



Priority Health Pty. Ltd.
 PO Box 84
 Prospect SA 5082
 Ph: (08) 8245 8888
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 Email: sales@priorityhealth.com.au
 ACN 008 091 530
 ABN 48 519 481 385

COD ACCOUNT APPLICATION FORM

APPLICANT'S FULL LEGAL NAME: ("the Customer")

(Please tick) Sole Trader Individual Partnership Pty Ltd Company Other (please state):

ABN: ACN (if Company):

Trading as: Trustee/s of Trust:

Street Address: Postal Address:

Nature of Business: Years in Business:

Telephone: Fax: Email:

Contact Name & Position:

OWNERSHIP please insert Owner(s) / Directors Name(s) in full:

1: Address:

DOB Driver's Licence No:

2: Address:

DOB Driver's Licence No:

3: Address:

DOB Driver's Licence No:

4: Address:

DOB Driver's Licence No:

IF LIMITED LIABILITY COMPANY - Address of Registered Office:

Date of Incorporation: Paid Up Capital:

Financial Institution: BSB: Account No: Account Name:

TRADE REFERENCES

Company	Contact Name	Phone Number	Account open since

Has the Applicant or a related entity of the Applicant previously been in Administration, Liquidation, Receivership, a Bankrupt or in a Part X Arrangement? (Please circle) Yes / No If yes please provide details:

I certify that the above information is true and correct and that I am duly authorised to make this application for credit, and enter into contracts, on behalf of the Customer. I have read and understood the TERMS AND CONDITIONS OF TRADE (on pages 2 and 3 overleaf or attached) of Priority Health Pty Ltd which form part of, and are intended to be read with this COD Account Application Form. The Customer agrees to be bound by the TERMS AND CONDITIONS OF TRADE.

Please note, if the Customer is a company, its directors are also required to sign the Guarantee & Indemnity on page 4. Please also remember to sign the Privacy & Credit Reporting Disclosure & Consent form on page 5.

Signed Print Name Position

Dated this day of 20

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Priority Health" means Priority Health Pty Ltd ACN 008 091 530 as Trustee for the Priority Health Unit Trust ABN 48 519 481 385.
- 1.2 "Customer" means the entity that has contracted with Priority Health to buy Goods and/or Services.
- 1.3 "Goods" means any goods supplied by Priority Health to the Customer (or ordered by the Customer but not yet supplied) including and in no way limited to, nuts, snack foods, dried fruit, health products, drinks and health foods.
- 1.4 "Services" means any services supplied by Priority Health to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, contract processing, packaging, roasting, merchandising and product demonstrations.
- 1.5 "Price" means the cost of the Goods and/or Services as agreed between Priority Health and the Customer and includes all out of pocket expenses Priority Health incurs on the Customer's behalf subject to clause 5 of this contract.

2. ACCEPTANCE AND MINIMUM ORDER

- 2.1 Any instructions received by Priority Health from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 2.2 Please note orders of less than \$250.00 will not be accepted by Priority Health.

3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.

4. PRIVACY ACT 1988 (AS AMENDED)

- 4.1 Priority Health collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at www.priorityhealth.com.au. A hardcopy of these policies can also be provided to the Customer free of charge, upon request.
 - 4.1.1 The Privacy Policy sets out: the personal information Priority Health collects; how Priority Health collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Priority Health's management of the information;
 - 4.1.2 The Credit Reporting Policy sets out: the types of credit related personal information Priority Health collects; how it is collected, why it is collected; how Priority Health may use and disclose the credit related personal information, including the credit reporting bodies to which Priority Health is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of Priority Health's management of the credit related personal information.
- 4.2 By the Customer providing instructions to Priority Health for the supply of Goods and/or Services, the Customer is consenting to Priority Health collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of Priority Health's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws

5. PRICE

- 5.1 The Price shall, at Priority Health's sole discretion, be:
 - 5.1.1 as stated on any invoice provided by Priority Health to the Customer; and
 - 5.1.2 as current at the date of supply.

6. PAYMENT

- 6.1 Subject to clause 6.2, payment of the Price shall be due on date/s determined by Priority Health, which may be:
 - 6.1.1 on delivery of the Goods and/or supply of the Services;
 - 6.1.2 before delivery of the Goods and/or supply of the Services;
 - 6.1.3 the due date specified on Priority Health's invoice;
 - 6.1.4 in the absence of any notification of the due date by Priority Health, it shall be on delivery of the Goods and/or supply of the Services.
- 6.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
 - 6.2.1 there is non payment of any sum by the due date;
 - 6.2.2 Priority Health forms the view that the Customer will not pay any sum by its due date;
 - 6.2.3 the Customer is bankrupted or enters administration, liquidation or receivership;
 - 6.2.4 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - 6.2.5 Any material adverse change in the financial position of the Customer.
- 6.3 Interest accrues on any amount owing after the due date at the rate of 1.0% per month, calculated daily from the first day overdue until payment.

