

PEDIGREE WHOLESALE LIMITED - TERMS AND CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 8.1.

1 Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day - a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions - the terms and conditions set out in this document as amended from time to time in accordance with clause 11.8.

Contract - the contract between Pedigree Wholesale and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer - the person or firm who purchases the Goods from Pedigree Wholesale.

Force Majeure Event - has the meaning given in clause 9.1.

Goods - the goods (or any part of them) which Pedigree Wholesale agrees to sell to the Customer pursuant to these Conditions.

Pedigree Wholesale - Pedigree Wholesale Limited (registered in England and Wales with company number 01047681).

Order - the Customer's order for the Goods.

1.2 **Construction.** In these Conditions, the following rules apply:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5 A reference to writing or written includes faxes and email.

2 Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate. All Orders must comply with Pedigree Wholesale's minimum order value applicable from time to time as specified in Pedigree Wholesale's published price list.
- 2.3 The Order shall only be deemed to be accepted when Pedigree Wholesale issues a written acceptance of the Order, or if no such written acceptance is issued, when Pedigree Wholesale delivers the Goods or accepts payment for the Goods (whichever occurs earlier), at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Pedigree Wholesale which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Pedigree Wholesale and any descriptions or illustrations contained in Pedigree Wholesale's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between

Pedigree Wholesale and the Customer for the sale of any goods or services.

- 2.6 Neither a quotation for the Goods, nor the issuance of a price list, catalogue, brochure or other communication by Pedigree Wholesale shall constitute an offer and shall merely represent an invitation to the Customer to make an offer to purchase Goods.

3 Goods

- 3.1 The Goods are described in Pedigree Wholesale's price list and website.
- 3.2 Pedigree Wholesale reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 Delivery

- 4.1 Pedigree Wholesale shall deliver the Goods to such location as may be agreed by Pedigree Wholesale in writing or, where no such location is agreed, delivery shall take place at Pedigree Wholesale's premises (Delivery Location).
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Pedigree Wholesale shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Pedigree Wholesale with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 Pedigree Wholesale's total aggregate liability for failure to deliver Goods shall be limited to providing the Customer with a refund in respect of the price paid by the Customer (if any) for the Goods, plus 10% of the price of the Goods. Pedigree Wholesale shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Pedigree Wholesale with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to take or accept delivery of the Goods at the time when the Goods are delivered to the Delivery Location or, where delivery takes place at Pedigree Wholesale's premises, by 4pm on the third Business Day following the date on which Pedigree Wholesale informs the Customer that the Goods are ready for collection (Attempted Delivery Time), then:
 - 4.5.1 delivery of the Goods shall be deemed to have been completed at the Attempted Delivery Time; and
 - 4.5.2 Pedigree Wholesale shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 10 Business Days after the day on which Pedigree Wholesale notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Pedigree Wholesale may resell or otherwise dispose of part or all of the Goods.
- 4.7 Pedigree Wholesale may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8 If the Supplier delivers less than the quantity of Goods ordered, the Customer shall not be entitled to reject the delivery of Goods but rather Pedigree Wholesale shall make an adjustment to the invoice relating to the Order to deduct the portion of the price relating to the Goods not delivered (and issue a refund if the Goods not delivered have already been paid for) on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 Pallets on which Goods are delivered shall remain the property of Pedigree Wholesale. The Customer shall return pallets to Pedigree Wholesale at the Customer's cost. In the event that

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the Customer fails to return any pallets, Pedigree Wholesale may charge the Customer a fee of £5 per pallet.

5 Quality

5.1 Pedigree Wholesale warrants that on delivery the Goods shall:

5.1.1 conform in all material respects with their description; and

5.1.2 be free from material defects.

5.2 Subject to clause 5.2.1, if:

5.2.1 the Customer gives notice in writing to Pedigree Wholesale that some or all of the Goods do not comply with the warranty set out in clause 5.1, and such notice is given to Pedigree Wholesale: (i) within 2 days of delivery of the Goods where such non-conformity should have been reasonably apparent on delivery; or (ii) within 7 days of the date of discovery of such non-conformity where the non-conformity would not have been reasonably apparent on delivery;

5.2.2 Pedigree Wholesale is given a reasonable opportunity of examining such Goods;

5.2.3 the Customer (at Pedigree Wholesale's absolute discretion) either returns such Goods to Pedigree Wholesale's place of business at the Customer's cost, or, providing that a further order is raised for delivery on Pedigree Wholesale's own transport, makes such Goods available for collection by Pedigree Wholesale. In all circumstances, the Customer shall store such Goods and maintain them in the same condition that they were in when first delivered to the Customer, prior to such Goods being returned to, or collected by, Pedigree Wholesale; and

5.2.4 the Customer complies with any timescales and other terms stipulated on or enclosed with the Goods relating to returning the Goods including, without limitation, any timescales or other terms relevant to claiming under any warranty offered by the manufacturer of the Goods,

Pedigree Wholesale shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Pedigree Wholesale shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.1.1;

5.3.2 the defect arises because the Customer failed to follow Pedigree Wholesale's oral or written instructions as to the storage, transportation, or use of the Goods;

5.3.3 the defect arises as a result of Pedigree Wholesale following any drawing or specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of Pedigree Wholesale;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Pedigree Wholesale shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 Pedigree Wholesale may from time to time, and at Pedigree Wholesale's absolute discretion, agree to accept the return of Goods in circumstances other than those set out in clause 5.1.1, but such agreement may be subject to the Customer agreeing to pay Pedigree Wholesale a re-stocking or administration fee, as applicable from time to time as specified in Pedigree Wholesale's published price list, to take account of costs incurred by Pedigree Wholesale in accepting the return.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Pedigree Wholesale.

