

Terms and Conditions of Supply for Fortis Vets Limited

1. Application and Agreement

- 1.1 By placing an order with, or otherwise purchasing goods or services from, Fortis Vets Limited ("the Wholesaler"), You ("You" or "Your" as the customer) agree to be bound by these terms and conditions of supply ("this Agreement") for the supply of goods and services from time to time.
- 1.2 This Agreement constitutes the entire agreement and supersedes and extinguishes all prior agreements and understandings, whether written or oral, between You and the Wholesaler. In the event of any conflict or inconsistency between this Agreement and the provisions of any document used by You or any other arrangement between the parties, this Agreement prevails unless otherwise agreed in writing and signed by both parties.
- 1.3 The general terms of this Agreement may be amended by the Special Terms provided for in Schedule 1 of this Agreement (if any). If there is any conflict between the general terms and the terms in Schedule 1, the terms in Schedule 1 shall prevail.

2. Definitions

- a. Agreement: Means these terms and conditions of supply.
- b. Goods: Means goods and services supplied or to be supplied by the Wholesaler to You from time to time.
- c. Minimum Order Value: Means the minimum order value of Goods specified in the Wholesaler's price list at the time of Order (if any). The Minimum Order Value is exclusive of Goods and Services Tax, freight and handling charges.
- d. Order: Means an order by You to the Wholesaler for Goods.
- e. Price: Means the price for the Goods as specified in the Wholesaler's price list from time to time.
- f. RVM: Means restricted veterinary medicine.
- g. RVM Seller: Means an entity or person authorised under the Agricultural Compounds and Veterinary Medicines Act 1997 to sell RVMs.
- h. Working Day: Means any day (other than a Saturday or Sunday) on which registered trading banks are open for business in Timaru, New Zealand.
- i. You and your: Means you as the customer.

3. Account with the Wholesaler

- a. You may apply for an account with the Wholesaler, the acceptance of which is in the Wholesaler's sole discretion.
- b. You acknowledge that the Wholesaler reserves the right to, at any time and in its sole discretion, suspend or cancel the account in accordance with this Agreement, and the outstanding account balance, if any, will become immediately payable.

- c. You authorise the Wholesaler to conduct all credit checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to your credit, financial and business affairs and history as is reasonably required to assess your credit position and as otherwise deemed necessary by the Wholesaler from time to time.
- d. You authorise third parties to disclose to the Wholesaler such information as the Wholesaler may reasonably require from time to time in respect of the above authorisations.

4. **Price and Payment**

- a. Goods will be charged at the Price(s) current as at the date of Invoice.
- b. You agree to pay the Price in NZ dollars plus GST, any other applicable taxes, duties, levies (if any), freight, handling charges and other costs to the Wholesaler by:
 - i. Bank transfer at the time of Order; or
 - ii. If You are an account holder, electronic funds transfer on or before:
 - (1) the payment date provided for on the invoice; or
 - (2) the 20th of the month following the date of invoice if no specific payment date is provided for in the invoice.
- c. You have seven Working Days from the date of the invoice to raise any dispute You have with the Wholesaler in respect of that invoice. Failure to raise a dispute within that timeframe deems your acceptance of the invoiced amount.
- d. Payment of the Price and any other monies owing to the Wholesaler shall be made in clear funds, free of any counterclaim, set-off, deduction or other claim whatsoever. The Wholesaler may allocate any payment received to your account and/or payment of any Goods as it sees fit and You waive any right to receive notification of that allocation.

5. **Failure to Comply with Payment Terms**

- 5.1 If You fail to pay any monies by the due date, or are otherwise in breach of this Agreement, the Wholesaler may, in its sole discretion, without prejudice to and in addition to any other rights and remedies:
 - a. Charge interest on all of your overdue accounts at a rate of 1.5% per month calculated on a daily basis until it is received in full. Any payments received by the Wholesaler will be applied firstly against any costs and expenses and then against such interest before payment of the overdue amount(s).
 - b. Recover from You or deduct from or set-off against any amount the Wholesaler may owe to You, any damage, losses, costs and expenses (including all legal costs as between solicitor and client) and debt collection fees incurred by the Wholesaler in consequence or in connection with the recovery of an overdue debt or the enforcement by the Wholesaler or any other power, right or remedy conferred upon the Wholesaler by law or this Agreement.
 - c. Suspend delivery of any Goods, cancel any Order, suspend or cancel your account, or terminate (in whole or in part) the supply of Goods, or this Agreement by written notice to You.

