

TERMS AND CONDITIONS OF TRADE

Definitions

In these conditions:

"Agreement" means any order placed by the Customer and accepted the Supplier.

"Australian Consumer Law ("ACL")" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

"Business Day" means a day on which trading banks, as defined in section 5(1) of the *Banking Act 1959* (Cth) are open for general banking business in New South Wales, excluding Saturdays, Sundays or public holidays in New South Wales.

"Consequential Loss or Damage" includes all indirect, special or consequential loss or damage, and includes (whether direct or indirect) all economic loss or damage, lost income or profit, loss of opportunity, increased or wasted costs, damage to tangible or intangible property, claims made by others, and losses or costs or expenses associated with investigation.

"Customer" means the purchaser of Goods. For the avoidance of doubt, the purchaser of Goods refers jointly and severally to the party with an obligation to make payment for the Goods and the party that placed the order with the Supplier.

"Supplier" means SavourLife Pty Ltd (ABN 79 162 723 882).

"Goods" means goods sold by the Supplier.

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Customer on a principal debtor basis.

"Interest Rate" means the prescribed rate pursuant to section 100 of the *Civil Procedure Act 2005* (NSW).

"PPSA" means the *Personal Properties Securities Act 2009* (Cth).

"Specialty Retailer" means a veterinarian or a retailer that is in the business of primarily selling pet food, pet toys and / or accessories and / or pet services (for the avoidance of doubt, not being general supermarkets).

"Terms and Conditions" means these Terms and Conditions of Trade.

1. TERMS, ORDERING AND PRICE

1.1 The Customer acknowledges that it has read and accepted these Terms and Conditions prior to each Agreement.

1.2 By placing an order for Goods with the Supplier, the Customer agrees to purchase those Goods subject to these Terms and Conditions. An order is binding on Customer when placed, but not binding on Supplier until accepted by Supplier either expressly or by performance.

1.3 These Terms and Conditions apply to all transactions between Supplier and the Customer including all quotations, offers, orders or sales and will prevail over any other (and subsequent) conditions not expressly agreed to by Supplier, to the extent of any inconsistency.

- 1.4 These Terms and Conditions may be varied from time to time by the Supplier at its sole discretion. The Supplier shall not be required nor be responsible to notify the Customer of the existence or content of any such variation. The Terms and Conditions (as published on the website of the Supplier) at the time of acceptance of any order, or part of an order, shall apply.
- 1.5 Supplier is under no obligation to accept any order or request for Goods by Customer, nor under any obligation to supply until an order is accepted by Supplier. The Supplier may accept an order in part or whole. The Supplier may part accept an order by part performance thereof. The Supplier retains the right to refuse orders under a minimum value at its absolute discretion.
- 1.6 The price to be paid for the Goods shall be as expressly agreed between the parties or otherwise such price as indicated on the Supplier's general price list as amended from time to time.
- 1.7 Prior to acceptance of an order, Supplier may change its general list prices at any time without notice. The Customer is not entitled to any credit connected to any such change in pricing and is bound by the new price amended prior to acceptance of an order.

2. NEW CUSTOMERS

- 2.1 If required by the Supplier, new or returning customers must complete an Application for a Trading Account, which must be submitted to the Supplier by mail, email, or through the Supplier's website. The Trading Account Application form is available on request and where the Supplier requires that form, new accounts will not be opened until the completed form is received and approved by the Supplier. Should an account be approved, the Supplier will notify the Customer.
- 2.2 Approval of new or returning customers is at the Supplier's sole discretion.

3. TERMS OF PAYMENT

- 3.1 Payment must be made in full and received by the Supplier within thirty (30) calendar days of the Supplier issuing an invoice to the Customer.
- 3.2 All accounts not paid by the due date will be placed on credit hold and will revert to terms of pre-payment (without any applicable discount) until all outstanding payments are satisfied.
- 3.3 The Supplier may withdraw credit approval at any time and without notice to the Customer.
- 3.4 If an account is inactive for a period of 6 months or more, the account may be closed at the discretion of the Supplier and without notice to the Customer.
- 3.5 All payments must be made by way of credit card or by way of electronic funds transfer ('EFT') to the bank account nominated by the Supplier, unless otherwise advised by the Supplier.
- 3.6 The Supplier may charge a service fee where payment is made by way of credit card.
- 3.7 The Customer shall not be entitled to any set off or deduction from the purchase price for any sums owed or claimed to be owed to the Customer by the Supplier.
- 3.8 Prior to accepting any Application for a Trading Account or any order, the Supplier may require a guarantor/s to jointly and severally guarantee to the Supplier the payment of all debts by the Customer ("Guarantor"). The Customer and the Guarantor/s acknowledge the guarantee will be a continuing guarantee and will not be in any way waived or affected by any time or indulgence granted by the Supplier to the Customer.

