

Y Magit and H Marget T/A East Bentleigh Dental Group – Terms & Conditions of Trade

1. Definitions

- 1.1 "Dentist" means Y Magit and H Marget T/A East Bentleigh Dental Group its successors and assigns or any person acting on behalf of and with the authority of Y Magit and H Marget T/A East Bentleigh Dental Group.
- 1.2 "Patient" means the person/s requesting the Dentist to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Incidental Items" means any goods or materials supplied, consumed, created or deposited incidentally by the Dentist in the course of conducting, or supplying to the Patient, any Services.
- 1.4 "Services" means all Services supplied by the Dentist to the Patient at the Patient's request from time to time.
- 1.5 "Price" means the price payable for the Services as agreed between the Dentist and the Patient in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 The Patient is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Patient places an order for, or accepts Services provided by the Dentist.
- 2.2 These terms and conditions may only be amended with the Dentist's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Patient and the Dentist.
- 2.3 The Patient undertakes to give the Dentist at least fourteen (14) days notice of any change in the Patient's name, address and/or any other change in the Patient's details.

3. Price and Payment

- 3.1 At the Dentist's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Dentist to the Patient; or
 - (b) the Dentist's quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 3.2 The Dentist reserves the right to change the Price if a variation to the Dentist's quotation is requested or where the variation is due to increase to the Dentist in the costs of materials and/or labour which are beyond the Dentist's reasonable control.
- 3.3 At the Dentist's sole discretion a non-refundable deposit may be required.
- 3.4 Time for payment for the Services being of the essence, the Price will be payable by the Patient on the date/s determined by the Dentist, which may be:
 - (a) on the day of treatment; or
 - (b) before treatment; or
 - (c) by way of instalments in accordance with the Dentist's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Patient by the Dentist.
- 3.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Patient and the Dentist.
- 3.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Patient must pay to the Dentist an amount equal to any GST the Dentist must pay for any supply by the Dentist under this or any other agreement for providing the Dentist's Services. The Patient must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Patient pays the Price. In addition the Patient must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery of Services

- 4.1 The Dentist may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.2 Any time specified by the Dentist for delivery of the Services is an estimate only and the Dentist will not be liable for any loss or damage incurred by the Patient as a result of failure by the Dentist to deliver the Services promptly or at all. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties.

5. Risk

- 5.1 Irrespective of whether the Dentist retains ownership of any Incidental Items all risk for such items shall pass to the Patient as soon as such items are delivered to the Patient and shall remain with the Patient until such time as the Dentist may repossess the Incidental Items.

6. Title

- 6.1 The Dentist and the Patient agree that where it is intended that the ownership of Incidental Items is to pass to the Patient that such ownership shall not pass until:
 - (a) the Patient has paid the Dentist all amounts owing for the Services; and
 - (b) the Patient has met all other obligations due by the Patient to the Dentist in respect of all contracts between the Dentist and the Patient.
- 6.2 Receipt by the Dentist of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Dentist's ownership or rights in respect of the Incidental Items shall continue.
- 6.3 It is further agreed that:
 - (a) the Patient is only a bailee of the Incidental Items and must return the Incidental Items to the Dentist immediately upon request by the Dentist;
 - (b) the Patient holds the benefit of the Patient's insurance of the Incidental Items on trust for the Dentist and must pay to the Dentist the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Patient must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Patient sells, disposes or parts with possession of the Incidental Items then the Patient must hold the proceeds of sale of the Incidental Items on trust for the Dentist and must pay or deliver the proceeds to the Dentist on demand.
 - (d) the Patient should not convert or process the Incidental Items or intermix them with other goods, but if the Patient does so then the Patient holds the resulting product on trust for the benefit of the Dentist and must dispose of or return the resulting product to the Dentist so directly.
 - (e) the Patient shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Dentist;
 - (f) the Patient irrevocably authorises the Dentist to enter any premises where the Dentist believes the Incidental Items are kept and recover possession of the Incidental Items.

7. Personal Property Securities Act 2009 ("PPSA")

- 7.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 7.2 Upon assenting to these terms and conditions in writing the Patient acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Incidental Items that have previously been supplied and that will be supplied in the future by the Dentist to the Patient.
- 7.3 The Patient undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Dentist may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Dentist for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Dentist;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of the Dentist.
- 7.4 The Dentist and the Patient agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 7.5 The Patient waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 7.6 The Patient waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by the Dentist, the Patient waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Patient must unconditionally ratify any actions taken by the Dentist under clauses 7.3 to 7.5.
- 7.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

8. Security and Charge

- 8.1 In consideration of the Dentist agreeing to supply Services, the Patient charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Patient either now or in the future, to secure the performance by the Patient of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.2 The Patient indemnifies the Dentist from and against all the Dentist's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Dentist's rights under this clause.
- 8.3 The Patient irrevocably appoints the Dentist and each director of the Dentist as the Patient's true and lawful attorney/s to perform any necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Patient's behalf.

9. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 9.1 The Patient must inspect the Dentist's Services on completion of the Services and must within seven (7) days notify the Dentist in writing of any evident defect in the Services or Incidental Items provided (including the Dentist's workmanship) or of any other failure by the Dentist to comply with the description of, or quote for, the Services which the Dentist was to supply. The Patient must notify any other alleged defect in the Dentist's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Patient must allow the Dentist to review the Services or Incidental Items that were provided.

- 9.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 9.3 The Dentist acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

- 9.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Dentist makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Dentist's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 9.5 If the Patient is a consumer within the meaning of the CCA, the Dentist's liability is limited to the extent permitted by section 64A of Schedule 2.
- 9.6 If the Dentist is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Dentist may refund any money the Patient has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Patient which were not defective.
- 9.7 Subject to this clause 9, returns will only be accepted provided that:
 - (a) the Patient has complied with the provisions of clause 9.1; and
 - (b) the Dentist has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Patient's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 9.8 If the Patient is not a consumer within the meaning of the CCA, the Dentist's liability for any defective Services or Incidental Items is:
 - (a) limited to the value of any express warranty or warranty card provided to the Patient by the Dentist at the Dentist's sole discretion;
 - (b) otherwise negated absolutely.
- 9.9 Notwithstanding clauses 9.1 to 9.7 but subject to the CCA, the Dentist shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Patient failing to properly maintain or store any Incidental Items;
 - (b) the Patient using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Patient continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Patient or any third party without the Dentist's prior approval;
 - (e) the Patient failing to follow any instructions or guidelines provided by the Dentist;
 - (f) fair wear and tear, any accident, or act of God.

10. Default and Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Dentist's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 If the Patient owes the Dentist any money the Patient shall indemnify the Dentist from and against all costs and disbursements incurred by the Dentist in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Dentist's collection agency costs, and bank dishonour fees).
- 10.3 Without prejudice to any other remedies the Dentist may have, if at any time the Patient is in breach of any obligation (including those relating to payment) under these terms and conditions the Dentist may suspend or terminate the supply of Services to the Patient. The Dentist will not be liable to the Patient for any loss or damage the Patient suffers because the Dentist has exercised its rights under this clause.
- 10.4 Without prejudice to the Dentist's other remedies at law the Dentist shall be entitled to cancel all or any part of any order of the Patient which remains unfulfilled and all amounts owing to the Dentist shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Dentist becomes overdue, or in the Dentist's opinion the Patient will be unable to make a payment when it falls due;
 - (b) the Patient becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Patient or any asset of the Patient.

11. Cancellation

- 11.1 The Dentist may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Patient. On giving such notice the Dentist shall repay to the Patient any money paid by the Patient for the Services. The Dentist shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 In the event that the Patient cancels delivery of the Services the Patient shall be liable for any and all loss incurred (whether direct or indirect) by the Dentist as a direct result of the cancellation (including, but not limited to, any loss of profits).

12. Privacy Act 1988

- 12.1 The Patient agrees for the Dentist to obtain from a credit reporting agency a credit report containing personal credit information about the Patient in relation to credit provided by the Dentist.
- 12.2 The Patient agrees that the Dentist may exchange information about the Patient with those credit providers either named as trade referees by the Patient or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Patient; and/or
 - (b) to notify other credit providers of a default by the Patient; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Patient is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Patient.
13. The Patient understands that the information exchanged can include anything about the Patient's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.1 The Patient consents to the Dentist being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.2 The Patient agrees that personal credit information provided may be used and retained by the Dentist for the following purposes (and for other purposes as shall be agreed between the Patient and Dentist or required by law from time to time):
 - (a) the provision of Services; and/or
 - (b) the marketing of Services by the Dentist, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Patient's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Patient; and/or
 - (e) enabling the daily operation of Patient's account and/or the collection of amounts outstanding in the Patient's account in relation to the Services.
- 13.3 The Dentist may give information about the Patient to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Patient;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Patient.
- 13.4 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Patient's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Patient's application for credit or commercial credit and the amount requested;
 - (c) advice that the Dentist is a current credit provider to the Patient;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Patient's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Dentist, the Patient has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Patient's credit obligations);
 - (g) advice that cheques drawn by the Patient for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Patient by the Dentist has been paid or otherwise discharged.

14. General

- 14.1 The failure by the Dentist to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Dentist's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, operability and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Dentist has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 14.2 Subject to clause 9 the Dentist shall be under no liability whatsoever to the Patient for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Patient arising out of a breach by the Dentist of these terms and conditions (alternatively the Dentist's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 14.3 The Patient shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Patient by the Dentist nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.4 The Dentist may license or sub-contract all or any part of its rights and obligations without the Patient's consent.
- 14.5 The Patient agrees that the Dentist may amend these terms and conditions at any time. If the Dentist makes a change to these terms and conditions, then that change will take effect from the date on which the Dentist notifies the Patient of such change. The Patient will be taken to have accepted such changes if the Patient makes a further request for the Dentist to provide Services to the Patient.
- 14.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.