



# VetriSCIENCE<sup>®</sup>

## Laboratories

### MINIMUM ADVERTISED PRICE POLICY (MAP)

Effective March 1, 2018

#### FAQs

#### **1. Why has VetriScience implemented a Minimum Advertised Price Policy (MAP)?**

The products sold by VetriScience are of high quality with a premium image earned through extensive product and market development activities and superior customer service. Some veterinary clinics and retailers authorized by VetriScience (“Resellers” or individually, a “Reseller”) have taken or may take advantage of this fact by using such products as loss leaders or by unfairly discounting them. In an effort to insure the long-term viability of its brands and help protect the investment of those Resellers that provide valuable services to their customers, VetriScience has established by unilateral policy (the “Minimum Advertised Price Policy (MAP)” or the “Policy”) a minimum advertised price for each of certain products—a price below which Resellers located in either or both of the United States and Canada may not advertise the product.

#### **2. What products are covered by the Policy?**

The Policy applies to each product for which a MAP is specified in the then-current price list(s) or product list(s) provided or otherwise made available to a Reseller by VetriScience or otherwise communicated in writing or electronically by VetriScience to such Reseller (individually, a “Covered Product” and collectively, the “Covered Products”). At any time, VetriScience may vary the MAP for a Covered Product or add to or delete any or all of the Covered Products, which may, among other things, be based on whether such product is offered or sold under or subject to one or more select VetriScience program(s) or under any other VetriScience policy or in any other situation announced by VetriScience from time to time. VetriScience will endeavor to provide prior notice of each new MAP or such change in the Covered Products, generally not less than five (5) days in advance. While VetriScience will communicate each MAP and such change through the price list(s) or product list(s) provided or made available to each Reseller electronically or otherwise, such Reseller is responsible for making sure that it is aware of the appropriate MAP(s) and the Covered Products in each circumstance.

#### **3. Is VetriScience setting the price charged by Resellers?**

No. Each Reseller may offer or charge any price it wishes, provided that the Reseller’s net adjusted price for a Covered Product is advertised at or above the corresponding MAP established by VetriScience from time to time and communicated to such Reseller. The “net adjusted price” means the lower of the price at which a Covered Product is offered by or on behalf of a Reseller to a customer (potential or actual) or that actually paid to or for the benefit of a Reseller for a Covered Product by such customer after (a) applying all discounts and similar price reductions, (b) excluding certain taxes and shipment charges and (c) giving effect to the value of free or reduced-price bundles. Specifically, net adjusted price will be calculated by:

- taking into account all discounts, deductions, rebates and allowances offered, otherwise made available or given to such customer (regardless of source, whether given or taken at the time of sale or otherwise and considered by VetriScience to be part of such offer or sale); except that an offer or sale using or applying a rebate, coupon or the equivalent (as determined by VetriScience) will not be considered part of net adjusted price if such rebate, coupon or the equivalent is provided by VetriScience (i) directly to such customer or (ii) to such Reseller for provision to and use by such customer;
- excluding, if to be paid or paid by such customer, all applicable taxes and all shipping, delivery and insurance charges (However, if such Reseller offers to pay or pays any or all of such taxes

and such charges that otherwise would be paid by such customer, the amount paid by such Reseller will be considered a discount, except as otherwise provided in the Policy.);

- subtracting, in the case of free goods, services and similar benefits for such customer provided or made available by such Reseller, ninety-five percent (95%) of the fair market value (as determined by VetriScience) of all such goods, services and benefits (regardless of source, whether given or taken at the time of sale or otherwise and considered by VetriScience to be part of such offer or sale);
- subtracting, in the case of reduced-price goods and services and similar benefits for such customer provided or made available by such Reseller, the difference between: (i) ninety-five percent (95%) of the fair market value (as determined by VetriScience) of all such goods, services and benefits (regardless of source, whether given or taken at the time of sale or otherwise and considered by VetriScience to be part of such offer or sale) and (ii) the amount to be paid or actually paid for such goods, services and benefits.

***What this means is that the Reseller's "bottom-line" price to its customers for each of the VetriScience products covered by the Policy must be at or above the applicable price described in the Policy.***

The bottom-line price is after all discounts, deductions, rebates and allowances and excludes taxes, shipping, delivery and insurance (if paid by the customer). In addition, ninety-five percent (95%) of the fair market value of free goods and services is treated as a discount against the price of the Covered Product, as is the excess of ninety-five percent (95%) of the fair market value of reduced-price goods and services over the amount to be paid or actually paid. In other words, ninety-five percent (95%) of the value of free goods and services and the extent by which ninety-five percent (95%) of the value exceeds the amount to be paid or paid for reduced-price goods and services (regardless of whether they come from VetriScience, another supplier, the Reseller or anyone else) will be considered as discounts against the price to be paid or actually paid by the customer if VetriScience considers such goods or services to be included with the offer or sale of a product covered by the Policy.