- d. Require that any balance outstanding in respect of any account held by You, whether or not due, is paid immediately.

6. Orders and Supply

- a. You may place an Order via telephone, facsimile, email, or via the Wholesalers website portal or connected software integration system.
- b. You acknowledge that the acceptance of an Order (in whole or in part) and the supply by the Wholesaler is subject at all times to the Wholesaler's sole discretion. The Wholesaler will use its reasonable endeavours to source all Goods ordered but does not guarantee supply. The Wholesaler will notify You via telephone, facsimile or email or such other means at the Wholesaler's discretion in the event it does not accept all or part of an Order received from You.
- c. Orders shall be for amounts no less than the Minimum Order Value (if any), subject to any agreement otherwise between the parties.
- d. The Wholesaler will endeavour to dispatch an Order within 24 hours of the Order being placed. Where cancellation is requested and accepted prior to dispatch the Wholesaler may in its sole discretion accept cancellation of the Order and may charge You an administration fee of up to \$100.00.

7. Delivery

- a. Subject to an agreement otherwise between the parties, the Wholesaler will deliver or arrange for the delivery of the Goods to the address You provide to the Wholesaler in writing, using a carrier of the Wholesaler's choice.
- b. The Goods will be deemed to have been delivered to You:
 - i. At the time You collect the Goods directly from the Wholesaler's premises; or
 - ii. At the time they are placed with the carrier by the Wholesaler or a third party provider; or
 - iii. As otherwise agreed between You and the Wholesaler in writing.
- c. While the Wholesaler shall use all reasonable efforts to deliver within a reasonable time, any delivery time shall be an estimate only and any stipulated delivery time or dispatch shall not be of the essence.
- d. You shall ensure safe and practical site access for deliveries and shall inspect the Goods on delivery. You have three Working Days from the date of delivery to raise any issue with the Wholesaler in respect of the Goods delivered. Failure to do so within this timeframe will deem the Goods as accepted by You and You may not reject the Goods after this time.
- e. You acknowledge that Goods that are biological in nature or are otherwise required to be refrigerated may be dispatched by the Wholesaler as a separate delivery to maintain the correct temperature of those Goods.
- f. Unless otherwise stated, all orders are subject to freight charges based on factors such as destination, weight, and shipping method.

8. Risk and Ownership

- a. On delivery of any Goods under this Agreement, You will take responsibility for the Goods and will carry the full risk of liability with no recourse to the Wholesaler. You are responsible for adequately insuring the Goods as from the time of delivery.
- b. You agree and acknowledge that until you have fully paid for the Goods and any other amounts due by You to the Wholesaler under this Agreement:
 - i. The Wholesaler retains ownership of the Goods; and
 - ii. You hold the Goods or any products which incorporate the Goods solely as bailee for the Wholesaler and You will store the Goods in such a way that it is clear that they are the property of the Wholesaler and in accordance with any storage requirements; and
 - iii. The Wholesaler and its agents have the right to enter the premises where the Goods are being stored at any reasonable time to inspect the Goods and should You be in breach of this Agreement, remove the Goods from your possession; and
 - iv. If the Goods are stored at the premises of a third party, You will obtain the consent of that third party to the Wholesaler's entry onto the premises for this purpose. You shall pay all costs incurred by the Wholesaler in respect of such entry and repossession, including all legal costs.
 - v. You grant to the Wholesaler a security interest over all Goods supplied to You by the Wholesaler and all the proceeds of sale in respect of those Goods. You waive any right to:
 - 1. Receive a copy of the verification statement, pursuant to s 148 of the New Zealand Personal Property Securities Act 1999; and
 - 2. Reinstate this Agreement, pursuant to s 133 of the New Zealand Personal Property Securities Act 1999.

