

# ANIMAL SUPPLIES

## (WHOLESALE) PTY LTD

### TERMS AND CONDITIONS OF TRADE as displayed on [www.animalsupplies.com.au](http://www.animalsupplies.com.au)

#### Definitions

"**Animal Supplies**" means ANIMAL SUPPLIES (WHOLESALE) PTY LIMITED (ACN 058 258 870).

"**Customer**" means the party to whom Products are sold by Animal Supplies.

"**Order**" means an offer by a Customer to purchase Products from Animal Supplies.

"**Products**" includes Pet Food and Accessories supplied by Animal Supplies. Pet Food includes all pet food and related products listed on the Animal Supplies Pet Food price list. Accessories includes all products (excluding Pet Food) listed on the Animal Supplies Accessories price list as published from time to time and current at the time of the Customer placing an order.

"**Chep**" is an independent company that rents pallets.

#### 1. Sale Terms

These conditions of sale apply to all transactions between Animal Supplies and the Customer including all quotations, offers, orders or sales and will prevail over all conditions of the transaction to the extent of any inconsistency. To the extent that these terms and conditions (as published on the website of Animal Supplies) may be varied over time by Animal Supplies then the conditions current at the time of acceptance of any specific order or part of an order shall apply. Animal Supplies shall not be required nor responsible to notify the Customer of the existence or content of any such variation.

#### 2. Placement of Orders

Orders may be placed by the Customer either by Telephone, Facsimile, Mail or Email to [orders@animalsupplies.com.au](mailto:orders@animalsupplies.com.au). In placing an order, the Customer acknowledges its acceptance of these Terms and Conditions.

#### 3. Acceptance of Order

Animal Supplies may accept any order in whole or in part, subject to our minimum order requirement of \$500.00. Delivery by Animal Supplies of Products pursuant to an order made by the Customer (whether by single or multiple delivery) shall be taken as acceptance to the extent delivered. Accepted orders may not be varied or cancelled by the Customer without the consent of Animal Supplies and (subject to the conditions set out herein) there is no right of return.

#### 4. Price

The price to be paid for the Products shall be as expressly agreed between the parties or otherwise such price as indicated on invoices provided by Animal Supplies to the Customer.

Prior to acceptance of an order, Animal Supplies may change its published prices at any time without notice.

The customer is not entitled to any credit for stock on hand in the event of a price reduction after the order has been invoiced.

#### 5. Taxes

Animal Supplies reserves the right to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

#### 6. Credit Granting

Animal Supplies may accept an order and allow credit for part or all of its value or may accept an order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery. Where credit has been approved for the Customer, all invoices issued by Animal Supplies are due and payable no later than 30 days after the date of Animal Supplies' invoice (or such other date for payment as the Customer and Animal Supplies may agree in writing).

#### 7. Settlement Discounts

Where credit has been approved for the Customer, the Customer is entitled to receive a 2% settlement discount only on Pet Food invoices provided the payment is received within 14 days of the invoice date.

#### 8. Delivery

Delivery of Products may not be refused by the Customer after an order has been accepted by Animal Supplies. Delivery is to the delivery point accepted by Animal Supplies. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to accept delivery of the Products as arranged, then Animal Supplies shall be entitled to charge a fee for redelivery at the current rate charged by the freight carrier. Delivery of the Products to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement. A re-direction fee will be charged for this service.

#### 9. Delivery Address

If the Customer requires regular delivery of Product to more than one delivery address, Animal Supplies reserves the right to open separate accounts for each delivery address.

#### 10. Freight and Handling charges

Animal Supplies may charge for freight and handling for a range of products delivered to particular destinations at rates dependent on distance and volume of Products supplied. Additional freight charges may be charged where the Customer requests urgent delivery of the Products. The rates are subject to change at any time without notice.

**11. Pallets**

Where Products are delivered on a Chep pallet, the Customer must either replace the equivalent amount of Chep pallets with the transport company delivering the goods or transfer the pallets through a valid Chep account. Any Chep pallets not replaced or transferred shall be invoiced at current replacement cost to the Customer. All pallets delivered to the Customer become the responsibility of the Customer.

