

# Trading Terms of Dr Neil's Pet & Equine Supplies Pty Limited (ABN: 43 100 909 742)

## 1. INTERPRETATION

Unless the contrary intention appears:

'Dr Neil's Pet & Equine Supplies' means Dr Neil's Pet & Equine Supplies Pty Limited (ABN: 43 100 909 742) which is the seller of the Goods.

'Goods' means the goods & if any services supplied by Dr Neil's Pet & Equine Supplies to the Purchaser.

'Purchaser' means the Purchaser of the Goods.

Nothing in these terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, right or remedy implied by law (including the Trade Practices Act 1974) & which by law cannot be excluded, restricted or modified.

## 2. GENERAL

These terms (which shall only be waived in writing signed by Dr Neil's Pet & Equine Supplies) shall prevail over all items of any Purchaser's order to the extent of inconsistency.

## 3. TERMS OF SALE

The Goods are sold on these terms. No variation to these terms will be binding unless such a variation is agreed to in writing by Dr Neil's Pet & Equine Supplies.

## 4. DR NEIL'S PET & EQUINE SUPPLIES QUOTATIONS

Unless previously withdrawn, Dr Neil's Pet & Equine Supplies quotations are open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after its date. Dr Neil's Pet & Equine Supplies reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

## 5. ORDERS

### 5.1. Provisionally Accepted

Orders shall be regarded as provisionally accepted to the extent notified in writing by Dr Neil's Pet & Equine Supplies.

### 5.2. Goods out of Stock

When Goods are out of stock, they will be delivered with the Purchaser's next order unless the Purchaser instructs Dr Neil's Pet & Equine Supplies otherwise.

## 6. SHORTAGE

The Purchaser waives any claim for shortage of any Goods delivered if a claim has not been lodged with Dr Neil's Pet & Equine Supplies within seven (7) days from the date of receipt of the Goods by the Purchaser.

## 7. PERFORMANCE

Any performance figures given Dr Neil's Pet & Equine Supplies are estimates only. Dr Neil's Pet & Equine Supplies shall be under no liability for damages for failure to attain figures unless specifically guaranteed in writing & any such written guarantee shall be subject to the recognised tolerances applicable to such figures.

## 8. DELIVERY

The delivery times made known to the Purchaser are estimates only & Dr Neil's Pet & Equine Supplies shall not be liable for late delivery or non-delivery & under no circumstances shall Dr Neil's Pet & Equine Supplies be liable for any loss, damage or delay occasioned to the Purchaser or its purchase arising from late or non-delivery or late installation of the Goods.

8.1 Goods are deemed to be delivered to the Purchaser once the Goods leave the premises used by Dr Neil's Pet & Equine Supplies.

8.2 Notwithstanding clause 14, upon delivery all risks associated with the goods (including any damage or deterioration in transit) pass to the Purchaser.

## 9. RETURNS

If any of the Goods prove faulty, Dr Neil's Pet & Equine Supplies shall replace them, repair them or grant an appropriate credit to the Purchaser in the absolute discretion of Dr Neil's Pet & Equine Supplies.

Goods may also be returned to Dr Neil's Pet & Equine Supplies in good order & condition for credit. Returned goods will not be granted an appropriate credit or be replaced unless they are returned within three (3) days from the date of delivery, accompanied by the invoice number & the reason for return. Under no circumstances will Goods be accepted for credit or exchange if its container has been opened or the label on it damaged or, the goods have been used. Due to increased administration costs, non-faulty Goods returned will incur a restocking charge of 10%.

## 10. WARRANTY & LIABILITY

### 10.1 Goods Manufactured by Dr Neil's Pet & Equine Supplies

Dr Neil's Pet & Equine Supplies' liability for Goods manufactured by it is limited to making good any defects by repairing the same or at Dr Neil's Pet & Equine Supplies' option by replacement, within a period not exceeding twelve (12) calendar months after the Goods have been dispatched provided that:

- (a) defects have arisen solely from faulty materials or workmanship;
- (b) The Goods have not received maltreatment, inattention or interference.
- (c) Accessories of any kind used by the Purchaser are manufactured by or approved by Dr Neil's Pet & Equine Supplies.
- (d) The seals of any kind on the Goods remain unbroken; &
- (e) The defective parts are promptly returned free of cost to Dr Neil's Pet & Equine Supplies.