- 6.4 All expenses, disbursements, collection and legal costs incurred by Priority Health in connection with the enforcement of any rights and/or preservation of any rights contained in this contract shall be paid by the Customer on a full indemnity basis.
- 6.5 For the purposes of clause 6.4, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses, irrespective of the amount of work actually performed by the collection agent.
- 6.6 Priority Health is entitled to terminate the provision of any credit facility with the Customer and suspend the supply of further Goods and/or Services to the Customer on credit at any time.
- 6.7 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in Priority Health receiving cleared funds for the entire amount of the negotiable instrument.
- 6.8 Where settlement discount applies, no settlement discount will be applied unless all monies for outstanding invoices are paid within agreed terms.

7. SPECIAL BUY-IN GOODS ORDERED BY THE CUSTOMER

- 7.1 Where the Customer orders any Goods from Priority Health that Priority Health does not have in stock, such that Priority Health is required to order the Goods from a third party (known as a "Special Buy-In"), the order is non-cancellable and the Customer remains liable to pay for the Goods once the Customer has made the order.

8. CREDIT CARD FEE

- 8.1 Priority Health reserves the right to (in its sole discretion) to charge a fee on payments ("fee") made by Mastercard or Visa credit or debit cards.
- 8.2 Priority Health does not accept payment by Diners Club or American Express.
- 8.3 Subject to clause 8.7, if the Customer pays an invoice in full within 7 days from the date of invoice, Priority Health will not charge any fee.
- 8.4 If the Customer pays an invoice using a card on or after the 7th day from the date of invoice, Priority Health may charge the Customer 1.8% of the amount(s) paid for payments by Mastercard or Visa credit or debit cards.
- 8.5 Priority Health may invoice the Customer for a fee separately to the Goods and/or Services.
- 8.6 Any fee payable by the Customer under this clause 8 is in addition to any other fee or charge Priority Health may add to the Customer's account. For example, Priority Health may charge the Customer interest on outstanding amounts in accordance with these conditions in addition to the fee.
- 8.7 If Priority Health decide to introduce a fee other than or in addition to the fee described in these Terms and Conditions of Trade, Priority Health will notify the Customer in writing at least 14 days before its introduction.

9. RISK TO GOODS AND DELIVERY

- 9.1 Where Priority Health arranges delivery, risk in any Goods shall pass when the Goods are delivered to the Customer or to the location nominated by the Customer. It is the Customer's obligation to insure the Goods from the point of delivery.
- 9.2 Unless Priority Health agrees in writing to the contrary, Priority Health will arrange delivery and insurance of the Goods to the Customer within inner Metropolitan Adelaide to the point of delivery.
- 9.3 Where the Customer arranges freight to its nominated location, risk in any goods shall pass when its nominated agent/carrier collects the Goods from Priority Health.
- 9.4 For the purposes of clause 9.3, the cost of freight and insurance to the point of delivery shall be at the Customer's expense and shall form part of the Price.
- 9.5 The Customer is responsible for unloading the Goods at the point of delivery.
- 9.6 Any representation of a date for delivery is an estimate only and Priority Health will not be liable for any loss or damage howsoever arising if the Goods are not delivered by a nominated delivery date.

10. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

Goods

- 10.1 Whilst risk in the Goods passes on delivery, legal and equitable title in the Goods shall remain with Priority Health until it has received payment in full for all monies owed by the Customer.
- 10.2 Until Priority Health has received payment in full for all monies owed by the Customer, Priority Health reserves the following rights:
 - 10.2.1 legal and equitable ownership of the Goods;
 - 10.2.2 the right to enter the Customer's premises and retake possession of the Goods;
 - 10.2.3 the right to keep or resell any Goods repossessed under sub-clause 10.2.2; and
 - 10.2.4 any other rights it may have at law or under the PPSA.
- 10.3 Where, pursuant to sub-clause 10.2.3:
 - 10.3.1 Priority Health resells the Goods repossessed, it is agreed that Priority Health may credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or

