

# TERMS OF TRADE: BYRON BAY TEA COMPANY

## Definitions

- 1.1 "BBTC" means Byron Bay Tea Company, its successors, assignees and any person acting on behalf of BBTC and who has the actual authority of BBTC.
- 1.2 "Customer" means a person, business or incorporated entity who buys or contracts to buy goods with BBTC. If there is more than one Customer, the term "Customer" is a reference to each Customer, jointly and severally.
- 1.3 "Agreement" means these Terms of Trade which sets out the terms by which BBTC and the Customer intend to be bound, and is incorporated into the Purchase Order
- 1.4 Any previously issued BBTC Agreement or Terms of Trade issued to the Customer are superseded by these Terms of Trade. In the event of any inconsistency, these Terms of Trade shall prevail.
- 1.5 "Conforming Goods" means all Goods that are in accordance with the obligations and described in the Purchase Order.
- 1.6 "Goods" means all Goods and Services sold, delivered, or supplied by the BBTC to the Customer in accordance with a Sales Order.
- 1.7 "Non-conforming" or "Non-Conformity" includes, but is not limited to, Goods that contain any defect, damage, shortage in quantity or which fails to comply with the obligations under the Purchase order.
- 1.8 "Price" means the amount payable by the Customer to BBTC which is indicated on the accepted Purchase Order that is provided by the Company to the Customer.
- 1.9 "Sales Order" is a confirmation document which is prepared by BBTC and sent to the Customer before delivery of the Goods.
- 1.10 "Purchase Order" is a written submission issued by the Customer to BBTC which shall specify the terms, including but not limited to, types, prices, quantity, quality of the goods to be delivered.
- 1.11 "Distributor" means an entity or person that buys and/or sells products or product lines that do not compete or are not similar to goods supplied by BBTC, and resells them to retailers or direct to the end users or customers. Distributors are expected to provide labour and financial support to the Supplier or manufacturer's promotional costs and provide other services such as product information, estimates, technical and after sales support and credit services to their customers.
- 1.12 "Wholesaler" means an entity or person that buys large quantities of goods from producers, manufacturers or vendors with the intent to resell to retailers.
- 1.13 "Delivery Date" means the final date that the goods for futures or

forward contracts must be delivered.

1.14 "Continued Supply" means a Purchase Order which is the supply of goods and promotional materials by BBTC to the Customer which is not a one-off or single order, and relates to the continued supply of Goods over a minimum period of at least three (3) months.

1.15 "Intellectual Property" means BBTC's recipes, logos, branding, packaging, marketing, images, websites, store concepts, trade secrets, secret or confidential operations and processes, designs, copyright and trademarks (whether registered or unregistered) and all other intellectual and industrial property rights resulting from intellectual activity

## Acceptance

- 1.16 A Customer can make a Purchase Order by phone, the BBTC website or by email sent to BBTC.
- 1.17 The Customer must ensure that the information and criteria of the Purchase Order is correct.
- 1.18 The minimum order value for wholesale Customers is \$150. The minimum order value for Distributors is \$500. The minimum order value is subject to change from time to time at the discretion of BBTC's.
- 1.19 A Purchase Order will be deemed to be accepted by BBTC once the Purchase Order is received by BBTC and BBTC acknowledges receipt.
- 1.20 BBTC is not obliged to accept an order for, or supply, any goods that BBTC do not ordinarily stock, do not hold in stock or have discontinued.
- 1.21 Upon acceptance of order pursuant to Clause 1.19 above, a binding contract between the Customer and BBTC shall exist.
- 1.22 A Customer shall be deemed to have accepted the Goods, and the Goods will automatically be deemed to be conforming unless the Customer takes action in accordance with Clause 1.41 below.