4. INVOICES

- 4.1 Goods are invoiced at the time of order acceptance and will include details of GST and delivery charges where applicable.
- 4.2 Invoices must be paid strictly on their terms and time is of the essence.

5. DESPATCH AND DELIVERY

- 5.1 Availability, despatch, and delivery dates are estimates only.
- 5.2 The Customer acknowledges and agrees:
 - (a) that no warranty is given or is implied to be given in respect of availability or despatch dates;
 - (b) estimated availability and despatch dates are based on information supplied by manufacturers and suppliers and may be subject to delays; and
 - (c) that the Supplier is not liable for any loss including Consequential Loss or Damage as a result of its inability or failure to despatch the Goods within specified time frames.
- 5.3 The Supplier may at any time extend the time for despatch of the Goods, provided that the extension does not exceed the reasonable amount of time allowable for such despatch.
- 5.4 Delivery of Goods may not be refused by the Customer after an order has been accepted by the Supplier. Delivery is to the delivery point accepted by the Supplier.
- 5.5 The Customer shall make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to accept delivery of the Goods as arranged, then the Supplier shall be entitled to charge a fee for redelivery at the current rate charged by the freight carrier. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of the Agreement. Additional fees may be incurred.
- 5.6 The Supplier may charge for freight and handling to particular destinations at rates dependent on distance and volume of Goods supplied. Additional freight charges may be charged where the Customer requests urgent delivery of the Goods. The rates are subject to change at any time without notice.
- 5.7 The Customer bears responsibility for checking the Goods upon delivery. Receipt by the Customer, or its officers, servants or agents, without complaint shall be prima facie evidence that the Goods have been delivered in good order and condition and in accordance with the Agreement. Receipt of the Goods as described is considered acceptance of the Goods by Customer.

6. CREDITS & CLAIMS

- 6.1 These Terms and Conditions do not exclude any statutory rights available to the Customer and must in all cases be read subject to those statutory rights.
- 6.2 In the case of damage to the Goods, a written complaint must be made by the Customer to the Supplier within two (2) Business Days of receipt of the Goods.
- 6.3 Unless a written complaint is made within the time limits specified in Clause 6.2 no action may be brought against the Supplier.
- 6.4 No goods shall be accepted for credit/return unless authorised by a representative of the Supplier and a restocking fee may apply.

- 6.5 Goods may not be accepted for credit in a damaged or defaced condition that is other than a fault in manufacture or a fault/responsibility of the Supplier.
- 6.6 Any costs incurred or loss suffered by the Supplier in respect of or arising as a result of any unauthorised return by the Customer may be deducted by the Supplier from any credit granted by it to the Customer or add it as a cost to the amount outstanding.
- 6.7 In the event of a justified objection notified by the Customer to the Supplier in accordance with these Terms and Conditions, the Supplier may, at its option:
- a. reduce the purchase price by agreement with the Customer;
 - b. accept the return of the Goods and, subject to the Goods being returned in the same condition as when they were delivered to the Customer, refund to the Customer the purchase price if already paid; or
 - c. replace the Goods.

7. DISPUTES

- 7.1 Customer agrees it will not take any legal action against Supplier until it has engaged in good faith discussions with Supplier to try and resolve and settle any claims or issues connected in any way to these Terms and Conditions.

8. DEFAULT OR INSOLVENCY

- 8.1 If any payment due to Supplier by Customer is not received by the due date on the relevant invoice, or if there is any breach of any provision of these Terms and Conditions, without limiting any other rights the Supplier may have the Supplier may charge interest on any overdue amounts at the Interest Rate from the date when payment becomes due.
- 8.2 The Customer and any Guarantor indemnifies the Supplier against all damages, claims, losses, expenses, costs (including legal costs on an indemnity basis) and disbursements incurred by the Supplier connected to any breach of these Terms and Conditions by the Customer, or the negligence of the Customer, or the default generally of the Customer.
- 8.3 Without prejudice to any other remedies the Supplier may have, if:
- (a) at any time the Customer is in breach of any obligation under these Terms and Conditions; or
 - (b) any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, administrator, liquidator or similar person (each an "Insolvency Representative") to the Customer's undertaking),

the Supplier may without any liability to the Customer and with no requirement of notice suspend, withhold or terminate the supply of Goods to the Customer and any of its other obligations under these Terms and Conditions.