9. Returns

- a. You agree and acknowledge that Goods required to be refrigerated cannot be returned to the Wholesaler for credit.
- b. Subject to the above, You may return Goods in their original packaging within for credit at the sole discretion of the Wholesaler. The Wholesaler may in its sole discretion charge a handling fee of 10% of the invoiced Price in respect of such returned Goods. All additional costs and expenses incurred by the Wholesaler associated with returning the Goods will be met by You.
- c. The Wholesaler in its sole discretion may replace short dated stock on receipt by You of no less than three months' notice prior to expiration of the Goods.
- d. If the Goods are faulty, the Wholesaler will meet its obligations to the extent required by law and under this Agreement, but the Wholesaler may at its option:
 - i. Replace the Goods supplied or supply equivalent Goods; or
 - ii. Pay for the cost of replacing the Goods or of acquiring equivalent Goods; or

- iii. Provide You with a credit in respect of those Goods.
- e. Where the Consumer Guarantees Act 1993 (CGA) applies, if the Goods do not meet a consumer guarantee, the Wholesaler will meet its obligations under the CGA to provide a remedy provided You can show proof of purchase. The above remedies are in addition to any warranty offered by a manufacturer of the Goods (where the Wholesaler is not the manufacturer), and You may have rights against the manufacturer directly.
- f. Goods returned for credit must be in top condition with dating stickers or other identification removed, and generally should be returned within 1 month of purchase and have at least 6 months dating. Any goods returned that have been ordered in error or are outside ordinary reason may be credited at the discretion of Fortis and at the wholesale price less 10%.

10. Excluded Legislation

- 10.1 Where You acquire the Goods, or hold yourself out to the Wholesaler as acquiring the Goods, for the purposes of a “business” (as defined in the CGA) then to the extent permissible under law, the parties agree that the CGA does not apply to this Agreement. You indemnify the Wholesaler from any liability or costs arising from You on-selling the Goods for a business purpose where You fail to exclude the application of the CGA (if applicable) to such transaction. If the provisions of the CGA apply to the supply of Goods to You by the Wholesaler, the clause limiting the Wholesaler’s liability under this Agreement shall not apply.
- 10.2 To the extent permissible under law, the parties agree that the Fair Trading Act 1986 sections 9, 12A, 13 and 14(1) do not apply to this Agreement and that the provisions of the Sale of Goods Act 1908 do not apply to this Agreement.

11. Recall of Goods

- 11.1 In the event the Wholesaler recalls or is required by the Government or any other authority to recall any or all of the Goods, the Wholesaler shall notify You in writing as soon as reasonably practicable. The Wholesaler may in such circumstances:
 - a. Replace the Goods where replacement Goods are available;
 - b. Pay reasonable costs incurred in the return of the Goods to the Wholesaler or in the destruction of the Goods by You; and/or
 - c. Pay reasonable third party service fees associated with the removal from and/or replacement of, the recalled Goods in animals up to the maximum amount determined by the Wholesaler at that time.
- 11.2 You agree to co-operate with the Wholesaler as is reasonably required in respect of any Goods subject to a recall.

12. No Warranties

- 12.1 Subject to specific warranties provided by the Wholesaler in respect of its Goods from time to time, to the extent permitted by law, no other guarantees, warranties or representations (either express or implied by law) are made by the Wholesaler with respect to the Goods.

13. Your Warranties

- 13.1 In relation to all Goods supplied by the Wholesaler, You warrant that:

- a. You hold all applicable permits, licences, registrations, approvals, certifications, consents or other authorisations under New Zealand law that are required to purchase, store, market, sell, distribute and otherwise deal with the Goods in New Zealand, including but not limited to being an RVM Seller where the Goods are RVMs;
- b. You (and your employees, agents and contractors) will deal with the Goods in accordance with any safety instructions, directions, guidelines, legislation and/or regulations;
- c. You (and your employees, agents and contractors) will not directly or indirectly sell or supply the Goods to third parties unauthorised under New Zealand law to purchase or receive such Goods; and
- d. Where You supply Goods to third parties in the course of trading, You shall not represent that You are acting as an agent of the Wholesaler and You shall not (and not allow any of your employees, agents or contractors to) give or make any undertaking, assertion, or representation on behalf of the Wholesaler in relation to the Goods without the prior written approval of the Wholesaler.

14. Indemnification

- 14.1 You agree to indemnify the Wholesaler against all liabilities, costs (including full costs between solicitor and client), losses, claims, expenses and demands incurred by the Wholesaler or any third party arising out of or incidental to the supply of Goods, or your non-compliance with this Agreement, and from any third party claims arising out of or incidental to the supply of and/or use of the Goods, and/or your incorrect storage, handling and use of the Goods, except where such liabilities, costs, claims and demands are the direct result of the gross negligence of the Wholesaler.