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- 1.23 The Price does not include delivery costs, sales, use excise or any other taxes or assessments levied by the federal, state municipal or other governmental authority, unless BBTC otherwise agrees in writing.
- 1.24 If at the time of delivery, the Customer is unable to take possession or accept delivery of the Goods, the Customer must pay for redelivery and/or costs associated with Storage of the Goods.
- 1.25 Payment of the Price by the Customer to BBTC must be made prior the Goods being dispatched, unless the Customer has an approved credit facility with BBTC. All payments for Goods shall be due 7 days from date of invoice unless an alternative credit facility has been arranged.
- 1.26 All Payments must be made to BBTC in Australian Dollars by cheque, money order, credit card or direct EFT transfers to BBTC.
- 1.27 Cheques must be made payable to the "Byron Bay Tea Company"

- 1.28 Credit Card payments will attract a 2.5% surcharge.
- 1.29 3.5 Past Due Invoice Penalties. Overdue invoices will accrue interest daily until the date of payment, at a rate of ten percent (10%) per calendar month.
- 1.30 Title to the goods shall vest with BBTC and will not pass to the Customer until BBTC has received payment for the Goods in full.
- 1.31 If the Customer fails to make a timely payment of the Price to BBTC, BBTC reserves the right to permanently close, or suspend, the account of the Customer and to refuse any further Orders until the breach has been remedied.
- 1.32 The Customer is liable for all costs and expenses, including legal costs (on a solicitor/client basis) and mercantile agents fees, incurred by BBTC in relation to recovering any amount outstanding in respect of an invoice provided by BBTC to the customer which the customer has failed to pay in accordance with the payment terms specified herein.

## Delivery of Goods

- 1.33 The Goods shall be deemed Delivered on the earlier of:
- (a) the Customer or the Customer's nominated carrier taking possession of the Goods at the address of BBTC; or
- (b) when BBTC or its nominated carrier delivers the Goods to the Customer's nominated address (even if the Customer is not present at the address).
- 1.34 BBTC shall make all reasonable efforts to deliver the Goods to the Customer by the date requested.
- 1.35 BBTC makes no warranties or guarantees as to delivery date, as delivery of the Goods is dependent on many variables, and delivery date is an estimate, and indicative only.
- 1.36 The Customer hereby acknowledges and covenants that it will not hold BBTC responsible, and has no remedy against BBTC, in the event that the Goods are not delivered by the delivery date specified in the Purchase Order.
- 1.37 Any delay in the delivery of Goods does not give rise to, or give grounds for, the Custom to refuse acceptance of the Goods or have any claim whatsoever against BBTC.
- 1.38 BBTC reserves the right to make delivery in instalments with such instalments being separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any instalment shall not relieve the Customer of its obligations to accept remaining deliveries.
- 1.39 The Customer must ensure at the time of submitting a Purchase Order that they are prepared and their facilities are suitable for the receipt of Goods and must take delivery by receipt or collection of the Goods when they are tendered for delivery. If at the time of delivery of the Goods the Customer is unable to take possession of the Goods, the Customer must pay for redelivery and/or storage of the

## Goods.

1.40 BBTC endeavor to dispatch all orders within 48 hours of receiving a Purchase Order, save and except for exceptional circumstances.

### Return of Goods

1.41 If the Customer is of the opinion that the Goods Delivered are Non-Conforming Goods the Customer must:

- (a) notify BBTC in writing within 2 business days of delivery that it is of the opinion that it has received Non-Conforming Goods;
- (b) permit BBTC to inspect the Goods;
- (c) cease all use of the Goods; and
- (d) properly maintain and store the Goods.

1.42 BBTC have the sole discretion to determine whether Goods returned in accordance with Clause 1.41 above, are Non-Conforming Goods.

1.43 If BBTC determine that the returned Goods are conforming, the Customer must pay all reasonable costs of BBTC associated with inspection and to retrieve the Goods from BBTC.

1.44 BBTC is not liable for any defect or damage, and shall not be obliged to accept a return for Goods which are:

- (a) dirty or damaged;
- (b) customized stock unless such Goods are Non-conforming;
- (c) the Customer's failure to comply with Clauses 1.41 to 1.43 above.

1.45 BBTC shall not be liable for non-delivery or delays in delivery caused by strikes, lockouts, fires, inability to obtain materials or shipping space, breakdowns, delays of carriers or suppliers, governmental acts and regulations, failure of the customer to approve samples in a timely manner during the production process, or any other event that has made performance by BBTC impracticable and beyond its control. BBTC will notify the Customer within five (5) business days that there will be a delay or non-delivery of the Goods.

