

FULL TERMS AND CONDITIONS OF TRADING AGREEMENT

BERI DISTRIBUTORS PTY LTD ACN 009 186 832
411 Scarborough Beach Road
OSBORNE PARK WA 6017
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1. In this document the expression "Company" defines and means Beri Distributors Pty Ltd ACN 009 186 832 and each related entity (as defined in the Corporations Act 2001) of Beri Distributors Pty Ltd ACN 009 186 832 from time to time and any of the Company's assigns. This agreement extends to a company which is not now, but is in the future a related entity of Beri Distributors Pty Ltd ACN 009 186 832.
2. The Applicant agrees to pay the price and taxes charged by the Company to the Applicant for the supply of goods and services ("the Price") within 30 days of the date of the invoice rendered by the Company or within such other period of time as may be notified to the Applicant from time to time by the Company with 30 days advance notice.
3. If the Applicant accepts a quotation provided by the Company, the Applicant must indicate its acceptance either by email or by forwarding a purchase order within 14 days of the quote. The Price quoted by the Company remains valid for one month from the date of acceptance of the quote and, if the Applicant fails to pay for the goods in full or take delivery of the goods within that time, the Company shall be entitled to provide an amended quote or cancel the order.
4. If goods are paid for in full by the Applicant within 1 month of acceptance of the quote, the Company will hold the goods (provided they are non-perishable) for up to 3 months from the date of payment free of charge. If the goods are not collected by the end of that 3 month period then storage charges shall apply.
5. Any request to return or exchange goods must be made within 10 days of delivery of the goods to the Applicant. The Company has the sole discretion as to whether a refund or exchange is issued. A determination as to whether the Company exercises its discretion to replace the goods or issue a credit will only be made after the goods are inspected by the Company's sales staff. Any refund or credit will be limited to the value of the goods supplied less a 30% handling charge if the goods are returned due to an incorrect order. Under no circumstances whatsoever will a refund or credit not be provided more than 30 days after the date of purchase.
6. The Applicant and any persons who have entered into a personal guarantee with the Company ("the Guarantors") agree that this trading agreement and each application for credit made by the Applicant shall be deemed to have been accepted from the date of the Company's first invoice to the Applicant after the date of this trading agreement and without further notice to the Applicant and the Guarantors, this document shall immediately have effect as an agreement by deed between the Company, the Applicant and the Guarantors.
7. The Company shall be entitled to charge interest on all outstanding monies due by the Applicant at the rate of 10.0% per annum.
8. Any credit allowed by the Company under this agreement is not unlimited. If no written notice of the credit allowed from time to time by the Company is provided to the Applicant then the credit limit is reflected by the highest amount of credit extended under this agreement at the immediate point in time. The credit limit stated herein, if any, does not limit or bind the Company in anyway whatsoever. Further, the Applicant agrees they are liable to pay the Price and Other Monies irrespective of whether the value of those goods and services supplied, either alone or in conjunction with any accumulated debt of the Applicant, exceeds the credit limit stated herein.
9. The Company may at any time withdraw or suspend this facility or increase or decrease the limit of this facility with 7 days notice to the Applicant. The Company may require security satisfactory to the Company (including further guarantees) to be given as a condition precedent to the continuation of this facility. The Company may at any time require the Applicant to pay cash on delivery as a condition precedent to the continued supply of goods and/or services by the Company to, or at the request of, the Applicant. The Company can, without any claim for loss or damage whatsoever by the Applicant in doing so, cease supply of goods and/or services to, or at the request of, the Applicant if there are any outstanding payments due by the Applicant to the Company on any account whatsoever or if the Company has reason to doubt the Applicant's ability to pay for the supply in the future.
10. All legal costs (on a full indemnity basis), charges, duties and other expenses incurred by the Company in respect of this agreement or the securities or other documentation required hereunder or in relation to registering, maintaining or releasing any security interest, charge or caveat (including the cost of registering any financing statement or financing change statement), or incurred as a result of the Applicant failing to perform their covenants and obligations contained herein, shall be paid by the Applicant to the Company. The expenses include, but are not limited to, the commission payable to a mercantile agent or a debt collector to pursue or recover outstanding monies pursuant to this agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of the debt collector. The Applicant agrees that it is liable for and will pay any stamp duty assessed on this document.
