

# PACIFICVET LIMITED

## Terms and Conditions of Sale (Export)

- 1. Interpretation**
  - 1.1 Where the term is used herein the "Company" means Pacificvet Limited its successors and assigns, the "Customer" herein includes its successors and assigns, the "Goods" herein means any Goods supplied to the Customer by the Company and "delivery" shall include when the Goods are uplifted from the Company, "FOB" means free on board.
  - 1.2 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;
  - 1.3 Any contract on these terms shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of such contract shall be governed by New Zealand law. The exclusive jurisdiction of New Zealand Courts to ascertain all claims and actions arising out of the contract is accepted and acknowledged by the Customer.
- 2. Acceptance and Supply**
  - 2.1 Any quotation or offer made by the Company shall expire three (3) months following the date it is made unless earlier accepted or extended and may be withdrawn either in writing or by fax at any time prior to acceptance. The contract for sale and the purchase of Goods shall arise upon acceptance by the Customer of the quotation or acceptance by the Company of a Customer's order. These terms and conditions shall be the conditions of the contract.
  - 2.2 The Company will not be bound by any conditions included in the Customer's order or otherwise proposed by the Customer or contained in the quotation 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. Orders**
  - 3.1 Orders placed must be for standard pack sizes as determined by the Company.
  - 3.2 If an order relates to any Goods temporarily out of stock the Company will supply these Goods when stocks become available unless the Customer specifically instructs otherwise before such Goods are shipped to the Customer.
- 4. Delivery**
  - 4.1 Delivery on a sale FOB shall be complete when the Goods effectively arrive at the airport nearest the point of dispatch or leave the Company's custody for transport to any depot for containerisation.
  - 4.2 Delivery may be effected by the Company at its discretion by one or more shipments.
- 5. Payment**
  - 5.1 Payment shall be made by telegraphic transfer, bank draft or another form acceptable to a Company upon invoice and prior to the despatch of the Goods by the Company ("the 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 or be deemed so to do.
- 6. Validity 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.
- 7. Price**
  - 7.1 Irrespective of all prices listed or quoted, all Goods are supplied at the prices ruling at the date of quotation or acceptance and the Company reserves the right to pass on to the Customer any change in price after acceptance of the Customers order.
  - 7.2 All prices are in New Zealand dollars exclusive of Goods and Services Tax and other taxes, charges and duties which shall be payable by the Customer (if required).
- 8. Liability on claims**
  - 8.1 The liability of the Company whether in contract, tort as otherwise for any loss, damage or injury arising directly or indirectly from any defect, non-compliance or defective workmanship in the Goods supplied is limited to the replacement of such defective or the non-complying Goods or the costs of damages not exceeding the invoice value of such defective or non-complying Goods at the option of the Company.
  - 8.2 The Company shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever.
  - 8.3 The Customer shall indemnify the Company against any claim by the Customers servants, agents, Customers or other persons whomsoever (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any defective or non-compliance of the Goods supplied.
  - 8.4 No claim by the Customer shall be accepted unless made in writing and received by the Company within fourteen (14) days after delivery of the Goods to the Customer.
  - 8.5 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 extent permitted by law.
- 9. Delay**
  - 9.1 The Company without prejudice to any other rights or remedies which it may have may charge storage and transportation expenses if the Customer fails to accept or permit delivery at the time specified in the quotation or at such other time as the
- 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.
- 5.2.4 the Company may withhold the supply of the Goods and any other Goods.
- 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 (provisional 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.

Company is able to deliver. The Company shall not be liable for failure to deliver or for delay in delivery occasioned by strikes, lock outs, difficulty in procuring certain materials, Goods or substances required in the manufacture and supply of the Goods, shortage of stocks, shortage of labour, delays in transit, legislative governmental or other prohibitions or restrictions, fire, flood, hostages, commotions or other causes whatever (whether similar in nature or not to the foregoing) beyond the Company's control.

## **10. Returns**

- 10.1 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) 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.
- 10.2 Acceptance of Goods for return shall be conditional upon the receipt of the Goods free of cost to the Company warehouse.

## **11. Cancellation**

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

## **12. Consumer Guarantees Act 1993**

- 12.1 To the extent where the same is applicable where the Company is supplying Goods to the Customer for business purposes within the meaning of the Consumer Guarantees Act 1993 pursuant to section 43 thereof the provisions of that Act shall have no effect.
- 12.2 Where the Company is supplying Goods to the Customer for other than business purposes the provisions of clauses 7, 8, 9 and 14 hereof shall have no effect and the provisions of the Consumer Guarantees Act 1993 shall apply where applicable.
- 12.3 Where the Customer supplies Goods to a person acquiring them for business purposes it shall be a term of the Customer's contract with the buyer thereof that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.

