



HERSHEY PTY LTD
ACN NUMBER 618 448 712
TRADING AS FURBABY RETREAT
398 FITZGERALD STREET, NORTH PERTH WA 6006
0411 490 156
bookings@furbabyretreat.com.au
www.furbabyretreat.com.au

TERMS AND CONDITIONS OF SERVICES AND GOODS

All Services rendered and Goods provided to the Owner by Furbaby Retreat are subject to the following General Terms and Conditions, which form part of the Order.

1. DEFINITIONS AND INTERPRETATION

1.1. In these General Terms and Conditions, unless otherwise required:

'Additional Fees' means additional fees payable by the Owner to Furbaby Retreat as set out in clauses 4.7, 5.4, 8.3, 9.2, 9.3 and 9.4;

'Agreement' means the agreement for the provision of Services and Goods by Furbaby Retreat to the Owner, and comprises the Order, any invoices and these General Terms and Conditions;

'Allocated Time' means the time allocated for either Drop-off or Collection as set out in the Order;

'Animal' means the animal of the Owner;

'Business Day' means a day that is not a Saturday, Sunday or public holiday in Western Australia;

'Collection' means collection of the Animal by the Owner from Furbaby Retreat's Premises;

'Commencement Date' means the first day of the Term;

'Day' means a calendar day.

'Dispute' means a dispute between the Parties arising out of or in connection with this Agreement;

'Dispute Notice' means a notice issued by one Party to the other Party under clause 17.2 notifying the other Party that there is a Dispute to be resolved;

'Drop-off' means the drop-off of the Animal by the Owner at Furbaby Retreat's Premises;

'End Date' means the last day of the Term;

'Event of Default' means an event of default within the meaning of clause 13.1;

'Fees' means the fees paid or fees payable by the Owner to Furbaby Retreat for provision of the Goods and Services as set out in the Order or as agreed between the Parties;

'Furbaby Retreat' means Hershey Pty Ltd (ACN 618 448 712) trading as Furbaby Retreat of 398 Fitzgerald Road, North Perth WA 6006, and its successors and assigns.

'Furbaby Retreat's Premises' means the premises at 398 Fitzgerald Road, North Perth WA 6006, or such other premises as Furbaby Retreat may specify in writing for the purpose;

'General Terms and Conditions' means these terms and conditions as supplemented or varied from time to time;

'Goods' means the goods provided by Furbaby Retreat to the Owner at the Owner's request;

'Loss' means:

- (a) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
- (b) liability;
- (c) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
- (d) cost or expense including legal costs on a full indemnity basis;

'Night' means from dusk the one day to dawn the next day;

'Nomination' means a nomination to have a mediator appointed within the terms of clause 17.3;

'Order' means the order placed, either online, telephonically or in person, by the Owner with Furbaby Retreat for the provision of the Goods and Services;

'Owner' means the owner of the Animal with whom Furbaby Retreat makes the Agreement;

'Parties' means the Owner and Furbaby Retreat, and **'Party'** means either of them;

'Services' means the services provided by Furbaby Retreat to the Owner at the Owner's request, which includes housing, feeding and exercising the Animal and providing the Animal with drinking water and administering any required medication;

'Term' means the term as set out in the Order or as agreed in writing between the Parties; and

'Termination Date' means the date of expiry of the Term or earlier termination of the Agreement.

1.2. In these General Terms and Conditions:

- (a) the singular includes the plural and *vice versa*; and
- (b) terms cognate with defined terms have corresponding meanings.

2. AGREEMENT FOR GOODS AND SERVICES

- 2.1. The Agreement will only become legally binding on the Parties once the Owner places the Order, payment for the Fees have cleared into Furbaby Retreat's nominated bank account and the Owner accepts these General Terms and Conditions.
- 2.2. In the event of any inconsistencies, the documents comprised in this Agreement will take precedence in the following order: these General Terms and Conditions, the Order and any invoices provided by Furbaby Retreat to the Owner.
- 2.3. If for whatever reason the Owner does not accept these General Terms and Conditions, the Owner is deemed to have accepted these General Terms and Conditions by virtue of the Drop-off.
- 2.4. Upon the Agreement becoming binding, Furbaby Retreat agrees to deliver the Goods and Services to the Owner, and the Owner agrees to pay the Fees and the Additional Fees and fulfil all the Owner's obligations for the Term on the terms and conditions contained in the Agreement and these General Terms and Conditions.

3. TERM

- 3.1. Subject to clause 13, the Term is specified in the Order and may be extended or varied from time to time by agreement in writing between the Parties.
- 3.2. In no case will the Term be less than 2 Nights.

