

Terms of trade

1 General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Animals and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

2 Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 7 days from the date of issue.
- (b) Quotes are based upon the cost of materials and transport available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary instructions to the Supplier and the cost of transport not changing between the date of the Quote and the date on which the Services are supplied. Additional transport costs incurred between the date of the Quote and the date of the provision of the Services are payable by the Customer.
- (c) An indication in a Quote of the time frame for the provision of the Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law (**ACL**), this estimate is not binding upon the Supplier.
- (d) The Supplier may amend any details in a Quote by notice in writing to the Customer before acceptance of the Quote. Such amended details supersede any relevant prior detail in dealings between the parties.

3 Orders

- (a) The Supplier is not obliged to commence providing the Services until the Quote has been accepted by the Customer in accordance with clause 3 (b).
- (b) Every Order by the Customer for the provision of Services must be submitted in writing on the Supplier's standard Order form and signed by the Customer (unless otherwise agreed), or sent or confirmed by email or text if acceptable to the Supplier, in which case the email or text must clearly accept the terms of the Quote in order to be valid.
- (c) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Services ordered, the Animal where appropriate, and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of the most recent Quote provided by the Supplier relating to that Order and acceptance of these terms of trade.

- (e) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation.

4 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Animals or Services or both.
- (c) The Supplier has an automatic extension of time for the provision of the Animals or Services equal to the delay caused by the variation.

5 Invoicing and payment

- (a) Payment on account of Services is required before the provision of any Services. Services will not be provided until payment requested has been made.
- (b) The Customer will be invoiced for the Services agreed, and any Additional Services supplied.
- (c) Invoices are payable on being issued and shall be paid by direct debit or credit card. Where paid by credit card an additional 2.2% credit card fee will be payable.
- (d) The Customer authorises the Supplier to deduct payment for invoices when issued by the Supplier from monies paid on account of the Services.
- (e) Where no Quote has been provided, the charges in an invoice will be calculated according to Supplier's usual charges for the Services at the Supplier's current rates.
- (f) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Services, including the retention of any Animal in the possession, custody or power of the Supplier, until overdue amounts are paid in full.
- (g) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (h) The Customer is not entitled to retain any money owing to the Supplier regardless of any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the provision of Services to an inadequate standard or a delay in the provision of Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.
- (i) The Customer is to pay the Supplier on demand interest at the rate of 8% per year on all overdue amounts owed by the Customer to the Supplier, calculated daily.

- (j) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (k) The Supplier may withhold the provision of Services while monies requested on account or invoices issued are unpaid.

6 Additional Charges

- (a) In addition to the amount payable for an Order the Customer must pay any Additional Charges for:
 - (i) variations or additional work required by the Customer;
 - (ii) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (iii) holding costs for Animals not collected from the Supplier within two (2) hours of the date on which they are scheduled to be collected.
 - (iv) any increase in cost of transport associated with an Order between the date of the Quote and completion of the provision of the Services;
 - (v) costs and expenses incurred by the Supplier necessary or advisable for the health and safety of the Animal or the Supplier pursuant to clause 9;
 - (vi) unforeseen packing, delivery or handling charges not included in the Quote;
 - (vii) unforeseen Government or council taxes or charges not included in the Quote;
 - (viii) any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost;
 - (ix) the unavailability or unsuitability of the Animal to be collected at the agreed time;
 - (x) the Supplier's inability to sufficiently identify the Animal to be collected from information supplied by the Customer;
 - (xi) time necessarily spent at the seller's property collecting the Animal over and above a reasonable time;
 - (xii) the cost of providing the Services over and above the charges included in the Quote which were not reasonably foreseeable;
 - (xiii) costs and expenses incurred by the Supplier as a result of delay not caused by the Supplier;
 - (xiv) costs and expenses incurred by the Supplier as a result of reliance by the Supplier on inadequate or incorrect information or material provided by the Customer; and
 - (xv) costs and expenses incurred by the Supplier as a result of reliance by the Supplier on information or material supplied later than required by the Supplier in order for it to provide the Services within the specified time frame (if any).

- (b) The Supplier may issue a separate invoice for Additional Charges not already invoiced where Additional Charges are payable.

7 Acceptance of Animals

- (a) Where the Supplier is to collect the Animal, the Customer must provide the Supplier with sufficient information to enable the Supplier to identify the Animal to be collected.
- (b) The identification and selection of the Animal is solely at the discretion of the Customer and the Supplier takes no responsibility for identification or selection of the Animal.
- (c) The Supplier is not obliged to collect Animals which:
 - (i) are ill or aggressive;
 - (ii) have not been vaccinated to an appropriate standard having regard to the Animal's breed/type and age; or
 - (iii) have not been washed within two (2) days of collection if cats or dogs.
- (d) where the purchase does not proceed or the Animal is not collected for any of the reasons in clause 7(c), the Customer must pay for the Services, and any Additional Charges, less the cost of transportation of the Animal to and from the Customer's nominated drop off point from the seller's property.
- (e) Where the Order is for the Premium Pickup Service or Try Before You Buy Service:
 - (i) the Customer must provide the Supplier with its approval or rejection of an Animal in writing, by email or text on request when the Supplier is due to collect the Animal;
 - (ii) where the Customer does not approve the purchase of the/an Animal for any reason, or the purchase does not proceed or the Animal is not collected for any of the reasons in clause 7(c), the Customer must pay for the Services, and any Additional Charges, less the cost of transportation of the Animal to and from the Customer's nominated drop off point from the seller's property; and
 - (iii) the Customer is deemed to have accepted the Animal and to have accepted that the Animal accords with the Customer's Order and selection, including the characteristics, condition and personality of the Animal on communicating the Customer's approval to the purchase of the Animal verbally, by email or text at the collection point.