11. Property in any goods supplied by the Company to the Applicant will not pass to the Applicant until such time as the goods are paid for in full and the Applicant has made payment in full of any monies owing by the Applicant to the Company on any account whatsoever and has met all of its obligations to the Company. The Applicant agrees that goods supplied by the Company to, or at the request of, the Applicant shall be at the Applicant's risk (including insurance responsibility) immediately on leaving the Company's premises or into the Applicant's custody (whichever is the sooner). The Applicant further agrees:-
 - (i) to store and maintain the goods in such a manner as to show clearly that they are the property of the Company and the Applicant shall be at liberty to sell the goods, in the ordinary course of business, but only as a fiduciary agent for the Company and shall account to the Company for all proceeds from any sale;
 - (ii) under this agreement the Company may enter upon the Applicant's premises or elsewhere with reasonable advance notice to repossess the goods without being liable for trespass. If the Applicant is in default, the Applicant shall indemnify the Company for any loss or damage suffered by the Company and against all claims brought against the Company arising from the Company repossessing the goods;
 - (iii) that in the event the Applicant uses the goods in some manufacturing or construction process of its own or some third party and so as to meet payment due to the Company under this agreement, the Applicant shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owed by the Applicant to the Company at the time of the receipt of such proceeds; and
 - (iv) to better secure any outstanding payment due to the Company under this agreement, the Applicant appoints the Company as their attorney to collect the goods and/or to collect payment from any third party for the goods and/or to collect payment from any third party who owes monies to the Applicant and to apply that payment against the Applicant's account with the Company. If payment is collected by the Company from a third party, then the Applicant irrevocably agrees with the Company and with the third party that in providing this attorney the third party's liability for payment to the Applicant in relation to the outstanding monies is reduced by the sum of the payments collected by the Company from the third party.

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12. For the purpose of this clause and other relevant clauses in this agreement "PPSA" means the Personal Property Securities Act 2009 and the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.
- (i) This agreement constitutes a security agreement under the PPSA.
 - (ii) The retention of title arrangement in clause 11 constitutes the grant of a purchase money security interest by the Applicant in favour of the Company in respect of all present and after acquired goods supplied to the Applicant by the Company.
 - (iii) If requested by the Company the Applicant and the Guarantors must immediately sign any documents, provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest or any other security interest created in favour of the Company is a perfected security interest.
 - (iv) The Applicant and the Guarantors must not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods supplied or any proceeds from the sale of the goods or grant any other security interest in favour of any party until the Company has perfected its purchase money security interest and other security interests created under this agreement.
 - (v) The Applicant and the Guarantors must not do or permit anything to be done that may result in the purchase money security interest or any other security interest granted to the Company ranking in priority behind any other security interest.
 - (vi) To the fullest extent permitted by the PPSA the Applicant and the Guarantors (to the extent applicable to such party) agree to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.
 - (vii) The Applicant and the Guarantors hereby waive any rights the Applicant and the Guarantors may otherwise have to:
 - (a) receive any notices or statements the Applicant and the Guarantors would otherwise be entitled to receive under sections of the PPSA including for the avoidance of any doubt the sections referred to in sections 115(1) and 115(7) of the PPSA;
 - (b) apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;
 - (c) object to a proposal of the Company to dispose of or retain any collateral under sections 130 and 135 of the PPSA; and
 - (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest created under this document.
13. It is the Applicant's responsibility to provide uninhibited access to delivery sites. If in crossing or endeavouring to avoid any obstruction damage is caused to the obstruction or the goods being supplied by the Company, then the Applicant agrees to indemnify the Company against all claims whatsoever for such damage. The Applicant agrees that any price quoted by the Company for delivery of the goods by the Company was on the basis of uninhibited access being provided to the delivery site and in addition to any price quoted the Applicant shall pay the price charged by the Company for any waiting time or time incurred by the Company in obtaining uninhibited access to the delivery site.