4. FEES

- 4.1. The Fees are charged per Night, are calculated in accordance with the Schedule of Fees and are set out in the Order.
- 4.2. Furbaby Retreat has the right to revise the Schedule of Fees at its absolute discretion and without any notice.
- 4.3. The Fees will be charged at the date of the Order and must be paid to Furbaby Retreat in full prior to Drop-off.
- 4.4. The Owner must pay all Additional Fees before Furbaby Retreat will allow for Collection.
- 4.5. All Fees and Additional Fees that remain unpaid after ten (10) Business Days will be passed on to a Furbaby Retreat debt collection agency.
- 4.6. The Owner is not entitled to any refunds or credit in the event of the collection of the Animal prior to the End Date.

5. DROP-OFF AND COLLECTION

- 5.1. The Owner is responsible for Drop-off on the Commencement Date and Collection on the End Date within the Allocated Time.
- 5.2. If the Owner cannot honour the Allocated Time for Drop-off, then the Owner will contact Furbaby Retreat and reschedule an agreed time.
- 5.3. If the Owner cannot honour the Allocated Time for Collection, then the Owner must give Furbaby one (1) Day notice in order to reschedule an agreed time.
- 5.4. Any arrangement for Drop-off and / or Collection outside the Allocated Time, will be at Furbaby Retreat's absolute discretion and additional charges may apply.

6. INSPECTION AND WARRANTIES

6.1. Inspection of Furbaby Retreat's Premises

If requested by the Owner, the Owner and a representative of Furbaby Retreat will conduct a joint inspection of Furbaby Retreat's Premises and upon Drop-off, the Owner is deemed to be satisfied with the quality, safety and suitability of Furbaby Retreat's Premises for provision of the Services and Goods.

6.2. Warranties by the Owner

The Owner warrants to Furbaby Retreat that:

- (a) he / she is the owner of the Animal, that all information he / she has provided in respect of the Animal is true, accurate and up to date and that he / she is authorised to enter into the Agreement;
- (b) the Animal has been fully vaccinated with an annual booster of F3 (minimum) at least two (2) weeks prior to the Term and that he / she will provide Furbaby Retreat with a veterinary certificate to show compliance with this clause;
- (c) the Animal is up to date with its flea, tick and worm prevention treatments;
- (d) he / she has and will disclose all relevant information regarding the health, illnesses, conditions and / or problems that the Animal might suffer from; and
- (e) he / she has and will disclose and provide any special care instructions for the Animal for its stay during the Term.

7. OWNER'S OBLIGATIONS

- 7.1. The Owner must pay the Fees and Additional Fees to Furbaby Retreat in full and without any deductions or set-off of any kind.
- 7.2. The Owner will ensure that the Animal is kept in an escape proof carry cage at Drop-Off.
- 7.3. At all times, the Owner will treat Furbaby Retreat staff, employees and representatives in a friendly and courteous manner.
- 7.4. The Owner must provide Furbaby Retreat with all the Animal's required medication for the duration of the Term, which medication must be labelled with the Owner's surname and the name of the Animal, along with written instructions for administering the medication.
- 7.5. The owner must provide Furbaby Retreat with an emergency contact name and number when placing the Order.
- 7.6. Should the Owner provide food and / or treats for the Animal, such food and /or treats must be labelled with the Owner's surname and the name of the Animal.

8. FURBABY RETREAT'S RIGHTS

- 8.1. Furbaby Retreat may request and receive any information from any veterinarian or veterinary clinic regarding the care, health and treatment of the Animal.
- 8.2. Furbaby Retreat may refuse entry of any Owner or Animal at Furbaby Retreat's Premises.
- 8.3. If the Owner has not collected the Animal within fourteen (14) Days from the End Date, Furbaby Retreat may at its absolute discretion make arrangements regarding the treatment, care, relocation and / or housing of the Animal, which costs shall be borne by the Owner.
- 8.4. Furbaby Retreat is authorised by the Owner the use photographs and images of the Animal on the Furbaby Retreat website, Furbaby Retreat social media and any Furbaby Retreat hard copy marketing material.

9. HEALTH AND CARE

- 9.1 The Owner acknowledges that Furbaby Retreat employees, staff, contractors and representatives are not qualified veterinarians and, as a result, are not qualified to diagnose latent health and medical issues that the Animal might experience or provide specialist care that the Animal may require.
- 9.2 If the Animal's flea, tick and / or worm prevention treatments expire during the Term, Furbaby Retreat is entitled to re-apply or re-administer such treatments, which costs shall be borne by the Owner.
- 9.3 If worms, fleas and / or special needs for the Animal are detected during the Term, Furbaby Retreat is entitled to treat the Animal accordingly and such costs shall be borne by the Owner.
- 9.4 Should the Animal require any veterinarian services, surgery or treatment, Furbaby Retreat may arrange, at its discretion, for such services, surgery or treatment (including the administration of anaesthetic by a qualified veterinary surgeon), which costs shall be borne by the Owner. In such event Furbaby Retreat will attempt to contact the Owner prior to the services, surgery or treatment if it is reasonably possible.

