exchange for payment of the non-refundable Stallion Fee, the buyer shall receive two (2) doses of cooled/frozen semen. Representation by Stallion farm that the doses contain only the semen of the named stallion.
9. **Sperm Viability Representation.** Statement by stallion farm that the stallion is breeding sound and that the cooled semen doses contain a minimum of not less than 1 billion progressively motile sperm at the time of packaging, but that the stallion farm cannot control sperm motility once it is cooled and that the stallion farm makes no representations or warranties as to the sperm cell motility after it is shipped to buyer. Stallion farm shall ship on an express overnight basis, or by counter-to-counter airline service on the same day of collection. Buyer accepts and assumes all risks concerning the sperm viability and motility. In the alternative, stallion farm may offer a representation that cooled sperm sold will be “viable” to settle a mare for only 24 hours after receipt.

10. **Proper Expertise.** Representation by Stallion farm that it has proper expertise and facilities to properly collect and cool/freeze the semen and to properly package, transport and ship it to buyer.
11. **Mare Representations.** Representation by mare owner that mare has had all annual vaccinations, a recent reproductive examination, she is of good breeding soundness and that artificial insemination shall be performed by a licensed veterinarian or experienced technician within 24 hours of receipt of the semen.<sup>17</sup>
12. **Stallion Farm Right to Reports.** Reservation of right by the stallion owner to obtain the results of uterine cultures and/or biopsies prior to shipping the semen to ensure that mare is in good breeding condition.
13. **Mare Owner Right to Test Motility.** Reservation of right by mare owner to test the motility of the semen after receipt of the cooled semen or the proper thawing of the frozen semen. If semen quality is poor, the mare owner should have the right to a full refund of the stallion fee.<sup>18</sup>
14. **Forfeiture of Right to Additional Doses.** Semen may not be used to impregnate any other mare except that mare stated in the contract. No substitution of mares will be allowed without express written consent of the stallion owner. Mare owner may not perform any embryo transfer. There may be no assignment of the agreement to any third party. Mare may not be bred to any other stallion during the same breeding season. Artificial insemination must be performed by a licensed veterinarian, experienced technician or at an approved breeding facility. If any of these provisions are violated, the buyer shall forever forfeit buyer's right to a refund, and shall have no right to the further shipment of the stallion's semen or to any additional doses.

15. **No Guarantee.** The sale of the semen should be made on a “No Guarantee” basis. It is not a good idea to provide any kind of “live foal” or “in foal” guarantee with cooled/frozen semen. So much of the impregnation procedure is out of the hands of the stallion farm and many factors can effect conception rates.
  
16. **Provision of Additional Straws.** If the mare is determined not in foal after 18 days from the date of insemination, buyer shall have the right to receive an additional 1-2 doses per heat cycle for (X) number of heat cycles if buyer has not violated any provisions of this agreement or otherwise forfeited buyer’s rights.
  
17. **Costs and Expenses.** Mare owner must pay all costs and expenses associated with collection/transportation of the semen. Set forth with specificity the costs of express overnight shipping or same-day service, and cost and deposit for the shipping container.
  
18. **Limitations of Claims.** Buyer must bring all claims under the contract against stallion farm within one year from the date of shipment of the semen, or in the event of a live foal, 6 months from the date of birth, or forever be barred.

**CONCLUSION**

Negotiating a mutually satisfactory stallion service agreement and reducing it to writing is time well spent. It is always legally important that the contract that you sign reflects what you need it to say before you sign it.