14. If the Applicant or Guarantors (a) defaults in the due and punctual observance of all or any of their obligations or covenants under this agreement; or (b) being a person, dies or commits an act of bankruptcy or enters into a debt arrangement or composition under the Bankruptcy Act 1966 or is unable to pay its debts or anything analogous, or having substantially similar effect, occurs; or (c) being a company, takes or shall have taken against it any action for their winding up, placement under official management, administration or receivership or is unable to pay its debts or anything analogous, or having substantially similar effect, occurs, then all monies owed by the Applicant to the Company shall become immediately due and payable and the Company without prejudice to any right or remedies open to it may:
- (i) treat as discharged all or any obligation arising from any agreement with the Applicant;
 - (ii) retain any security given or monies paid by the Applicant or available though the enforcement of any guarantee, security or bond and apply this in reduction of any sum of money owed or owing by the Applicant to the Company;
 - (iii) reserve the right to enter upon the Applicant's premises or enter upon any premises to which the Applicant has a right of access with reasonable notice to take possession of and remove any goods supplied by the Company to the Applicant under this agreement or any other agreement between the Company and the Applicant for which payment has not been received, without being liable for trespass. The Applicant shall indemnify the Company for any loss or damage suffered by the Company and against all claims brought against the Company arising from the Company repossessing the goods;
 - (iv) take such steps as it may deem necessary to mitigate the damages suffered including the putting to use, hiring out, or sale of any goods supplied under this agreement;
 - (v) appoint in writing any person or persons to be a receiver or receiver and manager ("receiver") of the property charged under clauses 19 and 20 below or any part of the charged property. The receiver so appointed shall be the agent of the Applicant or Guarantors (whichever is applicable) and the Applicant or Guarantors (whichever is applicable) shall be solely responsible for all acts and omissions by the receiver appointed under this clause and for the remuneration of the receiver. The receiver shall without the need for any consent on the part of the Applicant or Guarantors (whichever is applicable) have all the powers conferred on a receiver under the Corporations Act 2001;
 - (vi) exercise any other right or remedy available to it under the PPSA including to enforce the security interests created by this agreement;
 - (vii) the Applicant shall indemnify the Company for any loss or damage suffered by the Company and against all claims brought against the Company arising from the Company taking any action or exercising any of its rights under the PPSA under this agreement.
15. Should there be any variation in the information supplied in this document concerning the Applicant, the proprietorship of the Applicant's trading name or a variation in the structure of the Applicant's business (such as conversion to, or from, a trustee), the Company shall forthwith be notified in writing by the Applicant by certified mail delivered to the Company's registered office. Unless such notification is given to the Company, the Applicant and the Guarantors shall remain liable to the Company as though any goods or services supplied by the Company prior to such notification were supplied to, or at the request of, the original Applicant. The Applicant and the Guarantors agree this agreement also binds the Applicant and the Guarantors in relation to all goods and services supplied to, or at the request of, the Applicant as the proprietor (in whole or in part) or as agent of any business, and irrespective of whether the Applicant supplied the goods and services under the trading name of the Applicant's business disclosed on the front page of this document.
16. If any payment made by, or on behalf of, the Applicant to the Company shall subsequently be avoided at law or recovered by a liquidator or trustee in bankruptcy, such payment shall be deemed not to have discharged the Applicant's liability and in such event the Company and the Applicant shall be restored to the position in which each would have been had the payment not been avoided or recovered. The Guarantors agree to be liable to the Company for the payment so avoided or recovered.

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17. The Applicant and the Guarantors agree that any waiver of a term or condition under this agreement is effective only if it is in writing and signed by the Company. Such waiver is effective only in the specific instance and for the specific purpose it was given. The Applicant further agrees the Company may in its discretion, allocate any payment received from the Applicant towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards and is not compelled to apply the payment as directed by the Applicant or any third party. On any default by the Applicant, the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of any security interest held by the Company.
18. The Applicant and the Guarantors (as the case may be) warrant and agree that where they are, at the time of executing this document or at any time the Applicant has credit with the Company, a trustee of any trust (the "Trust"):- (a) to produce a stamped copy of the Trust deed (with all amendments) if and when requested by the Company; (b) that they have full power and authority to execute, or continue with their obligations under, this agreement on behalf of the Trust as they are doing so in their individual capacity and in their several capacity as trustee; (c) that they shall be bound by the terms and conditions of this agreement in their individual capacity, or further or alternatively, in their several capacity as trustee; and (d) that the assets of the Trust shall be available to meet payment of their obligations to the Company.