From time to time, VetriScience may communicate to a Reseller in writing or electronically what it considers to be the fair market value for particular goods or services.

***5. Are certain free or reduced-price services not treated as discounts?***

Yes. Free or reduced-price shipping will not be considered a discount when offered or provided by a Reseller in connection with a purchase that includes at least one of the Covered Products, as long as the value of such free or reduced-price shipping is reasonable (as determined by VetriScience).

***6. Are there any exemptions from the Policy?***

Yes. As long as a Reseller does not otherwise violate the Policy, such Reseller offering or selling to a potential or actual customer one or more of the Covered Products after the Policy Effective Date (March 1, 2018) below its or their respective MRP(s) is exempt from the Policy and will not violate it, if such offering or selling is consistent with at least one exemption described below (collectively, the "Exemptions"):

- bona fide advertising and promotional materials (including without limitation printed catalogs) that cannot reasonably be modified prior to the Policy Effective Date or the effective date of a change in the MRP(s), the Covered Products or the Policy until such time that it is reasonable to revise such materials (as determined by VetriScience) to be consistent with the Policy;
- each bona fide written contract between such Reseller and a customer that became effective no later than March 1, 2018 (the "Policy Announcement Date") or, in the case of a change in the MRP(s), the Covered Products or the Policy, the day before such change is announced by VetriScience;
- the offer or sale of one or more of the Covered Products based on a bona fide proposal or quotation given prior to (a) the Policy Announcement Date or (b) the effective date of a change in the MRP(s), the Covered Products or the Policy, which makes such proposal, quotation or sale non-compliant with the Policy (as long as, if the Policy was in place at the time such proposal, quotation or sale was given or made, it complied with the Policy); provided that, in either case, (i)

such proposal or quotation is effective for no longer than thirty (30) days after the Policy Effective Date or ten (10) days after the effective date of such change and (ii) each of the Covered Products subject to such accepted proposal or quotation will be delivered to such customer no later than thirty (30) days after such acceptance;

- the offer under one or more special programs (if any) designated by VetriScience;
- a discount, credit or rebate associated with the use of a specified credit or debit card that would, after its application result in offer or sale price(s) for any or all of the Covered Products below its or their respective MRP(s), as long as: (a) such discount, credit or rebate may be applied to all or most of the products offered by such Reseller or, in the case of a category wide sale (such as pet supplements), all or most of the other products in the category and (b) none of the statements or materials promoting such discount, credit or rebate mentions, uses, depicts or otherwise refers to any or all of the Covered Products;
- the accrual of "points" or other things of value ("Loyalty Points") in connection with the purchase of any or all VetriScience products and the application of Loyalty Points, even if such application results in price(s) for any or all of the Covered Products below its or their respective MRP(s), as long as: (a) Loyalty Points may be applied to all or most of the products offered by such Reseller and (b) the Loyalty Points accumulation rate for the purchase of VetriScience products is no more than that for the products from other manufacturers; and (c) none of the statements or materials promoting Loyalty Points mentions, uses, depicts or otherwise refers to any or all of the Covered Products; and
- the offer or sale of one or more of the Covered Products to an employee of such Reseller for his or her personal use (and not for resale), provided that such offer is reasonable (as determined by VetriScience). If such Reseller otherwise violates the Policy or VetriScience determines that such Reseller does not qualify for or abused any or all of the Exemptions, such exemption(s) will be deemed withdrawn by VetriScience retroactive to the Policy Effective Date or such other date specified by VetriScience.

**7. Will VetriScience consider requests for exemptions?**

Only in extraordinary circumstances.