- 10.3.2 Priority Health retains possession of the repossessed Goods, it is agreed that Priority Health may credit the Customer's account with the invoice value less such sum as Priority Health reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 10.4 Priority Health shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
- 10.5 If the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to Priority Health as security for the full satisfaction by the Customer of the full amount owing between Priority Health and the Customer.
- 10.6 Until Priority Health receives payment for Goods in full, the Customer acknowledges that Priority Health has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to Priority Health.
- General**
- 10.7 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.
- 10.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which Priority Health asks and considers reasonably necessary for the purposes of:
- 10.8.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
- 10.8.2 enabling Priority Health to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by Priority Health.
- 10.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- 10.9.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 10.9.2 redeem the Goods under section 142 of the PPSA;
- 10.9.3 reinstate the Agreement under section 143 of the PPSA;
- 10.9.4 receive a Verification Statement.
- 10.10 Nothing in clause 10 prevents Priority Health from taking collection or legal action against the Customer to recover any monies owed from time to time.
- 11. DISPUTES**
- 11.1 Claims for short delivery or damaged Goods will only be recognised when notification is received within 24 hours of the Customer's receipt of the Goods, or 7 days from the dispatch date of the Goods, whichever is the lesser amount of time.
- 11.2 No claims relating to the Goods will be admitted if the Goods:
- 11.2.1 have been cut, processed, mixed, marked or otherwise made less saleable;
- 11.2.2 are not stored as per the manufacturers storage requirements which includes storing the Goods in a cool, dry place away from direct sunlight;
- 11.2.3 have been contaminated from foreign matters and/or insects;
- 11.2.4 are not in the original condition and packaging is not complete in every detail.
- 12. LIABILITY**
- 12.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 are expressly excluded to the extent permitted by law.
- 12.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then Priority Health's liability is limited, at its option, to anyone or more of the following:
- 12.2.1 the replacement or supply of the equivalent of the Goods; or
- 12.2.2 the payment of the costs of replacing the Goods or acquiring their equivalent.
- 12.3 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then Priority Health's liability is limited at its option to:
- 12.3.1 supplying the Services again; or
- 12.3.2 the payment of the costs of supplying the Services again.
- 12.4 Subject to the Customer's rights under Schedule 2 of the Competition and Consumer Act 2010 ("CCA"), Priority Health shall not be liable for:
- 12.4.1 any loss or damage of any kind whatsoever, arising from the Goods and/or Services, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods and/or Services; and
- 12.4.2 the Customer shall indemnify Priority Health against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Priority Health or otherwise, brought by any person in connection with any matter, act, omission, or error by Priority Health, its agents or employees in connection with the Goods and/or Services.
- 13. CANCELLATION**
- 13.1 Orders placed with Priority Health cannot be cancelled without the written approval of Priority Health. In the event that Priority Health accepts the cancellation of any order placed, it shall be entitled to charge a 20% handling fee for any work done to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.
- 13.2 Any Goods which are returned for the purposes of clause 13.1 must be in the original condition and packaging and must be complete in every detail.
- 14. GOODS RETURNED FOR CREDIT**
- 14.1 Priority Health may allow a credit at its sole discretion, but in any event Priority Health will not accept Goods for a credit after the expiry of 30 days from the date of the original invoice relating to the Goods to be returned.
- 14.2 Special Buy-Ins cannot be returned for a credit.
- 14.3 Priority Health reserves the right to charge a restocking fee on any Goods accepted for a credit.
- 14.4 In all cases of returning Goods for credit, the Customer must quote the original invoice or delivery docket and the Customer must prepay return freight.
- 14.5 Goods returned for credit must be accompanied by the original invoice or delivery docket and must be in the original packaging.
- 15. CHARGE**
- 15.1 The Customer hereby charges in favour of Priority Health all of the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has or which it may later acquire any such interest in, with payment of all monies owed by the Customer to Priority Health from time to time and hereby consents to Priority Health lodging a caveat or caveats which note Priority Health's interest.
- 16. JURISDICTION**
- 16.1 These terms and conditions and all matters concerning the business relationship between Priority Health and the Customer shall be governed by the law of the State of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia for the conduct of any litigation.
- 17. MISCELLANEOUS**
- 17.1 Priority Health shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by Priority Health to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this contract.
- 17.3 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 17.4 Any variation to the terms and conditions contained in this contract must be agreed to in writing by Priority Health for it to have any legal effect.
- 17.5 Priority Health may vary these conditions at any time. The Customer will be notified of any variations in writing.