### 10.2 Goods not Manufactured by Dr Neil's Pet & Equine Supplies

If Goods are not manufactured by Dr Neil's Pet & Equine Supplies the warranty of the manufacturer shall be accepted by the Purchaser & is the only warranty given to the Purchaser in respect of the Goods.

### 10.3 Design Faults

Dr Neil's Pet & Equine Supplies shall not be liable for & the Purchaser releases Dr Neil's Pet & Equine Supplies from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by Dr Neil's Pet & Equine Supplies & the responsibility for any claim has been specifically accepted by Dr Neil's Pet & Equine Supplies in writing & in any event Dr Neil's Pet & Equine Supplies' liability hereunder shall be strictly limited to the replacement of the defective part.

### 10.4 Exclusion of Liability

Except as provided herein, all express & implied warranties, guarantees & conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded & Dr Neil's Pet & Equine Supplies shall not be liable for physical or financial injury or for consequential loss or damage of any kind arising out of supply, layout, assembly, installation or operation of the Goods or arising out of Dr Neil's Pet & Equine Supplies' negligence in any way whatsoever.

### 10.5 The Purchaser acknowledges to Dr Neil's Pet & Equine Supplies that (except for the specific warranties & representations made by Dr Neil's Pet & Equine Supplies in this Agreement):

- (a) He has entered into this Agreement relying entirely upon his own independent appraisal & assessment of the Goods.
- (b) He does not rely upon any warranty, statement or representation made or given by or on behalf of Dr Neil's Pet & Equine Supplies.
- (c) He is fully aware of the contents of this Agreement.
- (d) To the fullest extent possible he waives any possible cause of action or it may have under or in respect of Part V of the Trade Practices Act 1974 or Part 5 of the Fair Trading Act 1987 or any other legislation which is to any extent similar to such Part V or Part 5 or any portion of such legislation touching or concerning anything the subject of our incidental to this Agreement & releases & indemnities to the fullest extent possible Dr Neil's Pet & Equine Supplies & all persons or entities associated with Dr Neil's Pet & Equine Supplies from & against (as the case may be) any claim or liability (if any) arising out of or incidental to any such cause of action or any like cause of action or right of any other person or entity whatsoever.

### 10.6 TRADE PRACTICES ACT

Dr Neil's Pet & Equine Supplies' liability for a breach of condition or warranty implied by Div 2 or Part V of the Trade Practices Act 1974 (other than s69) is hereby limited to:

In the case of Goods, any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the Payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (d) the Payment of the cost of having the Goods repaired; or Services

In the case of services:

- (a) the cost of replacing the Goods
- (b) the cost of obtaining the equivalent Goods; or
- (c) The cost of having the Goods repaired, whichever is the lowest amount.

## 11. PRICES DISCOUNTED PRICES & BONUSES

Prices

Unless otherwise stated all prices quoted by Dr Neil's Pet & Equine Supplies are net, exclusive of GST, discounts & all delivery charges. Prices of Goods may vary without notice & will be the standard current published price for the Goods at the date of delivery, except where prices are those advertised or quoted. If discounted prices are not paid by the due date for payment as shown on the invoice then the invoice the standard current published price applies.

Discounted Prices & Bonuses

All Discounted Prices & Bonuses for Goods offered by Dr Neil's Pet & Equine Supplies will apply for the duration of the offer or until stocks of the Goods are exhausted which ever is the earlier.

## 12. GUARANTEE

Guarantee Definitions: "We" and "us" means each of the Guarantors and the Customer jointly and severally. "You" and "your" means Dr Neil's Pet & Equine Supplies Pty Limited

We guarantee payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you and any GST applicable thereto.

We indemnify you against any loss or damage arising from any past, present or future dealing with the Customer or any of us.

We agree:

- That this is a continuing guarantee and,
- That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by you and,
- That our ability under this guarantee shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by the Company voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA and,
- That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all members execute this guarantee and,
- That the Company is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor and,
- That this guarantee may only be revoked as to future trading with the Applicant and any notice of revocation may only be given by prepaid registered mail delivered to PO Box 6242 Blacktown NSW 2148 and shall not become effective until the expiration of 14 days from the date of posting.
- That any payment which is subsequently avoided by any law relating to Insolvency shall be deemed not to have been paid and,
- That we sign in both our personal capacity and as Trustee and,
- To notify you of any change in the Customer's structure or management including sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship within 7 days of the date of any such change.

We hereby charge in your favour all our estate and interest in any land and in any other assets, whether tangible or intangible, in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Applicant or any of us and consent to the lodging by the Company of a caveat or caveats which note your interest in that real property.

We further agree that this arrangement and any claim or dispute between the Company, the Customer or any of us shall be governed by the law applicable in the State of New South Wales and submit to the jurisdiction of the appropriate Court nearest the capital city of that State.

## 13. PAYMENT

When to be Made

Purchaser must pay without demand deduction or set off all sums due to Dr Neil's Pet & Equine Supplies in respect of supply by Dr Neil's Pet & Equine Supplies to the purchaser of Goods on or before the payment due date listed on the invoice.

#### Consequences of Non-Payment

If payment is not made by its due date as printed on the invoice then:

- (a) The supply of further Goods by Dr Neil's Pet & Equine Supplies to the Purchaser may be suspended;  
&
- (b) The sum due shall bear interest commencing on the date when the sum first became due from day to day at an annual rate equal to the rate charged by Dr Neil's Pet & Equine Supplies' bankers to Dr Neil's Pet & Equine Supplies on overdraft;
- (c) Dr Neil's Pet & Equine Supplies may demand immediate payment from the Guarantor where a Guarantee is in place.

#### 14. RIGHTS IN RELATION TO GOODS

##### Right Reserved Until Payment

Dr Neil's Pet & Equine Supplies reserves the following rights in relation to the Goods until all accounts owed by the Purchaser Dr Neil's Pet & Equine Supplies are fully paid:

- (i) Legal ownership of the Goods;
- (ii) To enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass resulting damage & retake possession of the Goods; &
- (iii) To keep or resell any Goods repossessed pursuant to (ii) above.

#### 14.1 RESOLD GOODS

If the goods are resold, or products manufactured using the Goods are sold, by the Purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in separate identifiable account as the beneficial property of the Dr Neil's Pet & Equine Supplies upon request. Notwithstanding the provision above Dr Neil's Pet & Equine Supplies shall be entitled to maintain an action against the Purchaser for the purchase price & the risk in the Goods shall pass to the Purchaser upon delivery.

#### 15 PURCHASER'S PROPERTY

Any property of the Purchaser under Dr Neil's Pet & Equine Supplies' possession, custody or control shall be entirely at the Purchaser's risk as regards loss or damaged caused to the property or by Dr Neil's Pet & Equine Supplies.

#### 16. GOODS SOLD

All Goods to be supplied by Dr Neil's Pet & Equine Supplies shall be as described on the purchase order agreed between Dr Neil's Pet & Equine Supplies & the Purchaser & the description on such purchase order modified as so agreed shall prevail at other descriptions including any Purchaser's specification or enquiry.

#### 17. CANCELLATION

No order may be cancelled except with consent in writing & on terms which will indemnify Dr Neil's Pet & Equine Supplies against all losses.

#### 18. APPLICABLE LAW & JURISDICTION

This agreement shall be governed & constructed by the laws applicable in the state of New South Wales & the parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute of whatsoever nature arising under this Agreement or its implementation or enforcement.

Should it be considered necessary by the company to incur legal and/or other expenses, including any such expenses to any debt collection agency, in obtaining or attempting to obtain payment of any amount due by the Customer, the Customer shall be liable for, and expressly undertakes to pay, such expenses. Amounts received by the Company may be applied first against interest, charges and expenses."