



Terms and Conditions of Trade with BEarena

The parties agree the following terms and conditions:

- 1. Agreement:** This Agreement comprises these Terms and Conditions of Trade, the Supplier's quotation and any document attached by the Supplier to the quotation relating to the Supplies. If there is any ambiguity or inconsistency between the documents comprising this Agreement, these Terms and Conditions take precedence to the extent of the ambiguity or inconsistency. By accepting the attached quotation or taking delivery of the Supplies whichever event occurs first, the Customer agrees to these Terms and Conditions without change. The Customer irrevocably acknowledges and agrees that this Agreement governs the parties' relationship including provision of the Supplies to the effect that any other terms and conditions as the Customer may include at any time (whether prior to formation of this Agreement or before or after delivery of any Supplies) either in a purchase order or any other communication with the Supplier are deemed to be excluded from this Agreement unless first agreed in writing by the Supplier.
 - 2. Definitions:** In this Agreement: "Contract Price" means the sum payable by the Customer for the Supplies; "Customer" means the person identified in the Supplier's quotation or invoice; "Delivery Location" means the address for delivery of the Supplies specified in a quotation or invoice; "Due Date" means the date that is 21 days from the date of the invoice; "Insolvency" includes a notice of an application, order or resolution (or an intention to do any of those things) for the winding up of the Customer or a controller or administrator under the Corporations Act 2001 (Cth) being appointed; "Interest" means the rate that is 2% above the variable interest rate per annum applicable to Bendigo Bank's Unsecured Business Term Loan product (or replacement product) as published from time to time (and applied in accordance with clause 7); "IP" includes copyright (including future copyright), technical data, rights in relation to inventions (including patent rights) and any other rights resulting from intellectual activity recognised in domestic law anywhere in the world; "Supplier" means BEarena Pty Ltd; and "Supplies" mean all goods and services supplied to the Customer under this Agreement.
 - 3. Interpretation:** Reference to the Supplier or the Customer includes that party's administrators, successors and assigns and any person to whom this Agreement is novated; a person includes a body corporate or a partnership; and the word "including" is not a word of limitation.
 - 4. Supplies:** The Supplier will provide the Supplies in accordance with this Agreement. The Supplier may sub-contract the Supplies and may make partial delivery of them. Delivery dates are estimated and the Supplier will not be liable to the Customer for any delay or failure to provide the Supplies.
 - 5. Acceptance:** Subject to the Supplier's warranty and statutory guarantee obligations, on the date that they are delivered the Customer is deemed to have accepted the Supplies as conforming to its requirements and cannot cancel or return any goods unless the Supplier first agrees in writing.
 - 6. Title and risk:** The Supplies may be subject to third party interests. Title to the Supplies (subject to clause 11) will not transfer to the Customer until payment of the Contract Price has been made in full. The risk of loss or damage to goods comprised in the Supplies transfers to the Customer on the date of delivery to the Delivery Location or collection by the Customer as applicable. Prior to the Supplier receiving payment of the Contract Price in full the Customer must not dispose of those goods to any third party unless the Supplier first agrees in writing, Pending payment of the Contract Price the Customer holds the goods as bailee for the Supplier.
 - 7. Payment:** The Customer must pay the Contract Price on or before the Due Date. The Customer will not be relieved from its obligation to pay an invoice because of delay in delivery of the Supplies. If an invoice is not paid in full by the Due Date the Customer must pay Interest on the unpaid amount calculated on daily rests computed from the day after the Due Date up to and including the actual date of payment. If the Customer disputes an invoice nonetheless the Customer must pay the undisputed part of the invoice by the Due Date. The Customer must pay all reasonable costs including debt collection commission and legal fees properly incurred by the Supplier to recover money owed to it by the Customer.
 - 8. Credit:** The Supplier is not obliged to either provide or continue to provide credit to the Customer. At any time for any reason the Supplier may do any one or more of the following: revoke, withdraw or change credit arrangements without prior notice or hold delivery of, or not deliver, the Supplies if the Company reaches its credit limit or is in default. The Supplier will not be liable to the Customer as a result of doing any of those things.
 - 9. Supplier warranty:** The Supplier's liability for warranty and consumer guarantees implied under the Australian Competition and Consumer Act 2010 (Cth) in relation to applicable Supplies is limited to any one or more of the following (at its discretion and within a reasonable period of time): in the case of goods, to replace the goods or supply equivalent goods; repair the goods; pay the cost of replacing the goods or of acquiring equivalent goods; or pay the cost of having the goods repaired; and in the case of services, to re-supply or pay the cost of having services supplied again. The Supplier's warranties and guarantees in respect of third party goods and services comprised in the Supplies are provided to the Customer strictly on the same terms (including warranty period) as are imposed by the relevant third party on the supply. The Supplier's liability for any express or implied warranty or guarantee does not apply if any defect in the Supplies is the result of any act or omission including negligence of the Customer, its officers, employees, agents, contractors or any other third party.
 - 10. Customer warranty:** The Customer warrants and represents that all information provided from time to time to the Supplier is accurate, up-to-date and complete at all times and that the Supplies are not purchased predominantly for personal, domestic or household purposes. The Supplier will continue to rely upon the Customer's warranty and representations at all material times.
 - 11. Intellectual Property and confidential information:** Ownership of all IP produced by the Supplier in relation to the Supplies remains vested at all times in the Supplier. Subject to payment of the Contract Price (and all other moneys payable by the Customer under this Agreement) the Supplier grants the Customer a non-exclusive, non-transferable licence to exercise that IP in Australia during the continuance of this Agreement for the Customer's internal use only (and for no other purpose including commercial purpose). The Customer must protect and keep confidential any confidential information disclosed to it by the Supplier. The Customer must use and disclose the confidential information, and obtain the Supplier's written consent to disclose it to any third party other than the Customer's officers and employees who need to know it, solely for the proper purposes for which it is provided by the Supplier to the Customer under this Agreement.
