
South Wairarapa Veterinary Services Limited - Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Veterinarian" means South Wairarapa Veterinary Services Limited, its successors and assigns or any person acting on behalf of and with the authority of South Wairarapa Veterinary Services Limited.
- 1.3 "Owner" means the person/s, entities or any person acting on behalf of and with the authority of the Owner requesting the Veterinarian to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Owner, is a reference to each Owner jointly and severally; and
 - (b) if the Owner is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Owner is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Owner's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by the Veterinarian to the Owner at the Owner's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Veterinarian and the Owner in accordance with clause 2 of this Contract.

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by the Veterinarian to the Owner in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.
- 2.3 The Owner shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Owner by the Veterinarian nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Owner must pay to the Veterinarian an amount equal to any GST the Veterinarian must pay for any supply by the Veterinarian under this or any other agreement for the sale of the Goods. The Owner must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Owner pays the Price. In addition, the Owner must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Risk

- 3.1 Risk of damage to or loss of the Goods passes to the Owner on Delivery and the Owner must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Owner, the Veterinarian is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Veterinarian is sufficient evidence of the Veterinarian's rights to receive the insurance proceeds without the need for any person dealing with the Veterinarian to make further enquiries.

4. Title to Goods (Including any incidental items supplied as part of any Services)

- 4.1 The Veterinarian and the Owner agree that ownership of the Goods shall not pass until:
- (a) the Owner has paid the Veterinarian all amounts owing to the Veterinarian; and
 - (b) the Owner has met all of its other obligations to the Veterinarian.
- 4.2 Receipt by the Veterinarian of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Owner in accordance with clause 4.1 that the Owner is only a bailee of the Goods and must return the Goods to the Veterinarian on request.
 - (b) the Owner holds the benefit of the Owner's insurance of the Goods on trust for the Veterinarian and must pay to the Veterinarian the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Owner must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Owner sells, disposes or parts with possession of the Goods then the Owner must hold the proceeds of any such act on trust for the Veterinarian and must pay or deliver the proceeds to the Veterinarian on demand.
 - (d) the Owner should not convert or process the Goods or intermix them with other goods but if the Owner does so then the Owner holds the resulting product on trust for the benefit of the Veterinarian and must sell, dispose of or return the resulting product to the Veterinarian as it so directs.
 - (e) the Owner irrevocably authorises the Veterinarian to enter any premises where the Veterinarian believes the Goods are kept and recover possession of the Goods.
 - (f) the Veterinarian may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Owner shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Veterinarian.
 - (h) the Veterinarian may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Owner.

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5. Personal Property Securities Act 1999 ("PPSA")

- 5.1 Upon assenting to these terms and conditions in writing the Owner acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Owner to the Veterinarian for Services – that have previously been supplied and that will be supplied in the future by the Veterinarian to the Owner.
- 5.2 The Owner undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Veterinarian may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Veterinarian for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Veterinarian.
- 5.3 The Veterinarian and the Owner agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 5.4 The Owner waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 5.5 Unless otherwise agreed to in writing by the Veterinarian, the Owner waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 5.6 The Owner shall unconditionally ratify any actions taken by the Veterinarian under clauses 5.1 to 5.5.
- 5.7 Subject to any express provisions to the contrary (including those contained in this clause 5), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

6. Default and Consequences of Default

- 6.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Veterinarian's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.2 If the Owner owes the Veterinarian any money the Owner shall indemnify the Veterinarian from and against all costs and disbursements incurred by the Veterinarian in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Veterinarian's collection agency costs, and bank dishonour fees).
- 6.3 Further to any other rights or remedies the Veterinarian may have under this Contract, if a Owner has made payment to the Veterinarian, and the transaction is subsequently reversed, the Owner shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Veterinarian under this clause 6 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Owner's obligations under this Contract.

7. Security and Charge

- 7.1 In consideration of the Veterinarian agreeing to supply the Goods, the Owner charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Owner either now or in the future, to secure the performance by the Owner of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 7.2 The Owner indemnifies the Veterinarian from and against all the Veterinarian's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Veterinarian's rights under this clause.
- 7.3 The Owner irrevocably appoints the Veterinarian and each director of the Veterinarian as the Owner's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 7 including, but not limited to, signing any document on the Owner's behalf.

8. Privacy Policy

- 8.1 All emails, documents, images or other recorded information held or used by the Veterinarian is Personal Information as defined and referred to in clause 8.3 and therefore considered confidential. The Veterinarian acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Veterinarian acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Owner's Personal Information, held by the Veterinarian that may result in serious harm to the Owner, the Veterinarian will notify the Owner in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Owner by written consent, unless subject to an operation of law.
- 8.2 Notwithstanding clause 8.1, privacy limitations will extend to the Veterinarian in respect of cookies where the Owner utilises the Veterinarian's website to make enquiries. The Veterinarian agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Owner's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Veterinarian when the Veterinarian sends an email to the Owner, so the Veterinarian may collect and review that information ("collectively Personal Information")

If the Owner consents to the Veterinarian's use of cookies on the Veterinarian's website and later wishes to withdraw that consent, the Owner may manage and control the Veterinarian's privacy controls via the Owner's web browser, including removing cookies by deleting them from the browser history when exiting the site.

- 8.3 The Owner authorises the Veterinarian or the Veterinarian's agent to:
- (a) access, collect, retain and use any information about the Owner;

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- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Owner's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Owner.
 - (b) disclose information about the Owner, whether collected by the Veterinarian from the Owner directly or obtained by the Veterinarian from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Owner.
- 8.4 Where the Owner is an individual the authorities under clause 8.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 8.5 The Owner shall have the right to request (by e-mail) from the Veterinarian, a copy of the Personal Information about the Owner retained by the Veterinarian and the right to request that the Veterinarian correct any incorrect Personal Information.
- 8.6 The Veterinarian will destroy Personal Information upon the Owner's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 8.7 The Owner can make a privacy complaint by contacting the Veterinarian via e-mail. The Veterinarian will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Owner is not satisfied with the resolution provided, the Owner can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

9. General

- 9.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand in which the Veterinarian has its principal place of business, and are subject to the jurisdiction of the Masterton Courts of New Zealand.
- 9.3 Where applicable, nothing in this Contract is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 (CGA). The Veterinarian shall be under no liability whatsoever to the Owner for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Owner arising out of a breach by the Veterinarian of these terms and conditions (alternatively the Veterinarian's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 9.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 9.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.