8 Title and risk

- (a) Risk in Animals passes to the Customer immediately upon collection of the Animal by the Supplier.
- (b) Subject to clauses 8 (a), (d) and (e), the Supplier shall be liable for Loss sustained as a result of the Supplier's negligence, by an Animal collected by the Supplier, or by other animals or people or the property of others as a result of the Animal's treatment in storage, holding or transport whilst in the possession of the Supplier from the time of collection until delivery to the Customer.
- (c) The Supplier will take out insurance to cover Loss sustained in the circumstances set out in clause 8 (b).

- (d) The Supplier's liability to the Customer or any third party for Loss sustained in the circumstances set out in clause 8 (b) is limited to the amount recovered from the insurer under the policy taken out by the Supplier under clause 8 (c).
- (e) The Customer is liable for all Loss sustained to the Animal, other animals, people and property in the storage, holding or transportation of Animals by third parties engaged for the storage, holding or transport of Animals for the Customer including airlines and other modes of transport or storage specified by the Customer. Such Loss includes loss incurred due to delay, cancellation of flights or the adoption of inadequate safety measures.
- (f) Property and title in Animals supplied to the Customer under these terms of trade do not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.

9 Health and safety

- (a) The Customer authorises the Supplier to arrange whatever veterinarian or other consultation, tests, treatment and medication for the Animal which the Supplier reasonably considers necessary or advisable, in the Supplier's absolute discretion, for the health and safety of the Animal or the Supplier and its employees and agents in providing the Services.
- (b) Before authorising any consultation, tests, treatment or medication pursuant to clause 9 (a), the Supplier will use reasonable endeavours to notify the Customer. The Customer will supply the Supplier with its contact details for this purpose. The Supplier's inability to contact the Customer does not affect the authorisation provided by the Customer in clause 9 (a).
- (c) The Customer agrees to indemnify the Supplier for the costs incurred by the Supplier pursuant to clause 9 (a), including, but not limited to, costs incurred to third parties, additional transport-related costs and the additional time spent by the Supplier, including overnight accommodation if necessary.

10 Ownership Rights

The Customer warrants that there is no impediment to the Supplier's right to collect the Animals the subject of the Order and Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of this warranty.

11 Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms of trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier.

12 Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) an application being made, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these terms of trade;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Animals or provide further Services;
 - (iv) repossess and re-sell any Animals delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Customer on account of Animals or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under clause 11(b), on the occurrence of an event of default all invoices will become immediately due and payable.

13 Termination

In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving written notice to the other party provided that the Customer

will pay the Supplier for its Losses and out of pocket expenses incurred by reason of the termination.

14 Exclusions and limitation of liability

- (a) To the extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) All information and specifications provided by the Supplier in relation to the Services are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Services will not entitle the Customer to reject an Animal upon delivery or to make any claim in respect of it.
- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Except as provided in these terms, the Supplier, and any of its suppliers, is not liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Animals or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission or defect, including, without limitation, for and in relation to any of the following:
 - (i) any Services supplied to the Customer;
 - (ii) any delay in supply of the Services; or
 - (iii) any failure to supply the Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Animals or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, and notwithstanding any other clause in these terms, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use or profits arising out of or in any way connected with the provision of or failure to provide Animals or Services, or otherwise arising out of the provision of Animals or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The ACL may give to the Customer certain consumer guarantees, which cannot be restricted, limited or varied.

15 Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of the Services, any Order or the subject matter of these terms of trade including but not limited to the characteristics, condition or personality of an Animal to be collected by the Supplier.

- (b) The indemnity in this clause 14 (a) includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

16 Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its collection of the Animals or provision of the Services, the Supplier is free from any obligation to provide the Animals or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of transport, epidemic or pandemic, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

17 Miscellaneous

- (a) The Supplier is not a common carrier.
- (b) These terms of trade are governed by the laws of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.
- (c) These terms of trade and any Quotes and Orders and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (d) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (e) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (f) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (g) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (h) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (i) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

- (j) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

18 Definitions and interpretation

18.1 Definitions

Additional Charge means the additional charges specified in clause 6 (a) being:

- (a) additional Services provided over and above the Services set out in the Quote or Order calculated in accordance with the Supplier's then current prices; and
- (b) additional expenses incurred by the Supplier in supplying the Services over and above those set out in the Quote or Order.

Animal means any animal and includes birds and reptiles to be procured or transported by the Supplier.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Animals are provided.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Loss includes, but is not limited to, injury to or death of an Animal, expenses, lost profits, award of damages, property damage costs (including party to party legal costs and the Supplier's legal costs).

Order means an order for the provision of Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

Premium Pickup Service includes the Supplier visiting the site of the seller of an Animal, showing the Animal to the Customer, seeking the Customer's approval of the purchase of the Animal from the nominated seller and arranging the transportation of the Animal from the seller's site to the Customer's nominated site.

Quote means a written description of the Animals or Services to be provided, an estimate of the Supplier's charges for the performance of the required work, including transport and storage costs, and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote or other written agreement and these terms of trade, and includes but is not limited to the inspection, identification, collection of, advice concerning and health and safety related services concerning Animals and/or transport and/or storage/ holding of Animals, and the Premium Pickup Service or Try Before You Buy service where required.

Supplier means the entity specified as the supplier of Services on the Quote and includes the Supplier's agents and permitted assigns.

Try Before You Buy service includes the Supplier visiting the site of the seller of an Animal, showing the Animal and other Animals to the Customer, seeking the Customer's approval of the purchase of the Animal from the nominated seller and arranging the transportation of the Animal from the seller's site to the Customer's nominated site.

18.2 Interpretations

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- (d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

Signed by the Customer or its
authorised representative

Signature of Customer

Signed for and on behalf of the Supplier
by its authorised representative

Signature of Supplier