

Portrush Family Dental Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Dentist" shall mean Portrush Family Dental Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Portrush Family Dental Pty Ltd.
- 1.2 "Patient" shall mean the Patient (or any person acting on behalf of and with the authority of the Patient) as described on any quotation, work authorisation or other form as provided by the Dentist to the Patient.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Patient on a principal debtor basis.
- 1.4 "Treatments" shall mean all Treatments provided by the Dentist to the Patient as described on the invoices, quotation (hereafter specified as Treatment Plan), or any other forms that are provided by the Dentist to the Patient (and shall include the incidental supply of goods or services provided as part of the treatments undertaken, or any advice or recommendations given by the Dentist to the Patient).
- 1.5 "Goods" shall mean all Goods provided by the Dentist to the Patient whether provided prior to, subsequent to, or as part of the actual provision of any Treatments.
- 1.6 "Fee" shall mean the cost of the Treatments as agreed between the Dentist and the Patient in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Patient acquires Treatments as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 3. Acceptance**
- 3.1 Any instructions received by the Dentist from the Patient for the provision of Treatments (including the making of an appointment with the Dentist) and/or the Patient's acceptance of Treatments provided by the Dentist shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one person has entered into this agreement, each person shall be jointly and severally liable for all payments of the Fee.
- 3.3 Upon acceptance of these terms and conditions by the Patient the terms and conditions are binding and can only be amended with the written consent of the Dentist.
- 3.4 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, the patient shall be liable for any losses or costs incurred by the Dentist as a result of the Patient's failure to comply with this clause.
- 4. Fee and Payment**
- 4.1 At the Dentist's sole discretion the Fee shall be either:
- (a) as indicated on invoices provided by the Dentist to the Patient in respect of Treatments provided; or
- (b) the Dentist's specified Fee as applicable to the individual Treatment Plan offered to and accepted by, or on the behalf of, the Patient. All Treatment Plans offers are only valid for seven (7) days from the date when they are first offered to the Patient.
- 4.2 The Patient acknowledges that the Dentist shall be entitled to vary the Dentist's Fee where the Patient requests any change to the Treatments which are to be provided by the Dentist, or where the Dentist is required to revise the Fee due to circumstances beyond the reasonable control of the Dentist (in which event the Dentist undertakes to immediately advise the Patient revised Fees before the provision of any further treatment(s)).
- 4.3 The Dentist requires payment on the day of treatment (subject to clause 4.4).
- 4.4 Notwithstanding clause 4.3 the Dentist may under special circumstances (and only where arranged in advance) agree to payments being made in accordance with a specified payment schedule.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Fee), or by any other method as agreed to between the Patient and the Dentist.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Fee except when they are expressly included in the Fee.
- 4.7 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 this contract, and the Goods, shall continue.
- 5. Provision of the Treatments**
- 5.1 The Dentist may provide the Treatments by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.2 The failure of the Dentist to complete the Treatments shall not entitle either party to treat this contract as repudiated.
- 5.3 The Dentist shall not be liable for any loss or damage whatsoever due to failure by the Dentist to provide the Treatments (or any part of them) promptly or at all where due to circumstances beyond the control of the Dentist.
- 6. Risk**
- 6.1 The risk in all Goods supplied (whether supplied separately or as part of any treatment) shall pass to the Patient immediately they have been supplied to the Patient and it shall be the Patient's responsibility to ensure they are insured adequately or at all.
- 7. Errors and Omissions**
- 7.1 The Patient shall within seven (7) days of the provision of Goods or Treatments (time being of the essence) notify the Dentist of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Patient shall afford the Dentist an opportunity to inspect the Goods/Treatments within a reasonable time following such notification if the Patient believes the Goods/Treatments are defective in any way. If the Patient shall fail to comply with these provisions, the Goods/Treatments shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Treatments, which the Dentist has agreed in writing that the Patient is entitled to reject, the Dentist's liability is limited to either (at the Dentist's discretion) replacing the Treatments or rectifying the Treatments, except where the Patient has acquired Treatments as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase Fee of the Treatments, or rectification of the Treatments, or replacement of the Treatments.
- 7.2 Goods will not be accepted for return other than in accordance with 7.1 above.
- 8. Default and Consequences of Default**
- 8.1 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.
- 8.2 In the event that the Patient's payment is dishonoured for any reason the Patient shall be liable for any dishonour fees incurred by the Dentist.
- 8.3 If the Patient defaults in payment of any invoice when due, the Patient shall indemnify the Dentist from and against all costs and disbursements incurred by the Dentist in pursuing the debt including legal costs on a solicitor and own client basis and the Dentist's collection agency costs.
- 8.4 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), the Dentist may suspend or terminate the provision of Treatments to the Patient and any of its other obligations under the terms and conditions. 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.
- 8.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 8.6 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 in the event that:
- (a) any money payable to the Dentist becomes overdue, or in the Dentist's opinion the Patient will be unable to meet its payments as they fall due; or
- (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.
- 9. Cancellation**
- 9.1 The Dentist may cancel any contract to which these terms and conditions apply or cancel the provision of the Treatments at any time by giving notice to the Patient. On giving such notice the Dentist shall repay to the Patient any sums already paid to the Dentist in respect of the Fee, less any amount owing by the Patient to the Dentist for Treatments already provided. The Dentist shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 The Dentist requires no less than twenty-four (24) hours notice that the Patient wishes to either cancel or reschedule an appointment (such notice shall not be accepted if given on weekends or public holidays). In the event that the Patient wishes to cancel the provision of Treatments after Treatments by the Dentist have already commenced then the Patient shall be liable to pay the Dentist for all Treatments already provided (including any loss of profits).
- 10. Privacy Act 1988**
- 10.1 The Patient and/or the Guarantor/s (herein referred to as the Patient) agree 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.
- 10.2 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.
- 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.
- 10.3 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).
- 10.4 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 Treatments; and/or
- (b) the marketing of Treatments 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 Treatments; 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 Treatments.
- 10.5 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.
- 10.6 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.
- 11. General**
- 11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.
- 11.3 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.
- 11.4 In the event of any breach of this contract by the Dentist the remedies of the Patient shall be limited to damages which under no circumstances shall exceed the Fee.
- 11.5 The Patient shall not be entitled to set off against, or deduct from the Fee, 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.
- 11.6 The Dentist reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any 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 shall be under no obligation to accept such changes except where the Dentist provides further Treatments to the Patient and the Patient accepts such Treatments.
- 11.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, or storm.
- 11.8 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.