

## 2005 Hold Harmless Deed Instructions

No player may participate in any practise, game or other polo activity conducted under the auspices of the NSWPA or its affiliated clubs unless they have signed the NSWPA approved 2005 Hold Harmless Deed which includes an acknowledgement that they will observe the terms of the following documents:

- the NSWPA Risk Management Policy and Guidelines,
- the APC Players' Code of Conduct and Discipline Policy

### **PROCEDURE for completing the DEED:**

#### **The Player/Player's Guardian must:**

1. Read all documents thoroughly and be aware that they can obtain legal advice prior to signing the deed. If they have any queries about the content or legal effect of the Deed or any part of it, they should obtain legal advice **BEFORE** signing.
2. Enter the Player's name and address in the spaces provided at the beginning of the Deed. In the case of a Player who is a minor (aged under 18 years), the Player's Guardian must explain the content and effect of the Deed and documents referred to in Clause 4(g) to the Player and then sign it on behalf of the Player in the manner set out in 1. above.
3. Sign the Deed in front of a witness who must also sign it. All signatures must be entered in the spaces provided.

#### **The Club must then:**

1. Execute the Deed. The Club Secretary, Club President or Public Officer must sign it in front of a witness. All signatures must be entered in the spaces provided.
  2. Retain the original Deed in safe custody.
  3. Provide a copy of the Deed to the Player.
  4. Deliver a copy of the Deed, either by mail or fax, to the NSWPA within 14 days of the Player being registered by the Club for the current year on the NSWPA approved website.
- Player registration is the responsibility of the Player's Club. No Player will be considered registered and entitled to participate in any Polo Activity until their name, postal address and details are recorded for the current playing year on the NSWPA approved website.
  - Player registration is conditional upon the Club confirming it holds a properly executed 2005 Hold Harmless Deed by entering the Player's name and details on the website.
  - **WARNING to Clubs: Confirmation of Player registration in the absence of a properly executed 2005 Hold Harmless Deed may have serious legal and other consequences.**

**DEED**

**THIS DEED** is made **BETWEEN**

**PLAYER'S NAME:** \_\_\_\_\_

**PLAYER'S ADDRESS:** \_\_\_\_\_  
in the State of New South Wales (hereinafter called "the Player")

**AND NSWPA POLO CLUB NAME:** \_\_\_\_\_  
a company duly incorporated and having its office at

**NSWPA POLO CLUB ADDRESS:** \_\_\_\_\_  
in the State of New South Wales (hereinafter called the "Club")

**AND NEW SOUTH WALES POLO ASSOCIATION (KYEEMAGH) LIMITED ABN 76 000 021 474** a company duly incorporated and having its office at **Suite 215, Sports House, Wentworth Park Sporting Complex, Wattle Street, Ultimo 2007** in the State of New South Wales (hereinafter called "NSWPA")

**RECITALS**

- A. The Club is a Polo Club affiliated to NSWPA. As a Polo Club, the Club manages grounds on which the game of Polo is practised and played.
- B. The Members of the Club and other players compete in Polo tournaments and games at different venues throughout New South Wales.
- C. The Player desires to participate in Polo practices, games and tournaments.
- D. The Player is aware that the game of Polo involves risk and wishes to participate in such practices, games and tournaments accepting such risks.
- E. The Club and the NSWPA is only prepared to permit the Player to participate in the Polo practices, games and tournaments on the basis that the Player has accepted the risks associated with playing and practising Polo.
- F. The Player has agreed to release the Club and NSWPA and each and every Officer of the same from any or all liability for any loss or damage which the Player may sustain from participating in a Polo Activity.

"Polo" means the sport played with a rider on horseback using a mallet to strike a ball with the intention to score goals by hitting the ball between goal posts;

"Polo Activity" means the practice or playing of Polo whether recreationally or competitively.

**1.2. Legislation**

A reference to legislation or a provision of legislation includes any change or reenactment of the legislation or a legislative provision substituted for and legislation and statutory instruments and regulations issued under, the legislation.

**1.3. Singular to include plurals**

Words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and trusts and vice versa; and headings are for convenience only and will not affect interpretation.

**1.4. References to clauses**

A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this deed; and a reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.

**1.5. Time**

A reference to a time and date concerning the performance of an obligation by a party is a reference to the time and date in New South Wales, even though the obligation is to be performed elsewhere; and where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done, then that thing will be done on the next succeeding business day.

**2. RELEASE AND INDEMNITY**

**2.1. Release**

In consideration of the Club and NSWPA permitting the Player to participate in the Polo Activity, to the extent permitted by law, the Player hereby releases and discharges the Club, each Member, NSWPA and the Included Bodies and Officers from and against all liability arising out of the Polo Activity as a result of any injury, damage or loss that may be sustained by the Player as a consequence of the participation in the Polo activity or by any act or omission of any other player in the Polo Activity.