1.46 BBTC's acceptance of the return of Goods shall not be deemed to be an acceptance of, or granting of credit to the customer and the delivery of all Goods returned by the Customer to BBTC is at the Customer's sole expense and risk. If BBTC determines that returned Goods were defective or damaged ("Non-conforming") at the time of delivery to the Customer, or if the delivery of the Goods was wrong or did not comply with the relevant Order, the Customer's reasonable costs of returning the Goods to BBTC will be refunded by BBTC to the Customer.

### Conforming Goods

1.47 BBTC has the sole discretion whether it shall accept returns of Conforming Goods. If BBTC does accept returns of Conforming Goods, the Customer must pay to BBTC handling fees and two (2) freight costs.

### Risk of Loss

1.48 The Customer warrants and

acknowledges that:

(a) once the Goods are delivered to the Customer, the Customer is liable for all possible risks and losses associated with the Goods.

(b) it shall have adequate insurance for the Goods with such policy beginning no later than the time the Goods are delivered.

(c) if the Goods are damaged following delivery to the Customer, but prior to the Customer making Payment and prior to title to the Goods passing to the Customer, BBTC shall receive Payment out of the proceeds from the insurance as a priority over any other distribution of the insurance proceeds.

### Disclaimer of Warranties

1.49 The Competition and Consumer Act 2010 (Cth) may imply certain conditions and warranties into these Terms of Trade that cannot be excluded or modified. These Terms of Trade do not exclude or modify any of those conditions if to do so would contravene that law or make any part of these Terms of Trade void.

1.50 Subject to Clause 1.49 above, BBTC excludes all warranties and conditions that may be implied into these Terms of Trade and limits its liability for breaching any implied warranty or condition that can be excluded to (at BBTC's option) the repair or replacement of those Goods or reimbursement of the cost of having those Goods repaired or replaced.

1.51 BBTC will use all reasonable endeavors to supply Goods in accordance with the agreed terms of any Purchase Order, however, BBTC shall not be liable for any delay in delivery of the Goods nor will the Customer be entitled to claim against BBTC in respect of any loss or damage caused by delay in delivery.

1.52 Subject to clauses of this Agreement, the liability of BBTC to the customer under, or arising out of or in connection with the supply of the Goods or arising otherwise at law or in equity (including by statute, tort (including negligence), contract (including indemnity and liquidated damages) or any other basis) will be limited at the opinion of BBTC to either replacement of the defective Goods or a payment not exceeding 20% of the amount paid to BBTC for the Goods provided that BBTC will have no liability to the customer in respect of consequential loss, damage or expense (including loss or profits or expense).

1.53 The limitation in clause 1.52 above does not apply to claims in respect of personal injury to, illness or death of persons.

1.54 Clauses 1.49 to 1.57 shall survive any termination of the Agreement.

1.55 The Customer indemnifies and holds harmless BBTC against all loss, liability or costs (including legal costs on a full indemnity basis) and expense incurred by BBTC:

- (a) arising from any act or omission of the Customer in connection with the Goods (including, but not limited to, negligence of the Customer or any

representation made or warranty given by the Customer in relation to the Goods); or

(b) as a result of any claim or action brought in connection with the Goods or their use, other than a claim or action brought by the customers under these Terms of Trade or a condition or warranty which is not excluded by these Terms of Trade.

1.56 In the event that a product has been customized, the Company will endeavour to match samples to the finished Goods supplied to the Customer.

1.57 The Customer acknowledges and covenants that:

(a) there may be some natural variation in the finished product due to seasonal variations of botanical ingredients or minor variations in packaging from the samples provided in the production process to the finished product;

(b) such variations are out of BBTC's control; and

(c) by signing the Purchase Order, the Customer acknowledges that Goods supplied may exhibit slight variations in taste, colour and appearance from time to time.

### Company's Right to Cancellation

1.58 BBTC may, without penalty, stop delivery of Goods and terminate the Agreement if:

- (a) BBTC has reason to believe the Customer is insolvent;
- (b) the Customer is insolvent or bankrupt;
- (c) any reason arising under Section 5.3 of this Agreement; or
- (b) BBTC gives reasonable notification to the Customer of such cancellation.

1.59 Pursuant to Clause 1.58 above, if BBTC terminates the Agreement, BBTC will repay the Customer any amount that the Customer paid to the Company for such Goods that the Customer has not received.

1.60 BBTC shall not be liable for any incidental or consequential damages arising from termination of the Agreement by BBTC pursuant to Clause 1.59 above.