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## **MARE OWNER CONSIDERATIONS IN BREEDING CONTRACTS**

Virtually almost every mare owner has a horror story about breeding. Sue Andrus of Andrus Racing Arabians in Copperopolis, California, has bred both Arabians and Thoroughbreds for the last 15 years and recounts the following: “I had several of my racing Thoroughbred mares transported to a large and well known facility in central California to breed to a big-time stallion. My paramount concern is always for the care and treatment of my mares. I was told by the stallion manager that there was a veterinarian who lived on the property and that there were cameras in every stall, so I felt pretty good about sending my mares there. Several months later, I got a call that one of my mares was in foal with twins. I asked that the vet snip (terminate) the smaller embryo. I thought that would be the end of it, but it wasn’t. Later I learned that the mare was never in foal with twins and that the vet had just aborted her without checking. I then found out that the stallion farm was caring for about 150 mares with only one vet and he didn’t even live on the property. I went to inspect the facility, and when I saw that there were no cameras in the stalls, I realized that I had been lied to about everything. I took my mares home that day.”

From the mare owner’s perspective, the following are beneficial provisions which the mare owner should strive to negotiate:

1. A Live Foal Guarantee. Foal is able to stand and nurse unassisted and healthy for at least 72 hours following birth.
2. Favorable Re-breeding Rights.
3. Multiple Mare Discounts.
4. A Guarantee on minimum sperm number and motility rate for cooled/frozen semen.
5. Obtain representations from stallion farm on statistical information regarding conception rate of stallion.

6. Representations and promises on the type of care, stalling, exercise, feed, vet and farrier services that will be provided to the mare while she boards at the facility.
7. Require the facility to carry “care, custody, and control” insurance.
8. If mare dies while in foal, the right to rebreed a different mare for free.
9. A representation that if the mare is in foal with twins, that she will not be summarily aborted but that she will be evaluated for health and welfare and that stallion farm must receive written instructions from the mare owner on how to proceed in the best interest of the mare.
10. No right in the Stallion Station to substitute a different stallion selected for breeding without mare owner’s written consent.
11. If stallion dies, refund of booking and breeding fees.

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### **AUTHOR’S BIO**

Jennifer Hagan is a business attorney who practices law in Palo Alto, California. She has owned and ridden horses for 32 years. She currently has four Arabians, two which she rides for endurance, one brood mare, and one that races. She also just claimed off the track in July an 8 year old great grandson of Man O War. Miraculously, he was still sound. If you are interested in viewing a complete breeding contract or if you have business or equine law related questions, you may reach Ms. Hagan through her website at [www.haganlaw.com](http://www.haganlaw.com). This article is not intended to render comprehensive legal advice, but only to provide a general understanding of stallion breeding contract and to suggest a checklist of subjects to be addressed by the parties.

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<sup>1</sup> Frederico Tesio wrote one book entitled, “Breeding the Racehorse.” It was first published in 1958. The book contains fifty years worth of his personal observations, experiences, reflections and philosophy about the art of breeding horses.

<sup>2</sup> Most cases involving breeding disputes do not make it to the appellate level. If they are litigated at all, they are usually decided at the small claims court level. Some are arbitrated or mediated. Most are not tried and do not result in the making of a published legal record.

<sup>3</sup> *Valentino v. Davis*, 270 A.D.2d 635 (N.Y. 2000).

<sup>4</sup> *Beason v. Ashford Stud*, unpublished, April 9, 2004 (2004 WL 758341).

<sup>5</sup> *Luebbe v. Booth*, unpublished, July 14, 2004 (2004 WL 1574224).

<sup>6</sup> If you are intending to breed a Thoroughbred to race on a track in the United States, the Jockey Club will only accept horses bred by live cover. The Jockey Club has banned registration of any horse born as a result of artificial insemination. This ensures the correct pedigree and identification of every Thoroughbred and, as such, is essential to the integrity of Thoroughbred breeding and racing.