6 Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Pedigree Wholesale has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 all other sums which are or become due to Pedigree Wholesale in respect of any other Goods or products sold to the Customer.

6.2.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.2.4 hold the Goods on a fiduciary basis as Pedigree Wholesale's bailee;

6.2.5 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Pedigree Wholesale's property;

6.2.6 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.2.7 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.2.8 notify Pedigree Wholesale immediately if it becomes subject to any of the events listed in clause 8.2; and

6.2.9 give Pedigree Wholesale such information relating to the Goods as Pedigree Wholesale may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Pedigree Wholesale reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Pedigree Wholesale may have, Pedigree Wholesale may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 Price and payment

7.1 The price of the Goods shall be the price set out in Pedigree Wholesale's website or published price list in force from time to time.

7.2 Following Pedigree Wholesale's acceptance of an Order, Pedigree Wholesale may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond Pedigree Wholesale's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

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- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Pedigree Wholesale adequate or accurate information or instructions.
- 7.3 Unless otherwise agreed in writing, or specified in our published price list, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer. Pedigree Wholesale may agree to supply the Goods inclusive of packaging, insurance and transport, subject to the value of Order meeting Pedigree Wholesale's minimum order values in force from time to time.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from Pedigree Wholesale, pay to Pedigree Wholesale such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 Pedigree Wholesale may invoice the Customer for the Goods on or at any time after receipt of an Order.
- 7.6 Unless otherwise agreed by Pedigree Wholesale in writing the Customer shall pay for the Goods on or before delivery. Where Pedigree Wholesale agrees in writing that the Customer may pay for the Goods after delivery, the Customer shall pay for the Goods within 14 days of the date of Pedigree Wholesale's invoice, or within such other time period as may be specified by Pedigree Wholesale in writing. Payment shall be made to the bank account nominated in writing by Pedigree Wholesale. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to Pedigree Wholesale under the Contract by the due date for payment, then Pedigree Wholesale may charge interest on the overdue amount at the rate of 8% per annum above the Official Bank Rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest and any additional administration charges (set out in clause 7.8 below) together with the overdue amount.
- 7.8 Where applicable, Pedigree Wholesale shall be entitled to charge the Customer the following additional administration fees in relation to late payment or non-payment: (i) £25 in respect of each dishonoured cheque; (ii) £10 in respect of any payment which fails to be processed due to the Customer cancelling a Direct Debit instruction; (iii) £10 where payment is overdue and Pedigree Wholesale has requested payment from the Customer on two or more occasions; and (iv) an amount equal to the costs actually incurred by Pedigree Wholesale in the event that Pedigree Wholesale instructs a third party debt collection agency, or other third party, to recover the debt.
- 7.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Pedigree Wholesale may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Pedigree Wholesale to the Customer.
- ## 8 Termination
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Pedigree Wholesale reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Pedigree Wholesale, Pedigree Wholesale may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Pedigree Wholesale without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Customer fails to pay any sum due under the Contract by its due date for payment;
- 8.2.2 the Customer becomes, or in Pedigree Wholesale's opinion is likely to become, insolvent;
- 8.2.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 8.2.4 the Customer's financial position deteriorates to such an extent that in Pedigree Wholesale's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 8.2.5 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- ## 9 Limitation of liability
- 9.1 Nothing in these Conditions shall limit or exclude Pedigree Wholesale's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matter in respect of which it would be unlawful for Pedigree Wholesale to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 Pedigree Wholesale shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise howsoever arising, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 Pedigree Wholesale's total aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise howsoever arising, shall in no circumstances exceed 125% of the price of the Goods.
- ## 10 Force majeure
- 10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

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11 General

- 11.1 **Medicinal Goods.** Where these Conditions permit the Customer to return the Goods to Pedigree Wholesale, the Customer shall return any Goods falling within any of the following categories within seven days of the date on which the Goods were delivered to the Customer in order to comply with the Veterinary Medicines Regulations: (i) Authorised Veterinary Medicine - General Sales List (AVM-GSL); (ii) Non-food Animal - Veterinarian, Pharmacist, Suitably Qualified Person (NFA-VPS); and (iii) Exemption Scheme for Small Pet Animals (Schedule 6 products).
- 11.2 **Goods requiring a licence.** The Customer warrants that it holds any and all necessary licences, authorisations and consents, which it may be required by law to hold in relation to the Goods.
- 11.3 **Assignment and other dealings.**
- 11.3.1 Pedigree Wholesale may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.3.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Pedigree Wholesale.
- 11.4 **Notices.**
- 11.4.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.
- 11.4.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.4.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 11.4.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.5 **Severance.**
- 11.5.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.5.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Pedigree Wholesale.
- 11.9 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).