

# PACIFICVET LIMITED

## Terms and Conditions of Sale (Domestic)

### 1. Definitions

- 1.1 In these terms and conditions:
- 1.1.1 **Accumulated Value** means the total value of all orders in a delivery determined by the Company;
- 1.1.2 **Company** means Pacificvet Limited;
- 1.1.3 **Confidential Information** means all information of a confidential nature provided by one party to another whether oral, written or embodied in any other physical or electronic form, whether in tangible form or not and whether provided before or after the commencement of the contract including information comprised of intellectual property rights but does not include information which is or becomes available in the public domain (other than because of a breach of these terms and conditions) or information disclosed in compliance with any applicable laws;
- 1.1.4 **Contract** means the contract between the Customer and the Company for the provision of Goods by the Company of which these terms and conditions form part;
- 1.1.5 **Customer** means the person to whom the Goods are to be supplied;
- 1.1.6 **Goods** means any Goods supplied by the Company under this contract;
- 1.1.7 **Working Day** means a day of the week other than a Saturday, Sunday or a public holiday in Christchurch, New Zealand.

### 2. Acceptance and Supply

- 2.1 All orders which are accepted by the Company shall form a contract between the Company and the Customer on the standard terms and conditions of sale set out herein.
- 2.2 The Company will not be bound by any conditions included in the Customer's order or otherwise proposed by the Customer unless the Company accepts them in writing and any supply made by the Company to the Customer shall not be deemed to constitute an implied acceptance by the Company of any terms or conditions proposed by the Customer.

### 3. Price and Orders

- 3.1 Irrespective of all prices listed or quoted, all Goods are supplied at the prices ruling at the date of delivery and the Company reserves the right to pass on to the Customer any change in price after acceptance of the Customer's order.
- 3.2 All prices are exclusive of Goods and Services Tax and other taxes, charges and duties which shall be payable by the Customer.
- 3.3 Orders placed must be for standard pack sizes determined by the Company.
- 3.4 If an order relates to any Goods temporarily out of stock the Company will supply these Goods when stock becomes available unless the Customer specifically instructs otherwise before such Goods are delivered to the Customer.

### 4. Delivery

- 4.1 An order to the Accumulated Value of \$750.00 (excluding GST) or more will be delivered free of freight costs to the Customer anywhere within New Zealand by a carrier nominated by the Company. For orders under \$750.00 (excluding GST) freight will be charged to the Customer.
- 4.2 Non-receipt of Goods must be notified within seven (7) days of the date of invoice or advice of dispatch whichever is the earlier otherwise credit for the same will not be allowed.
- 4.3 Failure to make any such delivery for any such reason shall not prejudice the right of the Company to make subsequent deliveries nor shall it entitle the Customer to refuse to accept the same or to terminate the contract for order either in whole or in part.

### 5. Payment

- 5.1 Payment shall be made without deduction on 20<sup>th</sup> day of the month following the date of invoice or delivery of any Goods whichever is the earlier (**due date**).
- 5.2 If payment is not made to the Company by the due date then:
- 5.2.1 the Customer shall be in default under these terms and conditions and the Company may exercise any or all of the rights and remedies contained herein or otherwise available at law.
- 5.2.2 there shall be due and payable by the Customer interest upon the moneys in default at the rate of 2.5 % per month or such lower rate as the Company may determine payable on a daily basis from the due date of payment provided that the charging of such interest shall not extend the due date of payment of be deemed so to do.
- 5.2.3 the Customer shall be liable for all expenses (including solicitor – own client legal costs) incurred by the Company as a result of the default by the Customer.
- 5.2.4 the Company may withhold the supply of further Goods on credit.
- 5.3 The Company reserves the right to cancel all or any part of any Contract with the Customer which remains unperformed if the Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, commits an act of bankruptcy or a liquidator (professional or otherwise) is appointed or is placed under statutory or official management or is in the opinion of the Company likely to be unable to meet its payment or other obligations to the Company.
- 5.4 Receipt by the Company of any monies, shall not be deemed to be payment until the same has been honoured and cleared and until such time receipt shall not prejudice nor affect the Company's rights, powers and remedies against the Customer and/or the Goods.

### 6. Validity and Allocation of Payment

- 6.1 The Customer acknowledges that :-
- 6.1.1 All payments made to the account of the Customer with the Company are in the ordinary course of the Customer's business.
- 6.1.2 All payments received by the Company to the Customer's account are received by the Company on the reasonably held belief as to the validity of those payments unless otherwise advised by the Customer and;
- 6.1.3 In accepting such payments on or after the due date for payment thereof the Company has altered its position in reliance on the validity of such payments.
- 6.2 The Company may in its sole discretion allocate any sum received from the Customer towards any invoice or amount owing by the Customer. The Company shall not be obliged to make such allocation at the time of receipt but may do so on any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by these terms and conditions and secondly towards any sum which in the Company's opinion is secured by these terms and conditions.