19. The Applicant and the Guarantors hereby in favour of the Company charge and mortgage with the due and punctual payment and the due, punctual and complete performance of all their liabilities and obligations hereunder or on any account whatsoever to the Company all their legal and equitable interest of whatsoever nature held in any real property both present and future and each of the Applicant and Guarantors hereby consent to the Company lodging a caveat or caveats noting its proprietary interest herein.
20. The Applicant and the Guarantors grant a security interest in all of their present and after acquired property and in all of their present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property including any debts owed to the Applicant and the Guarantors, in favour of the Company to secure the performance of their liabilities and obligations hereunder or on any account whatsoever.
21. In this document words in the singular includes the plural and *vis a versa*, and reference to any gender includes the other genders and where applicable reference to a person includes a body corporate.
22. The Company shall have no liability whatsoever to the Applicant in the case where any obligation that the Company has to the Applicant is delayed, affected, prevented or rendered impractical or unviable by any occurrence to the extent such an occurrence is beyond the reasonable control of the Company including but not limited to: fire, flood, riot, earthquake, strike by employees, civil commotion, Act of God, act of terrorism, pandemic or epidemic event, any health or other government direction, rule or regulation which may impact on the supply of the goods or services or any other ordinance, rule or regulation which becomes effective before or during the supply of the goods or services, to be determined by the Company in its absolute discretion.
23. If any party to this agreement comprises two or more parties each of those parties is jointly and severally liable on the covenants and obligations herein.
24. This agreement shall be binding upon each party that has executed it notwithstanding the failure of any other party named as a party to execute it or the avoidance or unenforceability of any part of this agreement.
25. If any part of this agreement becomes void or unenforceable then that part shall be severed to the intent that all parts that are not void or unenforceable shall remain in full force and effect. If this document and/or these terms and conditions and/or the further terms below are held to be a standard form small business contract then any clause or term which is deemed to be unfair pursuant to the Australian Consumer Law by any competent authority or the Courts, will be severed from this document and/or these terms and conditions and/or the further terms below.
26. This agreement shall be governed and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of the Courts of Perth, Western Australia.
27. None of the provisions of this agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of this agreement.
28. Where there is any inconsistency between the terms and conditions of this agreement and any prior or subsequent agreement between the Company and the Applicant, the Applicant irrevocably agrees any such prior or subsequent agreement shall be read down to the extent necessary to give full force and effect to the terms and conditions of this agreement.
29. To give effect to their obligations under this agreement the Applicant and the Guarantors hereby irrevocably appoints any solicitor for the Company, from time to time, as its attorney to do any act or thing which they are required to do under this agreement if the Applicant or Guarantors (whichever is applicable) is in default under this agreement.
30. The Privacy Act 1988 requires the Company to have procedures in place that cover the collection, use and disclosure of personal information that the Company may receive from its customers. This information is needed to process the requirements of the Company's customers and is used for internal purposes. The Applicant and the Guarantors authorise the Company to carry out credit checks and obtain credit reports in respect of their credit worthiness in accordance with any law with respect thereto in force from time to time and to disclose to credit reporting agencies the information outlined in this agreement for this purpose. The Applicant and Guarantors agree that the Company may give to and seek from any trade references or credit providers named in this agreement and any providers of credit that may be named in a credit report issued by a credit reporting agency, information about the Applicant and Guarantors. The Applicant and Guarantors understand that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. The Applicant and the Guarantors acknowledges further details of the Company's privacy policy and credit policy are available on request.

FURTHER TERMS AND CONDITIONS OF SUPPLY

In these terms "goods" shall mean all goods and materials supplied by the Company to, or at the request of, the Applicant.

- A. The Applicant acknowledges that it has inspected the goods, is satisfied the goods are fit for the purpose they are to be used for and are of good quality. The Applicant is aware of the proper use for which the goods are designed.