- 8.4 In any of the circumstances referred to in clause 8.3(b):
- (a) neither the customer nor its Insolvency Representative is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Supplier's ownership of the Goods, without the Supplier's prior written approval;
 - (b) the Customer and its Insolvency Representative is obliged to re-deliver the Goods to the Supplier immediately or immediately on their appointment at their expense; and

- (c) the Insolvency Representative will become personally liable to the Supplier on a full indemnity basis in respect of any dealings with or use of the Goods by the Customer or the Insolvency Representative occurring after the date of appointment of the Insolvency Representative and must account to the Supplier or reimburse the Supplier for all monies received as a result of such dealings or use of the Goods.

9. CANCELLATION

- 9.1 The supplier may cancel any Agreement to which these Terms and Conditions apply or withhold or cancel delivery of any Goods at any time before the Goods are delivered by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage howsoever arising from such cancellation or withholding.
- 9.2 In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of revenue and profits).

10. RECOVERY OF LEGAL COSTS

- 10.1 The Supplier is entitled to recover any legal and/or collection costs incurred by the Supplier from the Customer relating to the Customer's failure to meet any of these Terms and Conditions for whatever reason.

11. TITLE

- 11.1 Risk in the Goods passes to the Customer on Delivery;
- 11.2 Title in the Goods does not pass to the Customer until the Customer has paid the purchase price for the Goods in full.
- 11.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 11.2 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request;
 - (b) the Customer holds the benefit of the Goods and must return the Goods to (sit) or at supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods that is subject to a retention of title then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
 - (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods. The Customer acknowledges that the Supplier is not liable for any damage or injury caused to any of its premises (whether by the Supplier or its officers, servants or agents) in retaking Goods;
 - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;

- (g) the Customer 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 Supplier;
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. PERSONAL PROPERTY SECURITIES ACT 2009

- 12.1 The Customer agrees that the Supplier has a Purchase Money Security Interest (as defined in the PPSA) attaching to each Good in order to secure payment by the Customer to the Supplier of the purchase price for that Good ("PPSA Security Interest"). The Customer agrees to do all things necessary to assist the Supplier to perfect its PPSA Security Interest.
- 12.2 In the case of payment default the Customer authorises the Supplier to take possession of any Goods in which it has a PPSA Security Interest pursuant to these Terms and Conditions and includes Goods for which payment terms are not yet expired or overdue.
- 12.3 Until title in Goods passes to the Customer, the Customer agrees to store the Goods separately from all other goods in such a way as to allow the Goods to be identified as the Supplier's and keep them fully insured against all usual risks of damage or loss at the Customer's expense.
- 12.4 In this clause financing statement, financing change statement, and security interest has the meaning given to it by the PPSA. The Customer must:
 - (a) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (b) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;
 - (c) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.5 The following provisions of the PPSA do not apply: Sections 95, 125, 130, 132(3)(d), 132(4), 135(1)(a) and 143. The Customer agrees to waive its rights under section 157 of the PPSA.
- 12.6 The Supplier may delay disposing of, or taking action to retain, the whole or part of the collateral beyond the period mentioned in section 125(2) of the PPSA for as long as the Supplier sees fit provided the Supplier acts honestly.
- 12.7 The Supplier reserves all rights and powers in relation to any security interest that it has in addition to any right or power conferred under the PPSA.
- 12.8 The Supplier may choose between its various rights and powers, including for enforcement of its security interest, as the Supplier sees fit and without limiting its other rights and powers.

13. INSURANCE

- 13.1 The Customer acknowledges that:
 - (a) if any of the Goods are damaged or destroyed following delivery but prior to title in the Goods passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive

the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries;

- (a) if the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk;
- (b) the Supplier is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will the Supplier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Supplier for failure to arrange insurance or ensure that the Goods are insured adequately or at all.

