

## Terms and Conditions of Purchase Berrang Inc.



These Terms and Conditions apply to all outstanding and future purchase orders ("Purchase Orders") issued from Berrang, Inc. ("Buyer") to sellers, vendors and suppliers (collectively referred to as "Seller").

### 1. Scope of Agreement

These Terms and Conditions shall govern the purchase of products and services (collectively, "Products") pursuant to Purchase Orders issued to Seller by Buyer, subject to any additional terms and conditions appearing on the face of Buyer's Purchase Order. These Terms and Conditions may be amended by mutual agreement of the parties, which may be evidenced by exchange of written communications, including email proposal and acceptance by each party's authorized representative.

### 2. Purchase Orders

A Purchase Order shall be deemed accepted by Seller only if Seller acknowledges the Purchase Order in writing within forty eight (48) hours of Buyer's issuance of the Purchase Order. Purchase Orders and any acknowledgements, counter offer, notices, or other correspondence between Buyer and Seller shall be in written form, which includes, without limitation, transmission by facsimile or EDI. Any additional terms on any Seller form are objected to and rejected, and shall not be binding on or enforceable against Buyer, unless Buyer consents to such additional terms in writing. Buyer's "Requirements for Delivery Schedules" apply to delivery schedules as follows: for purchase orders and delivery schedules, the production release shall be in effect for two (2) months and material release for two (2) additional months, unless a minimum production quantity has been agreed upon by Buyer and Seller in writing.

### 3. Cancellation of Purchase Orders

Buyer may cancel any Purchase Order, in whole or in part, without further obligation or liability to Seller, at any time prior to Seller's shipment of the Products covered by such Purchase Order by providing Seller written or electronic notice of such cancellation.

### 4. The Basis of our Prices

Delivery must be made at the prices stated by Buyer. If for any reason the prices have not been set in a Purchase Order, Seller must immediately propose the prices for the Products, and Buyer shall have the right to accept or reject the proposed prices. The prices and discounts set out in the order/acknowledgement are fixed prices until the time of delivery.

### 5. Deliveries

- a. Seller shall deliver the Products F.O.B. to the place designated for shipment by Buyer in the Purchase Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Products to minimize the risk of damage in transit. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Products shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Products by Buyer shall immediately shift the risk of loss of such Products, wherever located, to Seller. Seller agrees that any contrary provisions of Sections 2-509 and 2-510 of the Uniform Commercial Code shall not apply to this Agreement.
- b. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Products after the same have been delivered to Buyer's premises. Buyer shall not be deemed to have accepted any such Products until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any lot of the Products consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Products, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's

expense, including all shipping costs. Buyer's failure to inspect or reject Products, or payment for Products, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

- c. Buyer's order number and part number must appear on all delivery notes and invoices. Each delivery must be accompanied by a carefully completed delivery note. Any inspection certificates or test reports requested in the order must accompany the invoice. Should Seller fail to comply with these conditions, Buyer reserves the right to return the delivery at Seller's expense and debit the merchandise value.

## 6. Time is of the Essence

TIME IS OF THE ESSENCE HEREOF and if any of the Products are not actually received by Buyer within the time specified therefore (or within a reasonable time, if none is specified) for any reason whatsoever (other than as set forth below), Buyer may, in addition to all other rights and remedies it may have hereunder or at law or in equity, refuse to accept the Products (or any of them), and may cancel this Purchase Order without any liability on its part to any person, firm or entity (including, without limitation, Seller) and may recover from Seller any loss or damage whatsoever incurred or suffered by Buyer as a result thereof.

SELLER SHALL BE LIABLE FOR LOSS OF PROFITS OR GOODWILL AND OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM ITS FAILURE TO DELIVER THE PRODUCTS IN A TIMELY MANNER.

Buyer's acceptance of the Products shall not constitute a waiver of any claim for delay. Seller shall immediately inform Buyer of any delay, provide the reason(s) for the delay, and provide Buyer of a new and binding delivery date. Buyer shall not be liable for any failure to deliver the Products as provided caused by circumstances beyond its control which make such performance impossible including, but not limited to, acts of God, fire, flood, acts of war, government action and accident, provided, however, that Seller's failure to perform must be entirely beyond Seller's control and without the fault or negligence of Seller.

## 7. Warranty Provisions

- a. Seller hereby warrants to Buyer that, in addition to any and all express warranties and implied warranties provided under the Uniform Commercial Code, (i) the Materials shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (ii) the Materials shall conform to all specifications and drawings provided by Seller and to any other specifications agreed upon between the parties; (iii) the Materials when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (iv) the Materials shall be manufactured, produced, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations, including, without limitation, the Robinson Patman Act, the Fair Labor Standards Act of 1938 as amended by Executive Order No. 11246 (Equal Employment Opportunity) Executive Order No. 11458 and 11625 (Utilization of Minority Business Enterprises), Executive Order No. 11701 (Listing of Job Openings for Disabled Veterans and Veterans of the Vietnam Era), Executive Order No. 11758 (Employment of the Handicapped), the Hazardous Materials Transportation Act of 1975, the Federal Hazardous Substances Act, the Federal Poison Prevention Packaging Act of 1970, the Occupational Safety and Health Act of 1970, the Toxic Substances Control Act and all rules, regulations, standards and rulings promulgated or issued thereunder, as from time to time amended, modified and/or superseded. Seller further agrees to execute upon Buyer's request, a certificate of compliance regarding subsection (iv) above.
- b. Seller shall give Buyer reasonable advance written notice of any production change related to the Materials, including but not limited to any change in the manufacturing process, formulation, raw materials or production location. For

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any change that could affect performance of the Materials, Seller shall complete any reasonable qualification process(es) of Buyer and address Buyer's concerns about the change.

- c. Seller agrees to indemnify Buyer and hold it harmless from and against any and all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as result of or in connection with Seller's breach of any of its obligations hereunder. Seller warrants all of the foregoing under Paragraph 7 and its subparagraphs for a period of thirty-six (36) months following delivery of its Products to Buyer.

### 8. Conditions of Payment

Payment of the full amount of the invoice shall be made no later than within thirty (30) days of the invoice date. Buyer is entitled to offset against any undisputed or legally determined claims arising from mutual business dealings. It is not permissible for Seller to assign claims to third parties without Buyer's explicit consent.

### 9. General Provisions

- a. Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which Buyer may suffer or incur (including reasonable attorneys' fees) arising out of, relating to or concerning any claim, action or allegation that any of the Products (or the use of same in an intended manner) infringes any patent or similar rights claimed by a third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller's sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceeding.
- b. This Agreement shall constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof and supercedes any prior written or oral understandings with regard thereto.
- c. If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed herefrom and shall not affect the interpretation or enforceability of remaining provisions hereof.
- d. These terms and conditions and any contract contemplated hereby between the parties shall be governed by and interpreted in accordance with the laws of the State of South Carolina. The state and federal courts of Greenville County, South Carolina shall have exclusive jurisdiction and venue over all controversies arising out of, or relating to, these terms and conditions and any agreement for a purchase or sale between Buyer and Seller.

**Berrang Inc.**  
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