15. Limitation of Liability

- 15.1 Except as otherwise provided in this Agreement, the Wholesaler will be under no liability whatsoever to You for any indirect loss, consequential loss, fines, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by You or any other person, arising out of or flowing from this Agreement, whether contemplated by this Agreement or not, and whether actionable in contract, tort (including negligence), equity or otherwise. To avoid doubt and in addition to the above, the Wholesaler shall not be liable to You or any third party to the extent that any loss or damage was caused or contributed to by your negligence, or that of your employees, representatives, agents or third parties.
- 15.2 In the event that, despite the above paragraph, the Wholesaler is found liable for any loss or damages, including the loss or damages set out above, such liability will be limited to the Price paid or to be paid by You for the Goods under this Agreement to which the liability relates, and is inclusive of all claims made against the Wholesaler under this Agreement by You.

16. Intellectual Property

- 16.1 You agree and acknowledge that the Wholesaler, or a third party, is the owner or licensee of all intellectual property rights in the Goods. You shall not, except as expressly provided for under this Agreement or on the receipt of the Wholesaler's prior written permission:
- a. Use, sell, distribute, duplicate, modify or otherwise alter the intellectual property of the Wholesaler or a third party in respect of the Goods;

- b. Tamper with or remove any markings, trade marks patent numbers, registration numbers or other indication of the source of origin of any Goods or descriptions required by law which are placed by the Wholesaler or third party on the Goods;
- c. Claim any rights, title or interests in or to the intellectual property in the Goods unless and to the limited extent expressly provided for under this Agreement;
- d. Damage or otherwise endanger the Wholesaler's or third party's intellectual property rights in the Goods; and
- e. Use the intellectual property and/or the Goods otherwise than as is intended.

16.2 Unless and to the extent expressly provided for in this Agreement or in a separate agreement between the parties, You shall not directly or indirectly re-sell the Goods to any third party by any means, including but not limited to selling the Goods via the Internet or other computer network. To avoid doubt, You may re-sell the Goods to:

- a. Veterinarians registered with the Veterinary Council of New Zealand who hold current practicing certificates as at the date of sale of the Goods; or
- b. Third parties whose primary line of business are the provision of veterinary services and medicine and who hold the relevant permits, licences, registrations, approvals, certifications, consents and/or other authorisations under New Zealand law that are required to purchase, store, market, sell, distribute and otherwise deal with the Goods in New Zealand; or
- c. (where You provide veterinary services and medicine) those third parties engaging your veterinary services which include customers purchasing scripted and non-scripted Goods from You for use on their animals.

17. Confidentiality

17.1 All intellectual property and other information belonging to a party which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of this Agreement. Except as otherwise specified in this Agreement (in particular clause 19) or as otherwise required under law, neither party will without the prior written consent of the other disclose any confidential information to any third party. To avoid doubt, confidential information includes but is not limited to the Wholesaler's Prices, profit margins, the identity of the Wholesaler's suppliers and the identity of the Goods supplied. The confidentiality obligations under this provision survive the termination of this Agreement.

18. Personal Information

18.1 You agree that the Wholesaler may collect, use and disclose your personal information for purposes related to your dealings with the Wholesaler including but not limited to the supply of the Goods, direct marketing, provision of information about the Goods, the recall of Goods, debt collection and credit reporting or assessment. If you are an individual, You have rights under the Privacy Act 2000 (or its successor legislation) to access any personal information that the Wholesaler holds and to request the correction of such personal information.

19. **Data Sharing and Confidentiality**

- a. Data Sharing: In the course of supplying Goods and services, You and the Wholesaler may exchange data and information, including but not limited to sales volumes, product usage, purchasing history, and customer contact information ("Shared Data").
- b. Confidentiality: Each party agrees to treat all Shared Data as confidential and must not disclose such data to any third party except: a. as required by law; b. with the prior written consent of the other party; or c. as otherwise permitted under this clause or Agreement.
- c. Permitted Use by Wholesaler: The Customer acknowledges and agrees that the Wholesaler may use the Shared Data for its internal business purposes, including but not limited to:
 - i. reporting and claiming rebates or discounts from manufacturers and suppliers;
 - ii. analysis of purchasing behaviour to improve product offerings and services;
 - iii. marketing, promotional, and sales strategies (including targeted marketing); and
 - iv. sharing relevant data with manufacturers or suppliers of the Goods for the purposes described above.
- d. Disclosure to Manufacturers: The Wholesaler may disclose Shared Data to manufacturers or suppliers of the Goods, provided that such data is only used for purposes consistent with this clause and subject to appropriate confidentiality obligations.
- e. Data Protection: The Wholesaler will take reasonable steps to ensure that all Shared Data it holds is protected against loss, misuse, and unauthorised access in accordance with the Privacy Act 2020.
- f. Limitation of Liability: To the fullest extent permitted by law, the Wholesaler shall not be liable (whether in contract, tort (including negligence), equity or otherwise) for any loss, damage, or expense (including consequential, indirect or special loss or loss of profits) arising out of or in connection with the use, disclosure, or handling of Shared Data.