<sup>7</sup> There is a significant difference between “cooled” and “frozen” semen. Frozen semen is more expensive but lasts much longer. Each stallion must be evaluated to determine whether or not his semen will withstand freezing. For the mare owner, there is no requirement to schedule shipments of semen to fit a particular mare’s ovulation time. Additional benefits are that the stallion does not have to be taken out of competition to breed, or have his competitive attitude possibly upset by having to breed or to have semen collected. Frozen semen has a global market because there is no limitation on duration of delivery time. On the serious downside, conception rates for artificial insemination with frozen (as opposed to “cooled”) equine semen are typically lower than those seen with fresh or cooled semen. The normal range for progressive motility in fresh semen is between 60-80%. When the semen is cooled, progressive motility can drop to 10%-50% for some stallions. When semen is frozen, progressive motility could drop to less than 30% post-thaw. While frozen semen may have a viable shelf life for over 100 years, accordingly to the American Association of Equine Practitioners (AAEP), cooled semen has viability for no more than 24-48 hours.

<sup>8</sup> Cooled shipped semen in equine breeding is a relatively new and sophisticated technology. It requires that the mare owner properly time the ovulation of the mare to be successful. Shipment of cooled semen must always be sent by overnight delivery or same-day courier in an appropriate container and there are additional charges for that service. According to Patrick McCue, DVM, Ph.D, an Associate Professor specializes in equine reproduction at Colorado State University, Fort Collins, if semen is to be used for shipped-cooled insemination, “[t]he minimum insemination dose should contain not less than one billion progressively motile sperm when packaged.” And forget about using cooled semen once its aged more than 48 hours. “It might have moving sperm, but they may not be capable of impregnating the mare.”

<sup>9</sup> A live foal guarantee (LFG) usually means that the breeding fee may be refunded, in whole or part, if the foal does not have the ability to stand and nurse for a period of time after birth. As an example, if the foal does not survive for 24 hours, the stallion farm may allow for a refund or a free re-breed to the stallion or another of the mare owner’s choice.

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<sup>10</sup> An “in foal” guarantee provides that the stallion fee is not due until the mare is determined by a veterinarian to be in foal after her 42 day exam. If the mare was in foal, but the foal subsequently is aborted or does not stand and nurse, there is no right of refund or free re-breed.

<sup>11</sup> Pursuant to the holding in *Carnival Cruise Lines, Inc., v. Shute*, 499 U.S. 585 (1991), and cited in over 800 cases since, forum selection clauses will be scrutinized by the courts for fundamental fairness.

<sup>12</sup> Be careful not to charge more than the law allows. This would be usury and could invalidate the entire contract and expose you to damages.

<sup>13</sup> In *Meuse-Rhine-Ijssl Cattle Breeders of Canada, Ltd. v. Y-Tex Corp.*, 590 P.2d 1306 (Wy. 1979), it was established that the supply of semen for artificial insemination constitutes a sale of a good under the Uniform Commercial Code. See also *Embryo Progeny Associates v. Lovana Farms Inc.*, 416 S.E.2d 833 (Ga. App. 1992).

<sup>14</sup> As of January 1, 2004, only Alaska, California, Maryland, Nevada, New York and Pennsylvania have not enacted some type of EAS.

<sup>15</sup> Elizabeth N. Clarke, Esq., Department of Equine Science, Otterbein College, “*Contract Issues Resulting from the Artificial Insemination of Horses*”, p. 1, October 2002.

<sup>16</sup> The sale of “Goods” under the UCC is subject to number of protections for the parties such as the establishment of “course of dealing and usage of trade”, the Statute of Frauds, performance under reservation of rights, and the imposition of warranties for fitness of purpose.

<sup>17</sup> Breeding with cooled, transported semen is more management intensive than with natural cover. Timing is critical. For the greatest chance of pregnancy, a mare must be bred from 12-24 hours before ovulation and six hours after ovulation.

<sup>18</sup> It may not be the fault of the stallion that motility is poor after cooling. According to Dr. Patrick McCue, some stallions are either classified as “poor coolers” or “good coolers.” Sometimes semen extender can be the cause of otherwise viable semen being unsuitable for use. Some semen extenders maintain motility for a particular stallion better than others.