**8. Apart from offering or selling a Covered Product at a price below its MRP, do certain other practices violate the Policy?**

Yes. Use by a Reseller (directly or through another party on behalf or for the benefit of such Reseller) of any or all of the following terms, descriptions, conditions or offers (or the substantive equivalent of any or all of them as determined by VetriScience) in connection (directly or indirectly) with the offering or sale of any or all of the Covered Products (or, if so noted below, any or all of VetriScience products, regardless whether it or they is or are one or more of the Covered Products) will be deemed to be a violation of the Policy with the same effect as advertising, promoting, offering, selling or otherwise providing each of the Covered Products in connection with such use at less than its Minimum Resale Price:

- knowingly or negligently directly or indirectly advertising, promoting or selling any or all items of the Covered Products (or, if so designated by VetriScience, just one or more particular items of the Covered Products) through (a) an online auction site (like eBay), (b) an online marketplace (such as that operated by Amazon or any of its affiliate(s)) or (c) an online site which is not or is no longer approved by VetriScience (but such Reseller may advertise, offer and sell such products on its own (non-auction) website, as long as such Reseller (i) has not received notice disapproving such site from VetriScience and (ii) otherwise complies with the Policy and each agreement between VetriScience and such Reseller);
- if a price for a Covered Product is shown in Internet advertising or promotion or as part of an Internet sale permitted by the Policy: (a) the price for such product does not appear on the initial webpage depicting or describing such product or (b) such price varies with respect to such product (exclusive of applicable taxes and all shipping, delivery and insurance charges) across any or all of: (i) such initial webpage, (ii) the in-the-cart (or other container) price, (iii) the checkout price and (iv) the substantive equivalent of any or all of them as determined by VetriScience;

- (a) the failure to expressly exclude any and all of the Covered Products (using a disclaimer provided by VetriScience or, if not so provided, a disclaimer acceptable to VetriScience) from an offer or use of a coupon, discount or rebate that applies to all or many of the products offered by such Reseller or in a category of products offered by such Reseller relevant to the Covered Products (such as pet supplements) when such offer or use has or would have the effect of reducing the price of any or all of the Covered Products below the applicable MRP(s) or (b) the use of any statement(s) or material(s) promoting such coupon, discount or rebate that mentions, uses, depicts or otherwise refers to any or all of the Covered Products, except for such disclaimer;
- offering a discount, coupon or rebate applicable to any or all of the Covered Products in return for a Facebook “Like”;
- the promotion or sale to group purchasers, except at price(s) no less than each applicable MRP;
- any form of low-price guarantee;
- advertising or promoting a trade-in offer for any or all VetriScience product(s) or any other product(s) in connection with or applicable to any or all of the Covered Products, regardless whether a specific trade-in price or value is advertised or promoted; and
- except as otherwise directed by the Policy, on any or all proposals, quotations, contracts, invoices and receipts provided to or prepared for the benefit of any or all of such Reseller’s potential and actual customers in connection with the offer or sale of any or all of the Covered Products (individually and collectively, “Customer Communications”), the failure of such Reseller to itemize the price charged for each of the products and services shown or referred to on such Customer Communications, regardless whether such Customer Communications contain(s) any reference to any or all of the Covered Products.

#### **9. What happens if a Reseller violates the Policy?**

After VetriScience verifies to its satisfaction that a Reseller offered, sold or provided (other than for bona fide returns) a Covered Product at a net adjusted price below its MRP (or is deemed to have done so) during the period beginning on March 1, 2018 and continuing until the Policy no longer is in effect as described in a future written or electronic notice to such Reseller from VetriScience (the “Policy Period”), VetriScience immediately will take one or more of the following actions:

**For the first violation during the Policy Period:** If such violation is due to:

(a) *an offer*, such Reseller will remove or stop or cause to be removed or stopped the offending reference(s), text or conduct after receiving notice thereof from VetriScience (i), in the case of a violation involving the Internet, no later than one (1) business day later, and (ii), in all other cases, no later than three (3) business days later or by the conclusion of the time period otherwise specified by VetriScience or (b) **a sale or otherwise providing one of the Covered Products**, VetriScience will provide notice of such violation to such Reseller.

**For the second violation during the Policy Period:** If (a) the offending reference(s), text or conduct that caused the first violation is or are not so removed or stopped (if VetriScience determines that it or they can be) after such Reseller receives notice of such first violation from VetriScience or (b) such Reseller violates the Policy a second time with the same item(s) of the Covered Products or violates the Policy with any other item(s) of the Covered Products, effective as of the date specified in notice from VetriScience to such Reseller and continuing for the next sixty (60) days, the authorization of such Reseller to purchase each stock-keeping unit (“SKU”) of the Covered Products determined by VetriScience to be involved in the second violation will be immediately revoked by VetriScience, so that all pending orders (even if accepted) will be cancelled and no new orders will be accepted from such Reseller for each such SKU.