- B. Notwithstanding anything contained herein the Applicant acknowledges that, subject to the extent permitted by legislation no warranty or condition, express or implied, is given by the Company as to the condition of the goods or as to the suitability or fitness of the goods. Subject to the extent permitted by legislation any obligation of the Company under these terms and conditions shall be to use its endeavours to supply goods and/or services or to repair or replace (at the Company's discretion) any goods which are found to be defective during any applicable warranty period (if any) and in no event shall the Company be liable for any other claims, losses or damages including but not limited to claims arising from faulty design, negligence, negligent or misleading advice, damages from the loss or use of the goods or howsoever arising and any indirect, special or consequential damage including but not limited to damages on account of prospective profits expenditures or other commitments relating to the business or goodwill of the Applicant or on account of any consequential loss or damage incurred or suffered by the Applicant or customers of the Applicant, which arises from or is connected in any way whatsoever with the use of the goods or injury to any person, corporation or other entity.

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- C. In the event of the Applicant requesting the Company transport the goods, the Applicant shall pay in addition to the supply charges all of the Company's charges and expenses in relation to the transportation. The Company reserves the right to dispatch the Applicant's order in one delivery or by instalments. Where the Company acknowledges an order which provides for delivery by instalments the Company shall be entitled to payment for each instalment delivered (as if it were a separate agreement) but failure to deliver any instalment shall not entitle the Applicant to repudiate the agreement as to any remaining instalments, unless the Applicant has given the Company at least 7 days to rectify the failure to deliver. Any variation, waiver or cancellation of the Applicant's order shall be of no effect unless accepted in writing by the Company and where the Company accepts the variation, waiver or cancellation, the Company may levy a handling charge of up to 30% of the Price (as defined in the trading application between the Company and the Applicant).
- D. It is the Applicant's responsibility to check the quantities of goods delivered. No claim for shortages or missed deliveries will be recognised unless notified in writing to the Company by the Applicant within 3 business days of delivery. Unless the Company receives for its consideration such a claim within this time period, then the Applicant acknowledges that the quantities of goods delivered are those listed on the Company's cartage dockets whether signed or unsigned. If no signature is obtained from the Applicant upon delivery of the goods, then no claim will be recognised by the Company unless the Company's employee who delivered the goods is of the belief that such shortage or misdelivery occurred. The Applicant agrees that the Company shall be able to deliver the goods whether or not a representative of the Applicant is present at the time of delivery and that should there be no representative of the Applicant present at the time of delivery, the quantities of goods delivered are those listed on the Company's cartage dockets.
- E. The Applicant agrees to use the goods in a skilful and proper manner and for the purpose for which the goods were designed and are reasonably and safely capable of fulfilling. The Applicant will observe and comply at its own expense with all notices, directions and legal requirements (including those of all authorities, statutes and regulations) in any way relating to the goods.
- F. The Applicant acknowledges that goods leaving the Company's premises are adequately packed. Claims for damage in transit must be made against the carrier. The Company is not responsible for any loss or damage to the goods in transit.
- G. It is acknowledged by the Applicant and the Company that the Australian Consumer Law and other laws may imply conditions or warranties in certain contracts and also give parties to those contracts certain other rights against suppliers of goods and services. To the extent such conditions, warranties or other rights are implied or given in respect of this agreement and it is not lawful or possible to exclude them, then such conditions, warranties or other rights shall (but only to the extent required by law) apply to this agreement and all other conditions, warranties or rights which might but for this provision be implied are hereby expressly excluded. Where the law implies any term or warranty into these terms and conditions which cannot be excluded, then the liability of the Company for any breach of such term will be limited in the manner permitted under section 64A of the Australian Consumer Law to one of the following (as the Company may determine):
- (i) in the case of goods supplied, to any one or more of the following:
 - (a) replacement of the goods or the supply of equivalent goods;
 - (b) repair of the goods;
 - (c) payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (d) payment of the cost of having the goods repaired; and
 - (ii) in the case of services supplied, to any one or more of the following:
 - (a) supply of the services again; or
 - (b) payment of the cost of having the services supplied again;
 - (c) in the event that the Company (as a deemed "manufacturer") has a liability to the Applicant (as a "Company") then, subject to the terms of section 276A of the Australian Consumer Law, such liability is limited to a liability to pay to the Applicant an amount equal to whichever is the lesser of the cost of:
 - (i) replacing the goods;
 - (ii) obtaining equivalent services; or
 - (iii) having the goods repaired.
- H. Any quotations of delivery times by the Company are made in good faith but as estimates and not commitments. The Company shall not be bound by any such estimate. Clerical errors or omissions by the Company, whether in computation or otherwise in any quotation, acknowledgment or invoice, shall be subject to correction.