DEED OF PERSONAL GUARANTEE & INDEMNITY

In consideration of **Priority Health Pty Ltd** ACN 008 091 530 as Trustee for the Priority Health Unit Trust ABN 48 519 481 385 ("**Priority Health**") granting the Customer (as named in the COD Account Application Form and which forms a part of this document) credit, **I/WE** hereby agree:

1. to personally guarantee to Priority Health the due and punctual payment by the Customer of all monies at any time owing and payable by the Customer to Priority Health, including any monies in excess of any credit limit granted to the Customer whether or not approved by the Customer and/or us, at the time of this guarantee and indemnity or at any subsequent time;
2. that this is a continuing guarantee and indemnity;
3. to indemnify Priority Health against all loss or damage arising from any past, present or future dealing with the Customer or any of us;
4. that our liability under this guarantee and indemnity is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by Priority Health or any grant to any of us of a release whether in whole or in part from any obligation contained in, or implied by, this guarantee and indemnity;
5. that our liability under this guarantee and indemnity shall not be avoided, released or affected by Priority Health making any variation or alteration in terms of any agreement with the Customer;
6. that our liability under this guarantee and indemnity shall not be avoided, released or affected by the Customer entering into a Deed of Company Arrangement (DOCA) or by Priority Health voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA;
7. that this guarantee and indemnity becomes binding on those of us that sign this guarantee and indemnity irrespective of whether or not all intended signatories execute this guarantee and indemnity;
8. that Priority Health is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor;
9. that this guarantee and indemnity may not be unilaterally revoked by us and remains in force until such time as we receive written confirmation from Priority Health that we are released from our obligations and liabilities under this guarantee and indemnity;
10. that if Priority Health forms the view, for any reason, after it receives a payment from the Customer and applies the payment to a debt owed by the Customer, that Priority Health is obliged to disgorge the payment or portion thereof to a Liquidator appointed to the Customer, Priority Health's rights are reinstated in relation to the debt that Priority Health applied the payment to (as if the payment had never been made) and I/we shall be liable to pay Priority Health the amount it disgorges to the Liquidator;
11. to further indemnify Priority Health against any and all losses and legal costs (on a full indemnity basis) that Priority Health incurs as a result of disgorging monies to a Liquidator of the Customer;
12. to hereby jointly and severally charge in Priority Health's favour all our estate and interest in any land, whether freehold or leasehold, in which we now have any legal or beneficial interest, or in which we later acquire any such interest in, with payment of all monies owed from time to time by the Customer or any of us and consent to Priority Health lodging a caveat or caveats which note Priority Health's interest in or over any of our real property;
13. to sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary;
14. to be liable for all Priority Health's collection and legal expenses (on a full indemnity basis) with respect to taking any action to preserve and/or enforce Priority Health's rights under this guarantee and indemnity.

GENERAL:

- "I", and "We" and "us" means each of the Guarantors jointly and severally.
- The invalidity or unenforceability of any provision of this guarantee and indemnity shall not affect the validity or enforceability of the remaining provisions.

I/We have read and understood this document and have been given an opportunity to seek independent legal advice prior to signing it.

Signed as a Deed

Guarantor Name (print)	Signature	Date
Witness Name (print)	Signature	Date
Guarantor Name (print)	Signature	Date
Witness Name (print)	Signature	Date

PRIVACY & CREDIT REPORTING DISCLOSURE & CONSENT FORM

OVERVIEW

Priority Health Pty Ltd ACN 008 091 530 (“**Priority Health**”) collects information about you for the purposes set out in our Privacy Policy and our Credit Reporting Policy. Both of these policies may be located at www.priorityhealth.com.au. A hardcopy of these policies can also be provided to you free of charge, upon your request.

The **Privacy Policy** sets out: the personal information Priority Health collects; how Priority Health collects and uses this information; how you may access or correct it; and how you may make a complaint in respect of Priority Health’s management of the information.

The **Credit Reporting Policy** sets out: the types of credit related personal information Priority Health collects; how it is collected, why it is collected; how Priority Health may use and disclose the credit related personal information, including the credit reporting bodies to which Priority Health is likely to disclose your credit related personal information to; and how a complaint may be made in respect of Priority Health’s management of the credit related personal information.

AUTHORISATION

By signing below you authorise us to collect, handle, use, disclose and otherwise deal with your personal information (including credit related personal information) in accordance with the terms of our Privacy Policy, our Credit Reporting Policy and in accordance with Australia’s privacy laws.

Print Name & Address of Applicant No.1:

.....
Signature of Applicant No.1 _____ Date / /

Print Name & Address of Applicant No.2:

.....
Signature of Applicant No.2 _____ Date / /

Print Name & Address of Guarantor No.1:

.....
Signature of Guarantor No.1 _____ Date / /

Print Name & Address of Guarantor No.2:

.....
Signature of Guarantor No.2 _____ Date / /