10. LIEN

- 10.1. Upon entering into this Agreement, a *lien* is created over the Animal in favour of Furbaby Retreat.
- 10.2. The *lien* created in clause 10.1 will only be discharged and the Animal will only be released by Furbaby Retreat to the Owner once the Owner has complied with all of his / her obligations set out in this Agreement, including payment of the Fees and the Additional Fees.

11. CANCELLATION OF ORDER

- 11.1. At Furbaby Retreat's absolute discretion, the Owner will be entitled to the following refunds in the event of cancellations of the Order:
- (a) 90% of the Fees in the event of cancellation six (6) or more Days of the Commencement Date; or
 - (b) 25% of the Fees in the event of less than six (6) Days of the Commencement Date.
- 11.2. In the event of an emergency, Furbaby Retreat may, at its absolute discretion, refund the Owner on the following conditions:
- (a) the owner emailing bookings@furbabyretreat.com.au; and
 - (b) the Owner providing Furbaby Retreat with written evidence of the emergency (e.g. letter from a doctor or veterinarian, etc.)

12. LIABILITY AND INDEMNITY

- 12.1 The Owner is solely responsible for the behaviour of the Animal for the Term and indemnifies Furbaby Retreat for any claims, Loss or damage arising from the acts or behaviour of the Animal.
- 12.2 The Owner indemnifies Furbaby Retreat for all costs and charges associated with all veterinarian costs incurred during the Term. Furbaby Retreat will, where possible, do all that is reasonable to contact the Owner before veterinarian treatment is sought.
- 12.3 The Owner indemnifies Furbaby Retreat for the Additional Fees and any and all other additional costs and charges incurred by Furbaby Retreat during the Term.
- 12.4 Furbaby Retreat and its employees, staff, contractors or representatives will not be liable for any Loss or any items damaged, destroyed, left behind or otherwise lost at Furbaby Retreat's Premises during the Term.
- 12.5 Furbaby Retreat and its employees, staff, contractors or representatives will not be liable for any paralysis tick, cat flu, illness, fleas, injury, death, loss or damage of any kind that may

occur to the Animal during the Term either at Furbaby Retreat's Premises, in-transit of the Animal or at any veterinary clinic.

13. DEFAULT AND TERMINATION

13.1. Events of default

Each of the following events is an Event of Default, namely:

- (a) if the Owner fails to pay the Fees and Additional Fees on the due date for payment thereof and such failure continues after notification of such by Furbaby Retreat to the Owner for more than three (3) Business Days; or
- (b) if the Owner fails to perform or observe any of the covenants or provisions of the Agreement and (if capable of remedy) such default continues for more than seven (7) Business Days after notice from Furbaby Retreat requiring the Owner to remedy the same.

13.2. Consequences of default

If an Event of Default occurs, Furbaby Retreat may at its option do any one or more of the following, namely:

- (a) terminate the Agreement by notice in writing to the Owner;
- (b) take such court action as it considers appropriate, whether to enforce performance by the Owner or otherwise; and
- (c) recover damages for the breach concerned.

If the Owner defaults in payment and leads to an Event of Default under clause 13.1(a), the Owner shall indemnify Furbaby Retreat from and against all costs and disbursements incurred by Furbaby Retreat in pursuing the debt including legal costs (on a solicitor and own client basis) and Furbaby Retreat's debt recovery costs (in addition to Furbaby Retreat's other remedies available in this clause 13.2).

13.3. Termination by Furbaby Retreat

Furbaby Retreat may terminate this Agreement at any time and for any reason. Furbaby Retreat will give the Owner two (2) Days' written notice of termination.

14. SEVERABILITY AND SURVIVAL OF COVENANTS

If any provision of the Agreement is or at any time becomes void or unenforceable, the remaining provisions will continue in full force and effect, and the Parties agree that they will amend the Agreement forthwith so that such void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which, so far as possible, achieves the same economic benefit or burden for Parties as the unlawful or unenforceable provision was intended to achieve.