**For the third violation during the Policy Period:** If (a) the offending reference(s), text or conduct that caused the second violation is or are not so removed or stopped (if VetriScience determines that it or they can be) after such Reseller receives notice of such second violation from VetriScience (i), in the case of a violation involving the Internet, no later than one (1) business day later, and (ii), in all other cases, no later than three (3) business days later or the conclusion of the time period otherwise specified by VetriScience or (b) such Reseller violates the Policy a third time with the same item(s) of the Covered Products or violates the Policy with any other item(s) of the Covered Products, effective as of the date specified in

notice from VetriScience to such Reseller and continuing until VetriScience provides notice to such Reseller otherwise, if ever, the authorization of such Reseller to purchase any or all of the VetriScience products designated by VetriScience will be immediately revoked by VetriScience, so that all pending orders (even if accepted) will be cancelled and no new orders will be accepted from such Reseller for any or all of such products.

Each violation of the Policy is cumulative. The consequences of each subsequent violation take effect regardless whether the consequences for the prior violation(s) are still running. The same act(s) or failure(s) to act may result in multiple violations. In the case of a Reseller that purchases through one or more distributors, the Policy will be enforced through a Do-Not-Sell List or the equivalent issued to each such distributor.

**10. Will a Reseller violating the Policy be warned first?**

VetriScience cannot provide any advance warning.

**11. Is the Policy legal?**

Yes. At least four U.S. Supreme Court cases taken together—U.S. v. Colgate (1919), Monsanto v. Spray-Rite (1984), Business Electronics v. Sharp (1988) and Leegin v. PSKS (2007)—have recognized that a supplier may establish the terms and conditions under which it will sell its products, including the terms and conditions affecting resale price. Particularly in the resale pricing area, such terms and conditions must be determined by the supplier unilaterally, i.e. without agreeing with any of its customers. For this reason, VetriScience cannot and will not discuss the conditions of acceptance of the Policy nor solicit or accept any assurances of compliance.

**12. Does this mean that VetriScience cannot explain the Policy?**

No. VetriScience will answer questions about the Policy, but will not do anything that may change the nature of the Policy into something other than a unilateral one. As a result, VetriScience cannot give any warning to any Reseller violating the Policy, nor can it ask for or accept pledges of compliance from Resellers. All questions or requests for additional information regarding the Policy or information regarding potential violations of the Policy (which must be in writing) are to be addressed to the persons at VetriScience responsible for the Policy (the "Policy Committee"):

Policy Committee  
FoodScience Corporation  
929 Harvest Lane  
Williston, VT 05452  
FSCPPolicyComm@FoodScienceCorp.com

Only the Policy Committee or the Policy Committee's designated representative(s) is or are authorized by VetriScience to answer questions regarding the Policy, to comment on the Policy or to accept information regarding potential violations.

**13. Will the Resellers that follow the Policy violate the antitrust laws?**

No. But they should avoid communicating to VetriScience their acceptance of the Policy or their compliance with it. Honoring the Policy by offering or selling any or all of the Covered Products at or above the relevant MAP, avoiding the use of certain terms or properly itemizing prices is not communicating acceptance or compliance.

**14. If a Reseller tells VetriScience that another Reseller has violated the Policy, may VetriScience act on this information?**

Yes. Such notification must be in writing addressed to the Policy Committee and document the apparent violation. VetriScience may investigate and, if warranted, take action against the Reseller violating the Policy, as long as the Reseller which contacted VetriScience does not agree with the company on a specific resale price. (Following the Policy is not an agreement.) In addition, VetriScience will not disclose to the Reseller that contacts it the outcome of its investigation, as, although VetriScience enforces its policies uniformly, all of the dealings between the company and its Resellers are confidential.

VetriScience also may use the services of one or more outside firms to monitor compliance with the Policy.

**15. Why are the rules so strict?**

In order to comply with the standards established by the law, VetriScience must carefully stay within their boundaries.

**16. How long will the Policy be in effect?**

The Policy will remain in effect with respect to a Reseller until VetriScience notifies it otherwise, but VetriScience may modify or suspend the Policy at any time, including, among other things, changing its terms and conditions in any way.

**17. Can VetriScience add other products or services to the Policy and establish minimum prices for them, remove certain products or services from coverage under the Policy or change the MAP for a Covered Product?**

Yes. VetriScience may do so at any time.

**18. Are other companies doing this?**

Yes. A number of manufacturers in diverse industries have adopted similar resale price policies to address the same or similar concerns faced by VetriScience.