### 7. Liability on Claims

- 7.1 All claims against the Company by the Customer must be made within seven (7) Working Days of receipt of the Goods. The Company reserves the right in its discretion to repair or replace the Goods or to refund or credit the portion of the purchase price applicable thereto in respect of any claims accepted. The Company will use its best endeavours to enforce any guarantee or warranty given by the manufacturers of the Goods sold by the Company.
- 7.2 The total liability of the Company whether in contract tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the Goods or any other breach by the

Company of its obligations under this agreement will not in any circumstances exceed the purchase price of the relevant Goods.

7.3 The Company will not be liable for any consequential, indirect or special damage or loss of any kind nor is the Company liable for any damage or loss caused by the Customers servants, agents, buyers or other persons whatsoever or for any loss resulting from storage instructions not being followed.

7.4 The Customer shall indemnify the Company against any claim by the Customer's servants, agents, Customers or other persons (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any defect in or non-compliance of the Goods or in respect of any other matter whatsoever.

7.5 All warranties, descriptions, representatives or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability or purpose or otherwise and all specific conditions, even though such conditions may be known to the Customer are expressly excluded to the extent permitted by law.

## 8. Returns

8.1 The Company will only accept Goods for return if the Company is satisfied that they were damaged in transit between the Company warehouse and the point of delivery or if the Goods supplied were not ordered. In the former case notification must be made by the Customer to the Company within seven (7) Working Days of receipt of order. The Company will not accept for return Goods with a broken seal or label removed or damaged or Goods which have an expiry date which has been exceeded.

8.2 Acceptance of Goods for return shall be conditional upon receipt of the Goods free of cost to the Company warehouse.

## 9. Cancellation

9.1 Orders placed with the Company cannot be cancelled if the Goods have already been dispatched.

## 10. Statutory Warranties

10.1 All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability of purpose or otherwise, and all specific conditions, even though such conditions may be known to the Customer are expressly excluded to the maximum extent permitted by law.

10.2 Without limiting clause 10.1, where the Customer is "in trade" within the meaning of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 (as the case may be), the Company and the Customer agree to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14 of the Fair Trading Act 1986.

10.3 If the Customer is acquiring the product otherwise than in trade, no provisions shall in any way limit or purport to limit the application of the Fair Trading Act 1986 or Consumer Guarantees Act 1993.

## 11. Property and Risk

11.1 Risk in any Goods supplied by the Company to a Customer shall pass when the Company parts with possession of the Goods in accordance with the contract.

11.2 Property in and ownership of the Goods remains in the Company until all monies owing from the Customer to the Company (whether under the contract for the Goods or otherwise) has been paid in full, or until property in the Goods has passed to a third party in accordance with this clause.

11.3 When dealing with the Goods the Customer acts as the principal as between the Customer and any third party but acts as an agent as between the Customer and the Company.

11.4 The Customer is a fiduciary for the Company and has a fiduciary duty to account to the Company for the Goods and if the Goods are sold the Customer receives the proceeds of the sale as trustee of the Company.

11.5 The Customer shall store the Goods separately so that they are identifiable as the property of the Company and must place the proceeds of the sale of the Goods in a separate bank account for the benefit of the Company.

11.6 If any money owed by the Company to the Company is overdue or if the Customer commits an act of bankruptcy or (where the

Customer is a Company) if a receiver or liquidator is appointed or the Customer does anything which would render it liable to be wound up, the Customer at the request of the Company must:

11.6.1 Re-deliver the Goods to the Company or do anything reasonably necessary to allow the Company to retake possession of the Goods.

11.6.2 Instruct any third parties who own money in respect of the Goods to pay that money directly to the Company or hold all claims against the purchaser of any such Goods in trust for the Company. The Company may in any of the said events either in its own name or in the name of the Customer make claim to and issue proceedings to recover the sale price of such Goods.

11.6.3 Make available to the Company any records which will assist the company to trace its proceeds of sale of the Goods.

11.7 The Customer authorises the Company or its representatives, servants, agents or employees to enter the property where the Goods are situated for purpose of repossession. The Company will not be liable for any costs, expenses, damage, loss of any kind suffered by the Customer as a result of repossession.