**2.2. Indemnity**

To the extent permitted by law the Player hereby indemnifies, and agrees that at all times hereafter the Player shall keep indemnified, the Club, each Member, NSWPA and all Included Bodies and all Officers against all and any liability, damage, loss and expense of whatsoever nature that are incurred by any one or more of them as a result of the participation of the Player in the Polo Activity or by any act or omission of the Player.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this deed unless the context otherwise requires the following words and expressions shall have the meanings ascribed thereto:

"Included Bodies" means all companies, incorporated associations or organisations which are associated with or are members of NSWPA or are otherwise engaged in any Polo Activity;

"Member" means a member of the Club and as such entitled to the benefits of membership of the Club;

"NSWPA" means New South Wales Polo Association (Kyeemagh) Limited ABN 76 000 021 474 and its successors in title and permitted assigns and for the purposes of this deed includes any company or organisation which controls or regulates the sport of Polo in New South Wales;

"Officer" means any director, secretary, committee member or other person holding any office of responsibility in any company, incorporated association or organisation;

### 3. WARNINGS TO THE PLAYER

Without limiting the generality of the risks associated with the Polo Activity, the Player acknowledges that the Player accepts a specific warning of the following risks:

- (a) the risk of physical injury caused by horses, including collisions between horses and horses falling;
- (b) injuries caused by the use of mallets associated with the Polo Activity, including the risk of being struck by a mallet of the Player or another Player in the course of the Polo Activity;
- (c) the risk of physical injury caused by the balls used in the Polo Activity;
- (d) the risk associated with the playing of the Polo activity at speed on uneven Polo grounds and on grounds with divots;
- (e) the increased risks associated with weather conditions;
- (f) the risk of minor to serious physical injury including sustaining cuts, bruises, abrasions, sprains, fractures and head or spinal injuries;
- (g) the risk of damage to the property of the Player or by the Player to the property of other players, spectators or members of the public caused by unrestrained horses or mallets or balls or otherwise.

### 4. PLAYER ACKNOWLEDGEMENTS

The Player acknowledges:

- (a) that the Player has requested that the Club and NSWPA permit the Player to participate in the Polo Activity from the date of this Deed until the Player ceases to be a registered member of the Club;
- (b) that the Polo Activity is dangerous and understands the risks of personal injury and property damage associated with involvement in the Polo activity;
- (c) that the Player undertakes that the Player will not participate in any Polo activity when:
  - (i) the Player is under the influence of alcohol or any drugs, prescribed, banned or otherwise, which may impair vision, physical strength, agility or reactions or the general competencies of the Player; and/or
  - (ii) the Player reasonably suspects that any medical or health issue or condition of the Player could be a risk to that Player or any other person or other Players involved in the Polo activity;
- (d) that prior to the Player's participation in the Polo activity, the Player was advised by the Club and/or NSWPA concerning the risks associated with the Polo activity, and that the Player would be solely responsible for arranging insurance cover appropriate to the personal needs of the Player to protect the Player against the risks involved in the participation in the Polo activity;
- (e) that the Player has made arrangements to provide adequate insurance cover to meet the Player's needs or, if no such insurance has been taken out by the Player, the Player acknowledges that the Player will accept the risk.
- (f) that the Player accepts that the Polo Activity is an activity with inherent and obvious risks.
- (g) that the Player will observe the Players' Code of Conduct, Discipline Policy and Risk Management Policy & Guidelines issued by the Australian Polo Council and/or NSWPA from time to time.
- (h) that the Player will promptly notify the Club of any changes of address and contact details.

### 5. GENERAL

#### 5.1. Amendment

No variation or waiver of, or any consent to any departure by a party from, a provision of this Deed is of any force or effect unless it is confirmed in writing signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

#### 5.2. Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by this Deed does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Deed.

#### 5.3. Liability of parties

If any party to this Deed consists of more than one person then the liability of those persons in all respects under this Deed is a joint liability of all those persons and a separate liability of each of those persons. If any covenant or agreement given by any party to this Deed is given jointly with any one or more other parties to this Deed then such covenant or agreement shall also be a separate obligation of each party.

#### 5.4. Entire Deed

This Deed constitutes the sole and entire agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Deed is of no force or effect.

#### 5.5. Severance

If any provision of this Deed is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

#### 5.6. Further Assurance

Each party must do, sign, execute and deliver all deeds, documents, instruments and acts reasonably required of it or them by notice from another party effectively to carry out and give full effect to this Deed.

#### 5.7. Counterparts

This Deed may be executed by any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

#### 5.8. Attorneys

Where this Deed is executed on behalf of a party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes the Deed on behalf of that party.

#### 5.9. Legal advice

The Player acknowledges that the Player has received, or has had the opportunity to receive, legal advice about the nature and effect of this deed and understands the full purport and effect of this Deed.

#### 5.10. Governing law and jurisdiction

This Deed is governed by, and is to be construed in accordance with, the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

**SIGNED** as a Deed

**SIGNED SEALED AND DELIVERED** by the  
said **Player / Player's Guardian**

\_\_\_\_\_  
**Player's / Player's Guardian's signature**

in the presence of:

\_\_\_\_\_  
**Witness signature**

\_\_\_\_\_  
**Name of witness (BLOCK LETTERS)**

**EXECUTED** by **THE SEAL** of

\_\_\_\_\_  
**Club Authority signature**  
pursuant to section 127 of the Corporations  
Act:\was hereunto affixed by authority of its  
board and in the presence of:

\_\_\_\_\_  
**Witness signature**

\_\_\_\_\_  
**Name of witness (BLOCK LETTERS)**

\_\_\_\_\_  
**Office:**

\_\_\_\_\_  
**Name (BLOCK LETTERS)**

**OFFICE USE ONLY:**

**EXECUTED** by **NEW SOUTH WALES POLO  
ASSOCIATION (KYEEMAGH) LIMITED**  
pursuant to section 127 of the Corporations Act:

\_\_\_\_\_  
**Director signature**

\_\_\_\_\_  
**Name of Director (BLOCK LETTERS)**

**NSWPA**

\_\_\_\_\_  
**Director/secretary signature**

\_\_\_\_\_  
**Name (BLOCK LETTERS)**