

## TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in writing by Pfizer Animal Health ("Pfizer"), the following are Pfizer's terms and conditions of sale for Pfizer's Infovet customers. These, together with any other terms and conditions agreed upon in writing between Pfizer and an Infovet customer ("the Client") apply to the sale of Infovet related services by Pfizer to that Client to the exclusion of all other terms and conditions.

**1. PRICE**

- 1.1 Unless otherwise agreed in writing by Pfizer, Services shall be charged at Pfizer's list prices. Pfizer's list prices are subject to change by Pfizer without notice to the Client.
- 1.2 The Contract Price excludes GST, which is to be added to the Contract Price and paid by the Client.
- 1.3 All prices are subject to change by Pfizer without notice to the Client.

**2. CREDIT**

- 2.1 Unless otherwise agreed in writing, payment shall be made on the 20th day of the month following delivery of the invoice. Failure to make payment in full on or before the due date constitutes a default and in addition to its other rights, Pfizer retains the right to charge a default penalty on such overdue amount calculated on a daily basis at the rate of interest payable on Pfizer's bank overdraft from time to time.
- 2.2 By agreeing to these terms and conditions, the Client authorises Pfizer to make enquiries as to the credit and financial history of the Client, including but not limited to, by obtaining such reports from credit reporting agencies as may be required by Pfizer from time to time. Any credit offered under clause 2.1 may be conditional upon the Clients' directors giving personal guarantees in relation to the Client's obligations and their consent for Pfizer to make such enquiries as to their personal and commercial credit and financial history, including, but not limited to, by obtaining such reports from credit reporting agencies as may be required by Pfizer from time to time.
- 2.3 Pfizer reserves the right to terminate the Clients' credit account at any time. In the event of such termination, Pfizer may require security for payment and may suspend performance of its obligations under the Contract until the provision of sufficient security. Such termination shall be without prejudice to any other rights Pfizer may have, and the Client will not be entitled to any compensation in respect of such termination.
- 2.4 The Client agrees to pay to Pfizer, or at Pfizer's direction, all reasonable collection costs, including commissions and legal charges on a solicitor and client basis, on all moneys outstanding on its credit account should the Client breach any of these terms and conditions of sale and action be taken by or on behalf of Pfizer to recover the debt.
- 2.5 The Client shall not be entitled to withhold payment or to make any deductions from the Contract Price without the prior written consent of Pfizer.
- 2.6 Receipt of a cheque, bill of exchange, or other negotiable instrument by Pfizer shall not constitute payment and the Client shall remain liable for the Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.
- 2.7 Any additional payments due by the Client pursuant to any other provisions of the Contract shall be paid at the time provided in the Contract or, if no time is provided, within seven days of payment being demanded in writing by Pfizer.

**TERMS AND CONDITIONS OF SALE****3. CAPITAL EQUIPMENT**

- 3.1 If Pfizer makes available to a Client any capital equipment (including, but not limited to, computer equipment), the Client agrees to take custody of the capital equipment and retain it as Pfizer's trustee, fiduciary agent and bailee.
- 3.2 The Client must not charge, mortgage or encumber the capital equipment and shall ensure that the capital equipment is insured and stored or identified such that it is readily distinguishable from other goods held by the Client or other persons.
- 3.3 In the event of default of any terms of this agreement then, immediately on Pfizer's request, the Client must return the capital equipment and Pfizer may enter the premises at which the capital equipment is stored and retake possession of it.

**4. IMPROPER PAYMENTS**

- 4.1 If Pfizer pays the Client a rebate in respect of purchases under this Contract, the Client warrants and represents that:
- (a) the Client has not and will not promise, pay or give anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage for Pfizer. In this clause, 'government official' means any official, officer, representative, or employee of, including any animal health care professional, employed by any government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office;
  - (b) the Client will at all times comply with Pfizer Anti-Bribery and Anti-Corruption Principles available on [www.pfizer.co.nz](http://www.pfizer.co.nz);
  - (c) the Client agrees to permit Pfizer to take reasonable steps to ensure that rebates paid are properly used by permitting Pfizer's auditors to access any relevant books, documents, papers and records of the Client involving the payment of rebates by Pfizer;
  - (d) Pfizer may terminate the Client's credit account if Pfizer learns that the Client is making, or has made, improper payments to government officials.

**5. INFORMATION**

- 5.1 The Client agrees that Pfizer may:
- (a) collect information about the Client from any person;
  - (b) use any information it holds, now or in the future, about the Client;
  - (c) disclose information about the Client to any person; and
  - (d) require a Client to provide information necessary to demonstrate compliance with clause 2

for any purpose associated with Pfizer's business, including credit assessment, debt collection, direct marketing activities or to ensure that the provisions of clause 2 are being complied with. The Client authorises any third party to release any information about the Client to Pfizer.

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5.2 If the Client is an individual, the Client may be entitled under the Privacy Act 1993 to request access to and correction of any personal information which Pfizer holds about the Client.

**6. DEFAULT**

6.1 A Default occurs if any one or more of the following occurs:

- (a) The Client defaults in performance of its obligations under this Contract (including failure to make payment on the date the payment is due).
- (b) The Client defaults in performance of its obligations under any other agreement with Pfizer.
- (c) The Client becomes insolvent or is adjudicated bankrupt or an application is made for its liquidation or a liquidator or receiver is appointed in respect of its assets.
- (d) The Client enters into, or is likely to enter into, any composition or arrangement with its creditors.
- (e) The Client no longer carries on business or threatens to cease carrying on business.
- (f) A change of ownership or effective control of the Client occurs or the nature of the Client's business is materially altered.
- (g) Any other event which Pfizer considers may materially adversely affect the ability of the Client to perform any of its obligations under this Contract

6.2 If a Default occurs, Pfizer, without prejudice to any other rights or remedies, may at its option do any one or more of the following:

- (a) Require all moneys outstanding to be immediately due and payable.
- (b) Require security for the Client's obligations to Pfizer's satisfaction.
- (c) Suspend the Contract in which case Pfizer shall not be obliged to perform any of its obligations under this Contract during the period of suspension including, without limitation, provision of the Services. Any suspension shall not prevent Pfizer from terminating the Contract during the period of suspension.
- (d) Terminate the Contract.