11.8 If the Company takes possession of the Goods or proceeds and after deduction of all money the Customer owes to the Company (including any interest due and including any expense incurred by the Company in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Company will pay that surplus to the Customer.

11.9 The Goods do not become fixtures on any land owned by the Customer or otherwise regardless of the degree and purpose of their annexation while the Customer owes any money to the Company.

11.10 If the Company's Goods become mixed with or incorporated in any other Goods in such a way that they cease to exist as separate Goods the original ownership of the new Goods created by that mixing vest immediately upon creation in the Company as owner of the new Goods with the owner of any other Goods which become part of the new Goods, the co-ownership to be calculated proportionately as to the value of the various component Goods. The Company's ownership of the new Goods is otherwise of the same terms as the ownership of the Goods originally supplied.

11.11 Without limiting clause 11.2 for the purposes of the Personal Property Securities Act 1999, to secure all of the Customer's obligations to the Company at any time, the Customer grants a security interest to the Company in all of the Customer's present and after-acquired property except for those items or kind of the Customer's personal property (**excepted property**) which has not been supplied by the Company to the Customer (other than excepted property which is or comprises proceeds of any personal property supplied by the Company).

11.12 The customer acknowledges that it is the intention of the parties that Part 9 of the PPSA will not apply to these terms and conditions. However, if at law this is not the case, the customer:

11.12.1 Agrees that if, at any relevant time, the Company's security interest in the goods created or provided for in these terms and conditions does not have priority over all other secured parties in respect of the goods, the parties, for the purposes of section 109(1) of the PPSA are deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that for the purposes of these terms and conditions and the application of the PPSA, that section 109(1) (amended only by deletion of the words "with priority over all other secured parties") is reinstated and contracted back into;

11.12.2 Agrees that nothing in section 133 and 134 of the PPSA shall apply to these terms and conditions;

11.12.3 Waives its right to receive notice pursuant to section 114(1)(a) of the PPSA;

- 11.12.4 Waives its right to object to the Company's proposal to retain any collateral pursuant to section 121 of the PPSA; and
- 11.12.5 Agrees that, in addition to the Company's right under clause 5.2 of these terms and conditions, the Company may appoint a receiver in relation to the goods and, in addition to and without effecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise) a receiver has the power to do all things as if the receiver had absolute ownership of the secured property.
- 11.13 The Customer undertakes to:
- 11.13.1 Sign any further documents and/or provide any further information; such information to be complete, accurate and up to date in all aspects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register ("PPSR");
- 11.13.2 Indemnify, and upon demand reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing and property charged thereby;
- 11.13.3 Not register or permit any other party to file a financing change statement or a change demand in relation to the secured property without the prior written consent of the Company;
- 11.13.4 Give the Company no less than fourteen (14) days' prior written of any proposed change in the Customer's name and/or any other change in the Customer's details (including to and not limited to changes in the Customer's address, facsimile number or business practice; and
- 11.13.5 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.14 Unless otherwise agreed to in writing by the Company, the Customer waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 11.15 If there is a guarantor, any reference to the Customer is deemed to also be a reference to the guarantor
- 11.16 All payments received by the Company from the Customer will (regardless of any direction or intention expressed by the Customer in respect of such payments) be applied in such manner as the Company considers necessary or desirable to preserve the Company's rights as the secured party under a purchase money security interest to the maximum extent.
- 11.17 The Customer shall notify the Company in writing of any change in name of the Customer at least fifteen (15) Working Days prior to any change.
- 11.18 The Customer has no right to assert as against the Company that it owns the Goods or the proceeds of sale or any part of the Goods or proceeds if the Company takes possession of the Goods or the proceeds and if after deduction of all monies owing from the Customer to the Company (including any interest due and including any expenses incurred by the Company in enforcing its rights under the contract including legal expenses as between solicitor and own client) there is a surplus the Company will pay the Customer a sum equivalent to the surplus.
- 12. Storage**
- 12.1 Storage of Company Goods must be in accordance with the requirements stated on each pack or as determined by the Company and advised to the Customer (ie refrigeration and cool storage facilities may be necessary).
- 13. Information and Privacy Act 2020 (or any amended or replacement Act)**
- 13.1 The Customer authorises the company to:
- 13.1.1 Collect all information it may require from any third parties and in respect thereof authorises third parties to release such information to the Company.
- 13.1.2 Hold all information given by the Customer or all such third parties to the Company for the purpose of this agreement or otherwise related to the Company's business.
- 13.1.3 Use all such information, including the giving of all such information to third parties to facilitate the collection of any monies owing or otherwise related to the Company's business.
- 13.2 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.
- 14. Force Majeure**
- 14.1 The Company is not liable for any failure in its obligations to any Customer or for any loss caused to the Customer by reason of circumstances beyond the Company's control including but not limited to:
- 14.1.1 Strike, lockout or labour disturbance;
- 14.1.2 Failure or delays by a supplier or a subcontractor;
- 14.1.3 Fire, earthquake, flood or similar natural disaster;
- 14.1.4 Acts of terrorism, hostilities, commotions or similar civil strike.
- 15. Waiver and Severability**
- 15.1 All the rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance or delay in enforcement thereof and the Company shall not be deemed to have waived any condition unless such waiver is in writing and signed by a duly authorised officer of the Company. Any such waiver shall apply to operate only in the particular transaction dealing or matter in respect of which it is given.
- 15.2 If part or all of any provision of this contract is illegal or unenforceable, that provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision (or part of it) cannot be interpreted in that way, the provision (or part of it) will be severed from this contract and the remaining provisions will continue in full force and effect.
- 16. Assignment**
- 16.1 The Company is entitled at any time to assign its rights under the contract. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its secured parties or successors in respect of the debt or part of the debt which is assigned.
- 16.2 The Customer is not entitled to assign its rights under this contract.
- 17. Confidential Information**
- 17.1 Each party will hold the confidential information of the other party in strict confidence and will not disclose or permit to cause the disclosure of any such confidential information without the other party's prior written consent or make use of the confidential information for any purposes other than the furtherance of these terms and conditions or the performance of the contract.
- 17.2 The confidential information may only be disclosed to such employees and advisors of the receiving party as need to know the confidential information and who have entered into an agreement or undertaking equivalent to that set out in these terms and conditions.
- 17.3 This paragraph 17 will survive termination of the contract.
- 18. Entire Contract**
- 18.1 The Company and the Customer agree these terms express the complete agreement between the parties and that there has been no representations made by either party to the other except as are