### Continued Supply

1.61 Where the Customer makes a Purchase Order for a Continued Supply then the Customer must:

- (a) Return all of BBTC's promotional materials, including but not limited to, signage and packaging to BBTC once the Continued Supply is complete;
- (b) provide BBTC with a minimum notice period of three (3) months should the Customer wish to end the Continued Supply;
- (c) pay all payments due for the Price of the Continued Supply for a period of three (3) months from the date of giving Notice to BBTC in accordance with this Clause; and
- (d) refund BBTC for the cost of all promotional material, packaging and/or Goods which BBTC has purchased or developed specifically for the Continued Supply

**Intellectual Property**

1.62 Where BBTC has designed, drawn, formulated or developed Goods for the Customer, any intellectual property rights which vests in those designs, drawings, formulations and documents shall remain the property of BBTC.

1.63 The Customer grants an exclusive Licence to BBTC for BBTC to use any intellectual property that the Customer may be the owner of in the course of carrying out BBTC's obligations under this Agreement.

1.64 The Customer shall hold harmless and release BBTC from any and all future claims for a possible infringement of the Customer's intellectual property if such claim arose out of BBTC carrying out its obligations under this Agreement.

1.65 The Customer must not replicate or use in any way any of BBTC's Intellectual Property, without BBTC's express written consent or approval as part of a campaign or promotion prepared for use which may be withheld in the absolute discretion of BBTC.

1.66 The Customer acknowledges that any containers or packaging provided to or by BBTC for the purposes of storing and displaying Goods supplied by BBTC have been provided under a limited license only, and remain the exclusive property of BBTC at all times. The Customer acknowledges that it is an express condition of this limited license that such containers and packaging shall only be used with Goods supplied by BBTC and their appearance must not be modified or changed in any way.

1.67 The customer must obtain BBTC's prior written consent before commencing and advertising or marketing in respect of the Goods, with such consent not to be unreasonably withheld.

1.68 Any improvement in procedure or any Intellectual Property of any nature made or discovered by the Customer in relation to the Goods are assigned to BBTC immediately upon their creation and the customer must do all things and sign all documents BBTC reasonably requires to give effect to an assignment if requested to do so in writing by BBTC.

1.69 The Customer agrees to maintain absolute confidentiality in respect of BBTC's Intellectual Property and also concerning the existence and terms of these Trading Terms and must not make any public announcements or communications without the prior written consent of BBTC.

**Representations and Warranties**

1.70 The Customer represents and warrants that:

- (a) all designs, specifications, or instructions given to BBTC for the Customer's Goods and/or Services will not cause BBTC to infringe any patent, registered design, or trademark.
- (b) the Customer shall indemnify BBTC against any action taken by a third party against BBTC in respect of any such infringement pursuant to this Clause.

1.71 BBTC represents and warrants that the Customer is granted a single use license for the design of any Goods supplied pursuant to the Customer's Purchase Order.

**General Provisions**

1.72 The parties shall not amend these Terms of Trade except by in writing and signed by both parties sought to be bound.

1.73 The Agreement is to be governed by and construed in accordance with the laws of Australia.

1.74 In the event that any dispute arising out of or in connection with this Agreement is not resolved through negotiations between the parties, the parties agree to participate in mediation. Such mediation must be conducted and completed before any party may commence a civil action or arbitration. Each party shall be responsible for an equal share in the cost of the Mediator, and shall be responsible for their own costs in respect of the dispute.

1.75 The Customer must not:

- (a) mix or dilute the Goods with any other product;
- (b) re-brand the Goods.
- (c) Substitute another product for the Goods in BBTC's packaging; and
- (d) change or alter the packaging of the Goods.

**GST**

1.76 All charges for the Goods payable by the Customer are exclusive of GST unless otherwise expressly stated in the Invoice.

1.77 The Customer must pay to BBTC, in addition to the Price and at the same time the Price is payable, and subject to being given a valid tax invoice, the GST payable in respect of the supply of the Goods.

**Notices**

1.78 All notices required to be given by either Party to the other shall be in writing and may be given personally or may be given by post to the addressee at its address as herein state or as notified from time to time, in which case such notice shall be deemed to have been received on the next business day following the date of posting.

**Severance**

1.79 If any provision or part of any provision herein contained is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof.