

# TRADING AGREEMENT AND GUARANTEE

**BERI DISTRIBUTORS PTY LTD ACN 009 186 832**  
411 Scarborough Beach Road  
OSBORNE PARK WA 6017  
Telephone: 08 9242 1570 Facsimile: 08 9242 1941

A APPLICANT'S NAME:.....(the "Applicant")  
Company – Sole Trader - Partnership – Inc. Assoc. (Delete those not applicable)  
TRADING AS .....OR ANY OTHER BUSINESS OF WHICH THE APPLICANT IS A PROPRIETOR  
A.B.N..... ESTABLISHED FOR .....YRS  
IS THE APPLICANT TRADING IN ITS CAPACITY AS A TRUSTEE Yes / No IF YES, NAME OF TRUST .....  
NATURE OF BUSINESS..... TELEPHONE..... FACSIMILE.....  
TRADING ADDRESS..... POST CODE .....  
PERIOD AT CURRENT TRADING ADDRESS? ..... STATE IF TRADING PREMISES ARE MORTGAGED OR LEASED? .....

B DIRECTOR'S/INDIVIDUAL'S/PARTNER'S/FULL NAME AND ADDRESS: (attach list if insufficient space)

SURNAME	FULL CHRISTIAN NAMES	RESIDENTIAL ADDRESS	DATE OF BIRTH	DRIVERS LICENCE NO.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

C TRADE REFERENCES (Companies or businesses with whom the Applicant is currently trading and level of trade. No banks or finance companies)

1..... 2.....  
3..... 4.....

D APPROX. MONTHLY CREDIT REQUIRED . . . . .

- 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.
- The Applicant hereby applies to have an account opened with the Company on the terms and conditions contained within this document and any other accompanying additional terms and conditions including but not limited to the Company's full terms and conditions available on its website. The Applicant acknowledges having had the opportunity prior to the execution of this document to review this document and the Company's terms and conditions on its website to obtain independent legal advice as to its meaning and the implications of executing this document.
- In consideration of the Company at the request of the undersigned signatories agreeing to grant this trading facility to the Applicant, I/we the undersigned signatories (the "Guarantors") hereby jointly and severally guarantee payment to the Company, without any deduction or set off whatsoever in law or in equity, of the price and taxes charged by the Company to the Applicant for the supply of goods and services (the "Price") and the payment of all other sums which now or in the future may be or become owing (including contingently) by the Applicant to the Company on any account whatsoever (whether such indebtedness or liability be present or future, actual or contingent, fixed or fluctuating, liquidated or unliquidated) or relating to any other third party dealings or arrangements ("Other Monies"). The Guarantors further guarantee the performance of the covenants and obligations of the Applicant under this agreement.
- The Guarantors agree to be bound by the terms and conditions within this document and any other accompanying additional terms and conditions including but not limited to the Company's full terms and conditions available on its website as if they were the principal debtor. This is a continuing guarantee and irrevocable until the Company has been paid the entire Price and Other Monies. This guarantee may be enforced by the Company, its successors and assigns. The Guarantors agree they are liable for and will pay any stamp duty assessed on this guarantee and indemnity.
- As a separate and independent agreement the Guarantors agree to indemnify and keep harmless the Company against any losses, costs (including but not limited to costs on a full indemnity basis) or damages of whatsoever nature incurred by the Company as a result of the Applicant failing to pay the Company the Price or Other Monies 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 as a result of the failure or default of the Applicant in the performance of their covenants and obligations contained under this agreement or under any other agreement between the Company and the Applicant.
- The Guarantors agree this guarantee and indemnity is a continuing and irrevocable security and will not be affected or in any way prejudiced by:-
  - the Company granting any extension of time or other indulgence to the Applicant;
  - the Company refusing further credit to the Applicant;
  - the Company with or without the Guarantors' prior knowledge, varying the terms and conditions of the Applicant's trading account with the Company (even if this increases the Guarantors' liability under this guarantee and indemnity);
  - by the release of any of the Guarantors or other guarantors of the Applicant or if a guarantee is unenforceable against any one or more of the Guarantors or other guarantors;
  - any collateral or other security and guarantee now or hereafter held by the Company and the Guarantors agree that the Company's rights under this guarantee and indemnity shall not be merged, discharged or substituted in any such other security and guarantee; or
  - any other fact, thing or event which could or might have the effect of prejudicing or discharging the Guarantors' liability.
- The Guarantors certify that prior to the execution of this guarantee and indemnity the Guarantors had the opportunity to take independent legal advice in respect of its meaning and effect.
- This document is executed as a Deed. The undersigned signatories warrant they have the authority to execute this document for and on behalf of the Applicant and are also executing this document contemporaneously in the joint and several capacity as Guarantors.

DATED THIS                      day of                      20\_\_

APPLICANT / GUARANTORS

WITNESS

NAME .....

NAME.....

ADDRESS.....

SIGNATURE X .....

SIGNATURE X .....

NAME .....

NAME.....

ADDRESS.....

SIGNATURE X .....

SIGNATURE X .....

NAME .....

NAME.....

ADDRESS.....

SIGNATURE X .....

SIGNATURE X .....

**WARNING: THIS IS AN IMPORTANT DOCUMENT IF ANY OF THE APPLICANT OR GUARANTORS DO NOT UNDERSTAND THIS DOCUMENT THEY SHOULD SEEK INDEPENDENT LEGAL ADVICE.**

**TERMS AND CONDITIONS**

1. The Applicant agrees to pay, without any deduction or set off in law or in equity whatsoever, 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.
2. The Applicant and the Guarantors agree that this trading agreement and the Company's full terms and conditions available on its website (together "this 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.
3. The Company shall be entitled to charge interest on all outstanding monies due by the Applicant at the rate of 15.0% per annum.
4. 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.
5. 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. 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 without notice and with force if reasonably necessary to repossess the goods 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;
  - (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.
6. 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) The retention of title arrangement in clause 5 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.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.
  - (v) 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.
  - (vi) 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.
7. 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.
8. 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.
9. 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. The Applicant and the Guarantors acknowledges further details of the Company's privacy policy and credit policy are available on request.