20. **Dispute Resolution**

- 20.1 The parties shall endeavour to resolve any disputes in relation to this Agreement and/or the supply of Goods between them cooperatively in the first instance, prior to seeking a resolution through the Courts. However, nothing in this clause prevents either party from seeking interlocutory or injunctive relief.

21. **Termination**

- a. The parties may at any time mutually agree to terminate this Agreement.
- b. If You fail to pay any monies owing, become insolvent, bankrupt, call a meeting of creditors, go into liquidation, voluntary administration or otherwise are in breach of this Agreement, the Wholesaler may (without prejudice to any other remedies available to it) within 10 days of notifying You to remedy the breach, and You failing to remedy the breach, suspend deliveries, refuse to fill any Orders, suspend or cancel your account, or terminate this Agreement immediately and all outstanding monies owing under this Agreement to the Wholesaler (if any), will immediately fall due and payable.

- c. You may terminate this Agreement at any time by providing notice to the Wholesaler in writing. Any Orders placed by You prior to the Wholesaler's receipt of notice of termination shall be filled unless the parties agree otherwise.
- d. Termination of this Agreement will deem any accounts You hold with the Wholesaler terminated.
- e. Any Goods held by You in respect of which the Wholesaler holds title as at the date of termination shall be immediately returned to the Wholesaler, subject to any prior agreement with the Wholesaler as to the sale of those Goods by You post-termination for a period to be agreed between the parties.

22. Force Majeure

- 22.1 No failure or omission by a party to carry out or observe any of the terms of this Agreement will give rise to any claim against that party or be deemed a breach of this Agreement, if such failure or omission arises from any cause reasonably beyond the control of that party. The party unable to fulfil its obligations will as soon as reasonably practicable notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure. Should the delay or failure in the performance exceed three months, either party may terminate the Agreement by providing a written notice to the other party.

23. Miscellaneous

- a. **Notices:** Notices under this Agreement will be sufficiently given if posted or successfully transmitted by email to the intended recipient at their last known address. The Wholesaler's addresses for notice are as provided for on its Website. You will notify the Wholesaler in writing of any change to your address details.
- b. **Variation:** The Wholesaler may amend this Agreement at any time. The amended terms and conditions will be posted on the Website. Your continued ordering of Goods will deem your acceptance of the amended terms. If You do not accept the amended terms, You may terminate this Agreement and the version of the terms and conditions immediately prior to the amended terms shall continue to apply to the Goods ordered prior to termination by You.
- c. **Assignability:** The Wholesaler may at any time assign or otherwise transfer, encumber or subcontract any of its rights and obligations under this Agreement to a third party.
- d. **Waiver:** A party will not have waived or be deemed to have waived any provision of this Agreement unless the waiver is in writing and signed by that party.
- e. **Survivorship:** Termination of this Agreement for any reason will not affect the rights and obligations of the parties that are intended to survive the termination, including but not limited to provisions in this Agreement relating to payment, failure to comply, risk and ownership, intellectual property, use, confidentiality, indemnification and limitation of liability.
- f. **Severability:** If any part or provision of this Agreement is found to be illegal, invalid or unenforceable, that part or provision shall be modified to the extent necessary and reasonable in all circumstances to remedy the illegality, invalidity or unenforceability. If it cannot be modified, that part or provision will be void and severable and the remainder of this Agreement will not in any way be affected or impaired.

- g. **Non-Circumvent:** The parties will not circumvent or attempt to circumvent the provisions and/or intent of this Agreement.
- h. **No relationship:** This Agreement does not create any relationship of partnership, employment, agency or joint venture between You and the Wholesaler.
- i. **Governing Law:** This Agreement is to be interpreted in accordance with and governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.

SCHEDULE 1

Additional Terms:

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ACCEPTANCE OF TERMS

I / We have read, understood and accept these terms and conditions.

Business Name:

Name:

Signed:

Name:

Position: Date: / /

Where you are a Limited Liability Company all Directors must sign below:

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