6.3 The Client shall pay all costs incurred by Pfizer, (including costs on a solicitor/client basis and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of this Contract.

6.4 Payments by the Client shall be applied in reduction of amounts owing by the Client in such order as Pfizer determines.

**7. INTELLECTUAL PROPERTY**

7.1 In this Contract "Trade Mark" means the registered trade mark(s) used in respect of Infovet.

7.2 Pfizer licenses the Client to use the Trade Mark in the Client's own promotional and sales materials in connection with the Services carried out by Pfizer for the Client under this Contract. Pfizer will provide the Client upon request with a copy of the Trade Mark of a quality suitable for reproduction.

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7.3 The Client must only use the Trade Mark with the prior written approval of Pfizer for each type of use or application, and Pfizer will not unreasonably withhold such approval.

7.4 When using the Trade Mark, the Client must not allow the appearance of the Trade Mark to be altered in any way (other than proportional size adjustment) without Pfizer's prior written approval.

**8. CONSUMER GUARANTEES ACT**

8.1 To the extent permitted by law, the provisions of the Consumer Guarantees Act 1993 will not apply where the Services are supplied for business purposes.

**9. LIABILITY**

9.1 To the fullest extent permissible at 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 of merchantability and/or fitness for a particular purpose, are excluded.

(b) Pfizer shall have no liability to the Client or any of the Client's representatives for anything, other than a breach by Pfizer of an express provision of this Contract (including but not limited to negligence on the part of Pfizer or its employees or agents).

9.2 Client acknowledges that it does not rely on any representation or statement made by or on behalf of Pfizer or its employees or agents other than the express provisions of this Contract. To the full extent permitted by the laws of New Zealand, any conditions or warranties imposed by such legislation are hereby excluded. Insofar as liability under or pursuant to such legislation may not be excluded, such liability is limited at the exclusive option of Pfizer, to:

(a) the re-supply of the Services; or

(b) the re-payment of the fees paid by the Client for the performance of the Services by Pfizer.

9.3 Pfizer shall not be liable for any loss of profits or any consequential, indirect or special damage or loss of any kind suffered by Client or any of the Client's representatives.

9.4 Notwithstanding anything else contained in this Contract, the liability of Pfizer to Client shall not in aggregate exceed the invoice price of the fee for the Services in respect of which the liability arises.

9.5 The Client releases and indemnifies and shall continue to release and indemnify, Pfizer from and against:

(a) all actions, claims, proceedings or demands by any person (including those brought by third parties) in respect of any loss, damage or injury which may be brought against it, whether on their own or jointly with the Client and whether at common law, in equity or pursuant to statute or otherwise arising out of the Client's exercise of its rights under this Contract;

(b) all damages, costs and expenses incurred in defending or settling any such claim, proceeding or demand; and

(c) any liability or cost incurred by Pfizer as a result of any breach by the Client of any provision of this Contract.

9.6 This clause 8 shall survive expiration of this Contract.

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**10. CONTRACT**

- 10.1 The Contract forms the basis on which Pfizer supplies and sells the Services to the Client. Each such supply and sale shall be affected pursuant to the terms of the Contract (unless in any specific case agreed otherwise in writing). Any invoice or other document evidencing or describing any Services is incorporated into and forms part of the Contract.

**11. CONFLICT**

- 11.1 These terms and conditions are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Services, these terms and conditions of sale will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.

**12. GENERAL**

- 12.1 Any terms or conditions put forward by the purchaser, whether in a purchase order or otherwise, shall not be binding on Pfizer insofar as they purport to amend, annul or augment any of these terms and condition of sale unless specifically agreed in writing by Pfizer.

**13. WAIVER OR VARIATION**

- 13.1 If Pfizer exercises or fails to exercise any right or remedy available to it, this shall not prejudice Pfizer's rights in exercising that or any other right or remedy.
- 13.2 Pfizer reserves the right to vary or add to these terms and conditions of sale at any time without notice.

**14. NO ASSIGNMENT**

- 14.1 The Client must not transfer or assign its rights under the Contract to anyone else without Pfizer's prior consent in writing.

**15. LAW AND JURISDICTION**

- 15.1 The Contract shall in all aspects be deemed to be a contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand law, The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the Contract is accepted and acknowledged by the Client provided however that Pfizer shall be entitled to commence any action arising out of or in respect of the Contract in any other court.

**16. INTERPRETATION**

**"Amount Owning"** means the Contract Price, for the Services and any other costs, charges or amounts which Pfizer is entitled to charge the Client under the Contract.

**"Contract"** means these terms and conditions of sale themselves and any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Services.

**"Contract Price"** means the price of the Services as set out in Pfizer's invoice.

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“**Client**” means the person purchasing the Services from Pfizer pursuant to the Contract, including that person’s successors and assigns.

“**Services**” means the services provided to the Client by Pfizer in respect of Infovet.

References to Pfizer include Pfizer’s successors and assignees.

References to the Consumer Guarantees Act 1993 and Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.