## **13. Risk and Insurance**

- 13.1 Risk shall pass to the Customer upon delivery of the Goods as defined in clause 4 herein.
- 13.2 The terms of this clause shall apply notwithstanding that property and the Goods may not have passed to the Customer.

## **14. Shipping documents**

- 14.1 Bills of lading shall be to the order of the Company or its agents. The Customer shall accept "received for shipment" and "container" bills of lading. The terms "bills of lading" includes air consignment notes or airway bills or their equivalent and all other documents other than the delivery orders, the delivery of which is customarily accepted as equivalent to delivery of the Goods thereby represented.

## **15. Import and export licences**

- 15.1 The Customer shall be responsible for obtaining all licences and authorisations for the importing of Goods to it and shall inform and provide a copy to the Company when it has obtained all necessary licences and authorisations. Where an export or import licence, a foreign exchange control authorisation or similar authorisation is required for the performance of the contract, the Customer shall act with due diligence to obtain it within the required time frame. If the requisite licence or authorisation cannot be obtained in time to effect timely delivery or within a reasonable time thereafter either party shall be entitled to regard the contract as at an end provided that such party informs the other party in writing of the same. The Company shall not be obliged to deliver the Goods until the Customer has obtained all necessary licences and authorisations.

## **16. Packaging**

- 16.1 Unless otherwise stated in the quotation charges for packing are included. The form and manner of such packing is at the option of the Company. Special requirements must be notified to the Company in sufficient time to enable the completion of the contract and the mode and the time stipulated. The Company is under no obligation to accept such requirements.

## **17. Ownership**

- 17.1 Property in the Goods remains in the Company until all moneys 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.
- 17.2 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.
- 17.3 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.
- 17.4 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.
- 17.5 If any money owed 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:
- 17.5.1 Re-deliver the Goods to the Company or do anything reasonably necessary to allow the Company to retake possession of the Goods.
- 17.5.2 Instruct any third parties who owe money in respect of the Goods to pay that money directly to the Company or hold all claims against the purchasers of any such Goods in trust for the Company and 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.
- 17.5.3 Make available to the Company any records which will assist the Company to trace its proceeds of sale of the Goods.
- 17.6 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 liability for any costs, expenses, damage, loss of any kind suffered by the Customer as a result of repossession.
- 17.7 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.
- 17.8 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 vests 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 on the same terms as the ownership of the Goods originally supplied.
- 17.9 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.

## **18. Information and Privacy**

- 18.1 The Customer authorises the Company to:

- 18.1.1 Collect all information it may require from any third parties and in respect thereof authorises third parties to release such information to the Company.
- 18.1.2 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.
- 18.1.3 Use all such information, including the giving of all such information to third parties to facilitate the collection of any moneys owing or otherwise related to the Company's business.
- 18.2 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.
- 19. Force Majeure**
- 19.1 The Company is not liable for any failure in its obligations to any Customer or any loss caused to the Customer by reason of circumstances beyond the Company's control including but not limited to:
- 19.1.1 Strike, lockout or labour disturbance;
- 19.1.2 Failure or delays by a supplier or a subcontractor;
- 19.1.3 Fire, earthquake, flood or similar natural disaster;
- 19.1.4 Acts of terrorism, hostilities, commotions or similar civil strike.
- 20. Waiver and Forbearance**
- 20.1 All the rights, powers, exemptions and remedies of the Company shall remain in full force not withstanding 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 was given.
- 20.2 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.
- 21. Assignment**
- 21.1 The Company is entitled at any time to assign to any other person all or part of the debt owing to the Company by the Customer. Any assignee shall be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or any part thereof assigned.
- 21.2 The Customer is not entitled to assign its rights under this contract.
- 22. Confidential Information**
- 22.1 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.
- 22.2 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.
- 22.3 This paragraph 22 will survive termination of the contract.
- 23. Contract**
- 23.1 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 the prior written consent of both the Company and the Customer.
- 23.2 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.
- 24. Non merger**
- 24.1 The agreements and obligations of the parties and the agreement evidencing them will not merge upon cancellation or termination of this agreement.
- 25. Dispute Resolution**
- 25.1 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.
- 25.2 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.
- 25.3 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 25.1 and 25.2.
- 25.4 Time shall be of the essence in relation to this clause 25.
- 26. General Authority Warranty**
- 26.1 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.
- 27. Electronic Execution**
- 27.1 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.
- 27.2 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.
- 28. Variation to Terms and Conditions of Sale**
- 28.1 The Company may amend or change its Terms and Conditions of Sale at any time by notice in writing to the Customer.
- 29. Notice**
- 30.1 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.