**12. Hand unload and tailgate deliveries**

If the Customer is unable to supply or does not have a forklift, additional charges will apply for a hand unload or tailgate delivery.

**13. Vaccines**

A charge for an esky and ice pack is applicable on all orders containing vaccines. Vaccines are shipped subject to the weather and are not shipped on Fridays. For delivery to areas not serviced by overnight couriers from Sydney, a charge will be applicable to ship the vaccines by overnight airbox if requested by the Customer. All orders of vaccines will be shipped at Customer's own risk.

**14. Passing of Risk**

The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery of the Products to the Customer or upon collection of the Products by the Customer, the Customer's agent or any courier as the case may be.

**15. Retention of Title to the Products Pending Payment**

Title to and property in all Products supplied by Animal Supplies is retained by Animal Supplies until such time as the Customer has paid in full all debts outstanding by the Customer to Animal Supplies or until the Customer has resold and delivered the relevant Product to a genuine arms length customer. Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of Animal Supplies, and shall keep the Products properly stored, protected and insured. The Customer shall, if directed by Animal Supplies, store the Products supplied in such a way that it is clear that they are the property of Animal Supplies and that title remains with Animal Supplies.

**16. Claims and Returns**

The Customer shall inspect the Products on delivery and shall within 48 hours thereof notify Animal Supplies of any apparent defect, shortage in quantity, damage or failure to comply with the order or quote. Animal Supplies does not accept liability for any such claim not made in accordance with these terms. Any damages alleged are required to be noted on the delivery document or transport company consignment note.

In the event of a justified objection notified by the Customer to Animal Supplies in accordance with these terms, Animal Supplies may, at its option:

- a. reduce the purchase price by agreement with the Customer;
- b. accept the return of the Products and, subject to the Products 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

The Customer agrees that it will not return any of the Products without first requesting or applying to Animal Supplies so that a Returns Authority (RA) number may be issued by Animal Supplies for valid returns. Where an RA has been issued, those Products to which it relates must be returned within seven (7) days of issue of the RA, by the shipping method nominated by Animal Supplies. Failure to return Products by the method nominated by Animal Supplies may result in (additional) freight charges. The returned Products must be unmarked and in a saleable condition and must include each original packaging.

An administration and restocking fee shall be debited to the Customer's account where the returned Products prove not to be defective or not valid for return. All freight, handling and other charges in relation to returning goods (other than defective goods or goods not ordered) are the responsibility of the Customer.

All claims for credit other than those where Animal Supplies is solely responsible should be referred to the manufacturing company's representative.

**17. Disputed Charges**

If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever first occurs), the undisputed amount is paid in full and notice in writing of the dispute is given to Animal Supplies, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Animal Supplies will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within seven (7) days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within thirty (30) days of the invoice date will be deemed to be correctly charged.

**18. Credit Policy and Default**

If Animal Supplies is not paid for any Products within the credit terms specified herein, without prejudice to any other right or remedy, Animal Supplies may charge interest on all amounts not paid by the Customer within the agreed term for payment at a rate of 2% per calendar month, calculated from the due date and accruing monthly there from until the date of payment and Animal Supplies may recover the price of the Products together with all interest forthwith from the Customer as a liquidated debt irrespective of any claim that the Customer may have against Animal Supplies for any thing or matter related to the Products delivered under these terms. The Customer shall indemnify Animal Supplies from and against all expenses costs and disbursements incurred by Animal Supplies in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to Animal Supplies by any mercantile agency. In addition, Animal Supplies may at its sole discretion:

- a. cancel any provision of credit to the Customer;
- b. reverse any discounts allowed;
- c. require cash pre-payment for any further Products ordered;
- d. provide to a credit reporting agency details of the payment default;
- e. commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- f. decline to supply Products to the Customer and terminate any other agreement with the Customer; and
- g. exercise any other rights at law.

A certificate of debt signed by a representative of Animal Supplies shall be prima facie evidence and proof of money owing by the Customer to Animal Supplies at that time.

**19. Returned Cheques**

An administration fee plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason.

**20. Credit Card recovery of costs**

A service fee may be added to the price where payment is made by way of a credit card.

**21. No Set-off**

The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by Animal Supplies or any third party, unless prior written agreement has been made with Animal Supplies.