 - 12. Indemnity:** The Customer indemnifies the Supplier, its officers, employees, agents and contractors against any liability, loss liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) compensation or expense incurred or sustained by any of them as a result of any act or omission including negligence of the Customer, its officers, employees, agents, contractors or any other third parties except to the extent that the liability, loss, damage, cost, compensation or expense is the result of any unlawful or negligent act or omission of the Supplier.
 - 13. Liability limitation:** Neither party will be liable to the Customer for any indirect special, incidental or consequential loss or damage including punitive, exemplary or aggravated damages arising under this Agreement as a result of loss of profits, revenue, production, goodwill, business opportunity, other economic advantage, savings, benefit or loss including loss of data (whether or not either of them reasonably ought have been aware of the possibility of the loss or damage) or for any statutory fines or penalties. Subject to law the Supplier limits its liability to the Customer to the Contract Price.
 - 14. Termination:** The Supplier may immediately terminate this Agreement if the Customer ceases to carry on business; assigns any of its rights in, or novates, this Agreement other than in accordance with its terms; breaches its IP obligations or otherwise breaches this Agreement and does not remedy that breach within 14 days of the date of the Supplier's notice of the breach; or if an event of Insolvency occurs.
 - 15. Dispute resolution:** Other than to seek urgent relief neither party will commence court proceedings in relation to any dispute arising under this Agreement unless a dispute cannot first be resolved by negotiation or mediation. Written notice of the dispute must be issued by the notifying party to the other party and must contain reasonable detail of the dispute. During a dispute the parties will continue to fulfil their obligations under this Agreement.
 - 16. General:** Any variation of this Agreement must be in writing and signed by each party to be effective. The Customer must give the Supplier at least 30 days' notice of any proposed change in the ownership of the Customer or if the Customer proposes to novate this Agreement to a third party. The Customer must not assign any of its rights under this Agreement unless the Supplier first consents in writing. Any delay or failure by the Supplier to enforce a condition of this Agreement will not be construed as affecting the enforceability of that condition or this Agreement. The law of the State of NSW applies to this Agreement.
 - 17. Reservation of title under PPSA:** "PPSA" means the Personal Property Securities Act 2009 (Cth); in this clause 17, words beginning with a capital letter have the meanings that are ascribed to them in the PPSA (unless a contrary meaning is expressed or implied in this Agreement):
 - the Customer grants the Supplier a Security Interest in the Goods and their Proceeds to secure payment of the Contract Price and any other obligations under this Agreement. If the Goods and their Proceeds are not identifiable or traceable or their recoverable value is insufficient to meet the Customer's obligations, then the Security Interest will extend to all Goods present and after acquired by the Customer to the extent that is required to secure performance of its obligations;
 - the Customer will do and sign all things as the Supplier may reasonably require to enable the Supplier to obtain, maintain, register and enforce its Security Interest. The Supplier may register a Financing Statement (or Financing Change Statement) including a Purchase Money Security Interest and the Customer waives all rights to receive notice of registration;
 - if any sum remains outstanding by the Customer to the Supplier on more than one invoice under this Agreement then any payments made by the Customer may be applied by the Supplier first, to satisfy unsecured obligations; secondly, to satisfy secured obligations (other than a Purchase Money Security Interest) in the order in which those obligations were incurred; and thirdly, to satisfy obligations secured by a Purchase Money Security Interest in the order in which those obligations were incurred;
 - until all amounts owing by the Customer to the Supplier have been paid in full the Customer must: ensure that the Goods in its power, possession or control, and the Proceeds, can be identified and distinguished from any other items and that Proceeds are capable of being traced; and not grant a Security Interest in the Goods to any other person without first obtaining the Supplier's written consent (unless the Goods are held by the Customer as Inventory in which event nothing in this clause 17 will prevent the Customer from disposing of Inventory in the ordinary course of business); the parties agree to contract-out of the PPSA under s.115 to effect that the following sections of the PPSA will not apply and the Customer will have no rights under them including in relation to service of notice: s.95; s.96; s.118; s.121(4); s.125; s.130; s.132(3)(d); s.132(4); s.135; s.142; s.143; and in respect of s.115(7), s.127; s.129(2) and (3); s.130(1); s.132; s.135(2); s.135; s.136(3), (4) and (5) and s.137;
 - if an event of insolvency occurs or the Customer does not pay the Contract Price and any other amount owing to the Supplier then the Supplier may do any one or more of the following: require the Customer to immediately return any Goods acquired from the Supplier; enter upon the premises where the Goods are held and recover possession without liability for trespass or any resulting damage; or dispose of the Goods.
- 18. Reservation of title under general law:** Title in goods supplied under this Agreement will not vest in the Customer until the Supplier has received payment of the Contract Price in full for the goods and all other moneys payable to the Supplier by the Customer. Until then (without limiting the Supplier's other rights and remedies) the Customer:
- must separately identify the goods in the name of the Supplier; hold the goods as bailee for the Supplier; and not dispose of the goods in any way without the Supplier's written consent;
 - authorises the Supplier to enter upon the Customer's premises to take possession of the relevant goods without being liable in trespass; and
 - to the extent that the goods are integrated with or transformed in other goods (whether sold or leased by the Customer to any third person), in capacity as the Supplier's fiduciary must hold in trust for the Supplier out of the payment received from any person the Customer a sum that is equal to the Contract Price for the goods.