

TERMS OF TRADE

Massey University Veterinary Teaching Hospital

Updated 1 December 2020

The terms of trade set out below govern the supply of all products and services supplied by the Massey University Veterinary Teaching Hospital ('VTH') to you ('you' or 'client'). Your acceptance of any estimates, products or services from the Massey University VTH is deemed to be acceptance of these Terms of Trade.

1. **Estimates:** Estimates are indicative only and are based on an interpretation of the client's instructions, both written and verbal. Clients are therefore advised to carefully check estimates before accepting them by signing the Consent Form. Should the original estimates change VTH will endeavour to contact the client to obtain their consent to the change, including for emergency treatments. However, if prior consent is not possible the client acknowledges and agrees that additional unauthorised costs may be incurred if a veterinarian deems it in the best interest of the patient's welfare.. The client acknowledges and agrees that the final and actual costs incurred by VTH in relation to the client's account may exceed the relevant estimate and that the client will be responsible for all such costs.
2. **Supplied materials:** VTH accepts no liability whatsoever and howsoever for errors or omissions resulting from materials, equipment, products or goods ('products') supplied to VTH by the client for their animal.
3. **Variations/Alterations:** All estimates are based on information supplied by the client. Specifications are listed clearly on the estimate forms and any variation to the specifications shall be agreed between the parties, unless it relates to emergency treatment when prior consent is not possible.
4. **Acceptance of Estimate:** The estimate will lapse if not accepted by the client in writing within 30 days of the date of the estimate.
5. **GST:** All estimates are inclusive of GST.
6. **Payment:**
 - 6.1 50% of the estimate is due upon the client signing the consent form with the remainder of the payment of the client's account (which may exceed the estimate) due to VTH in full at time of patient discharge unless a credit facility is in place in accordance with clause 6.2 below.
 - 6.2 If a credit facility has been agreed with VTH, and unless otherwise agreed in writing with VTH, payment is due on the dates detailed in the signed credit application and acceptance form. In the event that no payment and/or credit arrangements were advised or otherwise agreed with the client, payment is to be made in full at time of patient discharge in accordance with clause 6.1. The client shall not be entitled to withhold payment by reason of any claim to a counterclaim or set off whether legal or equitable.
 - 6.3 The total amount of the client's account shall become immediately due and payable on the appointment of a receiver or liquidator of the client, and/or at the discretion of VTH if the client is in breach of these terms and conditions.
7. **Non-payment:**
 - 7.1 Any unpaid balance in the client's account at the end of the month following the month of invoice shall automatically become subject to VTH's credit terms:
 - (a) Default interest shall accrue on any unpaid sums at the rate of two (2) percent per month.
 - (b) VTH may at its own discretion refer unpaid sums to a debt collection agency and shall be entitled to recover from the client in addition to those unpaid sums, any reasonable costs and expenses incurred in such recovery including legal and commission costs in the recovery of amounts owing to VTH.
 - (c) An additional monthly statement fee of \$5 (GST exclusive) may be charged for overdue accounts.
8. **Additional Account Statements:** Requests by clients for the VTH to provide additional printed account statements may incur a charge of \$5 (GST exclusive) per request.
9. **Services:** While VTH is a teaching facility, VTH will perform the services with skill, care and diligence. VTH cannot, however, guarantee any particular outcome or that the services will be error free.
10. **Discounts:** If the client's account includes an agreed discount(s) and the account is not settled by the due date required to qualify for that discount, then no discount will apply and the discount will be added back to the account. This also applies to Massey University staff accounts unless a variation to this clause has been previously approved.
11. **Non-assignment:** The client shall not assign their rights and obligations under this contract to another party unless approved in writing by VTH.
12. **Unauthorised use of account:** The client shall not be liable for any indebtedness arising from the unauthorised use of the account provided that the client uses reasonable endeavours to avoid any unauthorised use and must on discovering the unauthorised use of the account, immediately notify VTH.
13. **Third Party involvement:** If for any reason you as owner are unable to bring your animal in for an appointment yourself and a third party brings the animal instead, all costs of the consultation and treatment and any other charges will be charged to your account unless you have made prior arrangements with VTH or you notify VTH in writing that the account is to be charged to a third party and we are able to contact the third party to confirm their agreement to the arrangement and that third party signs these Terms of Trade. To avoid any doubt, where the third party is the owner of an animal that injures your animal, the account will be your responsibility unless the third party accepts full responsibility for the account and independently signs these Terms of Trade. The client agrees to reimburse VTH for any costs, expenses, losses or liability that VTH may suffer as a result of any third party claim concerning the services provided by VTH.
14. **Risk:** The client remains responsible for insurance and risk of their animal at all times (including when the animal is in the possession of VTH or is being transported to or from VTH's premises).
15. **Delay:** VTH will use its best endeavours to ensure the delivery of products or performance of services is on time but will not be liable to the client for any loss or damage whatsoever and howsoever caused arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle the client to cancel this contract.
16. **Termination:** VTH may terminate these Terms of Trade or any service if the client is in breach of these Terms of Trade or if VTH reasonably considers that a service requested by the client poses unnecessary risks to the animal or is otherwise unlawful or unethical. The client may cancel the services on 48 hours' notice to VTH or as otherwise agreed with VTH. Where these Terms of Trade are terminated or any service is cancelled, all work carried out by VTH will be paid by the client in full. This may include the cost of any services scheduled in the following 48 hours from the time of notice.

17. **Claims:** Complaints or claims regarding work performed by VTH must be received as soon as is practical and within 30 days from the completion of the services or receipt of the product.
18. **Illegal Activities:** VTH will, without liability, immediately cease work being performed for the client if it becomes apparent that such work is outside the codes of conduct under which veterinary services are provided. VTH will immediately inform the most appropriate authority of its findings without any further reference to the client. VTH will be indemnified by the client in respect of any and all claims, costs and/or expenses arising out of any such illegal activity.
19. **Limitation on Liability:**
 - 19.1 Clients that are consumers have statutory rights under the Consumer Guarantees Act 1993 ('CGA') and the Fair Trading Act 1986 ('FTA') that cannot be excluded or limited at law. Subject to the rights that consumers may have under the CGA and the FTA and to the extent permitted by law:
 - (a) all representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions are excluded to the fullest extent permitted by law;
 - (b) VTH's liability for the supply of products and services under these Terms of Trade shall not exceed the estimated price of the relevant products and services;
 - (c) in no circumstances will VTH be liable for:
 - (i) any claim, proceeding, loss, cost, damage or expense arising out of or in connection with any delay in completion of any services or the delivery of any products;
 - (ii) any consequential, indirect or special loss or damage of any kind whatsoever; or
 - (iii) any claim made by the client against VTH where notice of the claim is not made within 30 days from the delivery of the relevant services.
20. **Force Majeure:**
 - 20.1 VTH is not liable for any failure or delay in performing an obligation in respect of these Terms of Trade if that failure or delay is due to an act of God (such as an earthquake, flood or other natural disaster), fire, epidemic, pandemic, endemic, outbreak, riot, terrorism or war, industrial dispute, or act or omission of a government agency which is reasonably beyond the control of that party (a "Force Majeure Event"), provided that VTH:
 - (a) has notified the client in writing of the relevant Force Majeure Event as soon as practicable;
 - (b) has used its reasonable endeavours to comply with its obligations under these Terms of Trade despite the occurrence of any such Force Majeure Event;
 - (c) has used reasonable endeavours to remedy or minimize the effects of such Force Majeure Event; and
 - (d) as soon as any such Force Majeure Event ceases to affect the performance of its obligations under these Terms of Trade, uses its reasonable endeavours to resume compliance with such obligations as soon as reasonably practicable.
21. **Intellectual Property:**
 - 21.1 Each party shall retain ownership of all intellectual property rights (such as, for example, copyright, patents, registered designs, data and any other property rights) owned or produced by that party prior to, or independent of, these Terms of Trade.
 - 21.2 VTH has extensive intellectual property in all works carried out by VTH. Any new intellectual property developed or created by VTH resulting from the provision of services or products to a client will vest automatically in VTH.
22. **Dispute Resolution:** In the first instance, any dispute between the parties must be discussed between them in an attempt to resolve the dispute by negotiation. In the event that the parties are unable to resolve the dispute by negotiation within 20 days following receipt of notice of the dispute either party may, by written notice to the other party, refer the dispute to mediation. The mediation will be in Palmerston North and conducted under the Resolution Institute standard mediation agreement. If the parties do not agree on a mediator or the mediator's fees within five days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the chair of the Resolution Institute (or their nominee) at the request of either party. The parties shall bear the mediator's fees equally. This dispute resolution procedure shall not preclude VTH at its election, seeking summary judgement for any unpaid portion of the purchase price or any urgent interlocutory relief sought by either party. It also shall not preclude either party referring the matter to appropriate veterinary authorities such as the Veterinary Council of New Zealand.
23. **Privacy:**
 - 23.1 The client acknowledges that: (a) personal information will be collected and used by VTH to provide services and products to the client and to comply with laws and regulations to which VTH is subject (such as under clause 18): and (b) that the client's personal information may be collected and used to determine whether to extend credit to the client and to verify any credit information provided by the client or any relevant third party credit agencies. The client acknowledges that VTH will share the client's personal information with its service providers, professional advisors and credit agencies to the extent required to meet the purposes summarised in this clause. If the client wishes to enter into a credit arrangement with VTH, VTH will also need to undertake a credit check in relation to the client and a separate authority is hereby given to VTH by the client on the understanding that:
 - (a) The Debt Collection Agency (Agency) will give VTH information about the client for the purpose of the relevant credit check.
 - (b) VTH will give the client's personal information to the Agency, who will hold that information on their systems and use it to provide their credit reporting services to their other customers.
 - (c) When other Agency customers use their credit reporting service, they may give the information to those customers.
 - (d) If the client defaults in their payment obligations to VTH, information about that default may be given to the Agency, and they may give information about the client's default to their other customers.
 - (e) The client has rights of access and correction of personal information under the Privacy Act 2020 and agrees to supplying their personal information for the purposes of these Terms of Trade.
24. **Confidentiality:** Each party shall at all times treat as confidential all information provided under the Terms of Trade that is not generally available to the public and shall not publish, release or disclose such information without the other party's prior written consent unless required for the provision of the services or contemplated by these Terms of Trade. To avoid any doubt, confidential information includes pricing and intellectual property rights disclosed to each party.
25. **General:** VTH reserves the right to change these Terms of Trade from time to time on prior notice to the client. If the client does not agree to the proposed change, it can cancel any current services and cease using VTH's services in future.
26. **Governing law:** The Terms of Trade are governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
27. **Other requirements:** These Terms of Trade are in addition to, but will form part of, any other requirements of VTH such as the Consent Form, the Estimate of Costs Form and the application for Credit Form that may be required to be signed for surgery or treatment.