**22. Acts of Default**

Animal Supplies may at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Customer where the Customer:

- a. defaults on any payment due under the agreement;
- b. being a natural person, commits an act of bankruptcy;
- c. being a corporation, is subject to:
  - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
  - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
  - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
  - (iv) any assignment for the benefit of creditors.

**23. Reservation of Rights**

Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the time for payment as provided for herein, Animal Supplies reserves the following rights in relation to the Products until all amounts owed by the Customer to Animal Supplies in respect of the Products and all other Products and services supplied to the Customer by Animal Supplies at any time are fully paid:

- a. legal and equitable ownership of the Products;
- b. to retake possession of the Products; and
- c. to keep or resell any of the Products repossessed.

The Customer hereby grants full leave and irrevocable license without any liability to Animal Supplies and any person authorised by Animal Supplies to enter any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

**24. Disclaimer and Limitation of Liability**

The Trade Practices Act and various State Acts imply certain warranties into transactions which in certain circumstances cannot be excluded. Notwithstanding this (but subject to such laws as necessarily apply) the Customer acknowledges that it has not relied on any advice given or made by or on behalf of Animal Supplies in connection with the Products. Animal Supplies excludes all implied conditions and warranties from this agreement, except any conditional warranty (such as conditions or warranties implied by the Trade Practices Act and State Acts) to the extent that they cannot be excluded ("Non Excludable Conditions"). Animal Supplies limits its liability:

- a. for breach of any Non Excludable Conditions to the extent that liability for such breach can by law be limited to the invoice cost of the Products supplied; and
- b. for any error or omission in delivery of the Products caused by Animal Supplies to (at Animal Supplies' sole discretion) resupply of the Products affected by the breach, or the payment of the cost of resupply.

Subject to this Clause, Animal Supplies excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with this agreement whether that liability lies in contract, tort (including Animal Supplies' negligence) or under statute. Without limitation, Animal Supplies will in no circumstances be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity. The Customer indemnifies Animal Supplies and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of this agreement and any negligent or unlawful act or omission of the Customer in connection with the Products.

**25. Force Majeure**

While Animal Supplies endeavours to keep delivery dates, any delay of delivery, for any reason whatsoever, will not entitle the Customer to claim for any consequential loss or damage or to cancel, rescind or terminate the agreement. Should circumstances beyond the control of Animal Supplies prevent or hinder delivery, Animal Supplies will be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, Animal Supplies may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of Animal Supplies include but are not limited to strikes, lockouts, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

**26. Privacy Information**

Animal Supplies may give information about the Customer, its guarantors, directors or proprietors to a credit reporting agency or other third party for the following purposes:

- a. to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- b. allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors; and
- c. to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.
- d. for market analysis.

**27. No Assignment**

The Customer may not assign or subcontract any contract for the purchase of Products or its obligations under this agreement.

In the event that the Customer sells its business, the Customer shall be responsible to notify Animal Supplies 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 Animal Supplies for the payment of Products subsequently sold to a third party on the Customer's account as if the Customer had ordered the Products itself.

**28. Waiver of terms of agreement**

The failure by Animal Supplies to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

**29. Entire Agreement**

This document represents the entire agreement between the parties. The Terms and Conditions contained herein can only be waived or varied in writing signed by Animal Supplies.

**30. Proper Law**

The agreement is governed by and will be construed in accordance with the laws of the State of NSW and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW.

**31. Interpretation**

Words in italics have the meanings set out in the Corporations Act 2001 Cth. In these Terms unless the contrary is expressly provided:

- a. the singular includes the plural and vice versa;
- b. a gender includes each other gender;
- c. days mean consecutive calendar days;
- d. headings are for convenience only and do not affect interpretation;
- e. reference to legislation or a provision of any legislation includes modifications or re-enactments of the legislation, or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation;
- f. if there is more than one Customer, then each of them will be jointly and severally liable to Animal Supplies.

**32. General**

Animal Supplies may serve any notice on the Customer by forwarding it by ordinary pre-paid post to the address of the Customer last known to Animal Supplies.

If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

Animal Supplies may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

Animal Supplies may terminate this agreement at any time, by giving notice in writing to the Customer.