expressly set forth in these presents and in any credit application made by the Customer and there is no inconsistency with any order that may be lodged with the Customer and if there is any consistency then such order shall be of no effect. The Contract shall not be subject to change or modification except with prior written consent of both the Company and the Customer.

- 18.2 The Company reserves the right to amend the terms and conditions on written notice to the Customer. No variation of the terms and conditions by the Customer is permitted unless the Company has agreed in writing to such variation.

## **19. Non Merger**

- 19.1 The agreements and obligations of the parties and the agreement evidencing them will not merge upon cancellation or termination of this agreement.

## **20. Dispute Resolution**

- 20.1 If any dispute arises between the parties in relation to these terms and conditions representatives of the supplier and customer shall meet within 14 days of the dispute in order to endeavour to resolve the dispute by negotiation. If such efforts are unsuccessful the parties will submit the dispute to mediation in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. with a mediator appointed by the President of the New Zealand Law Society if the parties are unable to agree on such appointment within 14 days.

- 20.2 In the event of the mediation referral being unsuccessful after 30 days from the submission of the dispute it will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

- 20.3 Neither party may initiate any court proceedings (with the exception of an application for injunctive relief) in respect of any dispute under these terms and conditions without first undertaking the processes set out in clauses 20.1 and 20.2.

- 20.4 Time shall be of the essence in relation to this clause 20.

## **21. General Authority Warranty**

- 21.1 In the case where the Customer is a company or similar entity, each party warrants and represents to each of the other parties that it has the legal right, authority and full power to enter into the contract and to perform its obligations under it and has taken all necessary actions to authorise its execution, delivery and performance.

## **22. Electronic Execution**

- 22.1 Any and all parties may execute the contract by way of electronic execution, including the use of Adobe Acrobat Sign, Docusign, or other mutually agreed electronic process which meets the requirements of the Contract and Commercial Law Act 2017. For the avoidance of doubt, this clause does not limit the ability of any party from executing the contract by any other means permitted by law.

- 22.2 Documents executed, scanned and transmitted electronically signatures shall be deemed to be original signatures for the purpose of the contract and all other matters related thereto, with such signatures have the same legal effect as original signatures.

## **23. Applicable Law**

- 23.1 The contract on these Terms and Conditions shall be governed by New Zealand Law and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

## **24. Variation to Terms and Conditions of Sale**

- 24.1 The Company may amend or change its Terms and Conditions of Sale at any time by notice in writing to the Customer.

## **25. Notice**

- 25.1 Any notice required to be served under these Terms and Conditions shall be deemed to have been properly served if forwarded by post or by electronic means to the last known address of the Customer.