14. EXCLUSION OF WARRANTIES, LIABILITY

- 14.1 All conditions, terms and warranties that are or might otherwise be implied by law, practice, trade usage, or international convention, are excluded to the fullest extent permitted by law.
- 14.2 To the maximum extent permitted by law and subject to the rights conferred on a consumer under the Australian Consumer Law, where such is applicable, which cannot be excluded or modified by agreement, the Supplier makes no representations, guarantees or warranties in connection with the Goods apart from those expressly set out in these Terms and Conditions.
- 14.3 Provisions of the Competition and Consumer Act 2010, the ACL, State or Territory law, and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law the Supplier's liability under those provisions is limited at the Suppliers option to:
 - a. replace the Goods or supply equivalent Goods; or
 - b. pay the cost of replacing the Goods or of acquiring equivalent Goods.
- 14.4 Supplier relies on the statements set out in this clause as essential conditions of these Terms and Conditions. Customer has not relied on any representation made or implied by Supplier or arising out of or implied by its conduct save for as expressly set out in these Terms and Conditions. To the extent that Supplier has made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these Terms and Conditions, Customer is not proceeding in reliance on the representation. Supplier makes no promise, representation or otherwise in relation to any benefit Customer may obtain by entering into an Agreement save as set out herein and Supplier guarantees in no way any increased sales, transactions, revenue, goodwill or profit or any other benefit that may flow from Customer having entered into an Agreement.

15. OTHER DAMAGE EXCLUDED

Subject to any non-excludable statutory provisions:

- (a) the Supplier is not liable for, and the Customer does not rely on being able to claim against the Supplier for any Consequential Loss or Damage under or in connection with or arising out of the supply of the Goods to the Customer or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any order for the Goods, and whether or not the possibility or potential extent of the loss or damage or Consequential Loss or Damage was known or foreseeable and whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or

other duty (if any) and whether or not the act or conduct was authorised or required; and

- (b) the Supplier's liability for direct loss or damage is capped in the aggregate at \$10,000.

16. NO ASSIGNMENT

- 16.1 The Customer must not assign or purport to assign any of its rights under these Terms and Conditions without the prior consent of the Supplier.
- 16.2 In the event that the Customer sells its business, the Customer shall be responsible to notify the Supplier in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable to Supplier for the payment of Goods subsequently sold to a third party on the Customer's account as if the Customer had ordered the Goods itself.

17. FORCE MAJEURE

- 17.1 The Supplier shall have no liability whatsoever under or in any way related to its obligations under these Terms and Conditions to the extent that such fulfilment is prevented by circumstances beyond its reasonable control, including but not limited to natural disasters, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, accidents, breakdowns, import or export restrictions, pandemics, acts of terrorism, or acts of war ("Force Majeure").
- 17.2 Should any event of Force Majeure occur, the Supplier may, without liability or compensation to any person including the Customer, terminate the Agreement by written notice to the Customer.

18. PRIVACY

- 18.1 The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
- 18.2 The Customer and/or the Guarantor/s agree that the Supplier may exchange information about the Customer and/or the Guarantor/s with credit providers (and credit reporting agencies) either named as trade referees by the Customer and/or the Guarantor/s or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- a. to assess an Application for a Trade Account by the Customer;
 - b. to notify other credit providers of a default by the Customer;
 - c. to notify a credit reporting agency of a default by the Customer;
 - d. to exchange information with other credit providers (and credit reporting agencies) as to the status of this credit account, where the Customer is in default with Supplier or any other credit providers; and/or
 - e. to assess the credit worthiness of the Customer and/or the Guarantor/s.
- 18.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit pursuant to Section 18K(1)(h) of the *Privacy Act 1988* (Cth).
- 18.4 The Supplier may give information about the Customer to a credit reporting agency for the following purposes:

- a. to obtain a consumer credit report about the Customer; and/or
- b. to allow the credit reporting agency to create or maintain a credit information file in relation to the Customer.

19. GENERAL

- 19.1 If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and effect.
- 19.2 Where the Supplier fails to enforce any of these Terms and Conditions or fails in any way to exercise its rights under them, the Supplier will not be deemed to have waived those rights with respect to any continuing or subsequent breach of any term or right under these Terms and Conditions.
- 19.3 These Terms and Conditions will prevail over any terms and conditions contained in any offer made by the Customer or any document used by the Customer which purports to have contractual effect.
- 19.4 These Terms and Conditions and any Agreement are governed by and construed in accordance with the law in force in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and courts that hear appeals from those courts

20. TRADE CHANNEL RESTRICTION

- 20.1 The Customer agrees to only supply the Goods to Specialty Retailers unless express approval in writing is obtained from the Supplier.
- 20.2 If any ambiguity arises under this clause 20, the Customer must refer the proposed supply to the Supplier and the Supplier will determine, at its absolute discretion, whether the Customer may supply the Goods to that person.