15. WAIVER

- 15.1. No failure or delay on the part of Furbaby Retreat to exercise any power or right operates as a waiver of that power or right, and no single or partial exercise of any power or right precludes any other or further exercise of that power or right.
- 15.2. Furbaby Retreat will only be taken to have waived a power or right under the Agreement, including without limitation a right in respect of an Event of Default, to the extent that the power or right has been expressly waived in writing by Furbaby Retreat and irrespective of any previous waiver of any other breach of the same or any other covenant or provision of the Agreement.

16. NOTICES

Any notice, invoice or document relating to the Agreement will be deemed to be served:

- (a) on the second Business Day after the date on which it was posted – if sent by ordinary pre-paid post addressed to the Owner;

- (b) on the day on which it was sent – if it is sent:
 - (i) by facsimile transmission before or during normal business hours on a Business Day, and a receipt of successful transmission is produced to that effect; or
 - (ii) by email transmission before or during normal business hours on a Business Day; or
- (c) on the next Business Day following the day on which it was sent – if it is sent:
 - (i) by facsimile transmission after normal business hours on a Business Day or on a day other than a Business Day, and a receipt of successful transmission is produced to that effect; or
 - (ii) by email transmission after normal business hours on a Business Day or on a day other than a Business Day.

17. DISPUTE RESOLUTION

- 17.1. Other than in respect of matters requiring urgent injunctive relief, the Parties will use their best endeavours to settle amicably, by negotiation, any Dispute which arises.
- 17.2. If the Parties cannot settle the Dispute by negotiation in a reasonable time, either Party may issue to the other Party a Dispute Notice indicating that there is a Dispute to be resolved in accordance with the following provisions of this clause.
- 17.3. If the Dispute cannot be settled within 21 days of issuance of the Dispute Notice, either Party may make a Nomination in writing within 14 days of that date to have a mediator appointed for the purpose of conducting a mediation of the Dispute in Perth, Western Australia, such mediator to be independent of the Parties and, if the Parties cannot agree on a mediator within 14 days of the Nomination, the mediator will be a person appointed by the Chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or his or her nominee.
- 17.4. The mediation will be governed by the 'Institute of Arbitrators & Mediators' Australian Mediation and Conciliation Rules or any replacement rules from time to time.

18. FORCE MAJEURE

- 18.1. If in the event of Force Majeure, either Party becomes unable to fulfil the requirements of this order in whole or in part, or is delayed:
 - (a) The Party affected must give immediate notice to other affected Party. Notice must identify details of the event of Force Majeure; establish which requirements have been affected and the estimated delay in meeting requirements of this order.
 - (b) The requirements affected will be suspended, but only for as long as those requirements are affected by the event of force majeure.

- (c) The Party affected by the event of force majeure must move to overcome or remove the impact of the event from affecting the requirements of this order and minimise any subsequent delay to the best of the Party's ability.

19. GENERAL

- 19.1. The Agreement will be construed in accordance with the laws of Western Australia, and the Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal therefrom.
- 19.2. If any provision of the Agreement or these Terms and Conditions is invalid, void, illegal or unenforceable then that provision is severed to the minimum extent required by the law and the validity, existence, legality and enforceability of the remaining provisions are not affected, prejudiced or impaired.
- 19.3. Furbaby Retreat is under no liability whatsoever to the Owner for any Loss suffered by the Owner arising out of a breach by Furbaby Retreat of the Agreement or these Terms and Conditions.
- 19.4. In the event of any breach of the Agreement or these Terms and Conditions by Furbaby Retreat, the remedies of the Owner is limited to damages which under no circumstances will exceed the Fees.
- 19.5. The Owner is not entitled to set-off against or deduct from the Fees or Additional Fees any sums owed or claimed to be owed to the Owner by Furbaby Retreat.
- 19.6. Furbaby Retreat reserves the right to review the Agreement or these Terms and Conditions at any time. If, following any such review, there is to be any change to the Agreement or these Terms and Conditions, then that change takes effect from the date on which Furbaby Retreat informs the Owner of such change in writing.
- 19.7. This Agreement (and these General Terms and Conditions) constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement (and these General Terms and Conditions) is of no force or effect.
- 19.8. The documents comprising the Agreement will be read in the following order of precedence:
 - (a) the Agreement;
 - (b) the Terms and Conditions;
 - (c) the Order; and
 - (d) any invoices provided by Furbaby Retreat to the Owner.

Schedule of Fees

	1 Animal (\$ P/N)	2 Animals (\$ P/N)	3 Animals (\$ P/N)	4 Animals (\$ P/N)	5 Animals (\$ P/N)
Penthouse	97.00	122.00	147.00	172.00	197.00
Five Star	65.00	90.00	115.00	-	-
Standard Suite	43.00	-	-	-	-