

Welcome to Better That. We are excited you have chosen to use our platform. Before you start buying, there are some important things you need to know.

We recommend that you carefully read the terms and conditions set out in these Terms of Use.

## 1. What is Better That?

Better That Ltd ACN 648 796 285 (**Better That, we, our or us**) operates the "Better That" auction website, mobile app and Internet-based platform (which are both collectively and individually referred to as the **Platform**).

Through the Platform, you can bid to buy Products offered by Sellers at great reverse auction prices; or create reverse auctions where Sellers bid to provide you with a Product you want at a better price.

The Platform is a technology service to help connect Sellers and buyers like you, and to exchange information and payments for auctions carried out via the Platform.

We do not sell or provide any of the Products that you may bid on or buy using the Platform, and we do not act as an agent for either you or the Seller.

## 2. Acceptance of terms

### 2.1 Agreement

By downloading the Better That app, creating an account, or using the Platform, you agree that you are bound by these Terms of Use. If you do not agree, you should stop using and uninstall the Better That app, or do not download the Better That app or use the Website.

### 2.2 Use of Platform

As a condition of your use of our Platform, you warrant and agree that:

- (a) if you are bidding, offering to buy, ordering or buying alcohol, you are at least 18 years of age;
- (b) if you are bidding, offering to buy, ordering or buying any Product other than alcohol, you are at least 18 years of age or have your parent's permission to use the Platform;
- (c) all information you supply to us and a Seller is true, accurate, current and complete, and to the extent you provide information about

other individuals, you are authorised to provide such information on their behalf;

- (d) you will use the functionality of this Platform only for the purchase of Products offered through the Platform, and for legitimate reasons only;
- (e) you will not manipulate the price of any Product or interfere with other buyer's bids or Seller's auctions;
- (f) you will not use (or attempt to use) data mining, robots, screen scraping or similar data gathering and extraction tools on the Site;
- (g) you will use the functionality of the Platform only for your personal use, or that of another person for whom you are legally authorised to act, and only in accordance with these Terms of Use;
- (h) you will inform such other person(s) about the Terms of Use should you purchase any Products on their behalf;
- (i) you will not use the Platform to communicate or distribute viruses or any other technologies that may harm us or the interests of the Sellers and other users;
- (j) you will not harvest or otherwise collect information about users, including email addresses, without their consent;
- (k) any content that you post in use of the Platform, including under clause 6, will not infringe the Intellectual Property Rights of any third party;
- (l) if you have an account on the Platform, you will safeguard your Login, will supervise and be completely responsible for any use of your Login or account by you and anyone other than you;
- (m) you will not link to our Platform or any part of our Platform in a way that damages or takes advantage of our reputation, including but not limited to in a way to suggest or imply that you have any kind of association and affiliation with us, or approval and endorsement from us that you do not have; and

(n) you will comply with these Terms of Use.

### 2.3 Change to terms

- (a) You agree that we may update these Terms of Use at any time, by giving you notice in any of the ways mentioned in clause 12.7(b).
- (b) After we give you such a notice, your continued use of our Platform will signify your agreement to and acceptance of the Terms of Use as amended, with effect from the date we give you notice.

### 3. Platform security; Suspension; Availability

#### 3.1 Security

You alone are responsible for your use of the Platform and protection of your password. You are also responsible for all activities that occur in connection with your Login and account. You agree to notify us immediately of any unauthorised use of your account.

#### 3.2 Suspension

We may, without prior notice to you, suspend (in part or whole) or terminate your account or access to the Platform if:

- (a) there is a malfunction, fault or breakdown of any equipment we use, or any repairs, maintenance or services are required;
- (b) we are required to do so by law;
- (c) an event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the Platform and any related services;
- (d) if we determine that you:
- (1) are in breach of your obligations under clause 2.2;
  - (2) have engaged in prohibited conduct under clause 3.3;
  - (3) have failed to comply with your payment obligations in clause 5.1; or
  - (4) are otherwise in breach of these Terms and that breach has not been remedied within 5 days of our notice to you, given in any of the ways mentioned in clause

12.7(b);

- (e) if someone claims that the Platform infringes their Intellectual Property Rights; or
- (f) if someone makes a Claim that exposes us to Liability.

A suspension for any of these reasons will not affect any right which accrues prior to, or after, suspension of our obligations under these Terms of Use.

#### 3.3 Fraud; suspicious activity

(a) If you post on the platform or make a purchase through the platform that we consider in our sole discretion is suspicious, or we otherwise detect that your account shows signs of fraud, abuse or suspicious activity, we may take any of the following actions as we deem reasonable:

- (1) verify (including pre-authorising) your credit card;
- (2) cancel any purchase associated with your name, email address or account, and close any associated accounts; or
- (3) notify any affected or potentially affected Sellers.

(b) If you have or we suspect that you have carried out any fraudulent activity, we may take necessary legal action and you may be Liable for any Loss we incur, including litigation costs and damages.

(c) If you wish to contest the cancellation of a purchase, or the suspension or deactivation of your account, please contact us by email on [support@betterthat.com](mailto:support@betterthat.com).

#### 3.4 Availability; Downtime and Limitations

(a) It is possible that that some or all of the Platform may be unavailable from time-to-time, including for maintenance or while we make improvements.

(b) If we anticipate that we may need to interrupt your use of or access to the Platform for longer than we would normally expect, we will take reasonable steps to tell you in advance.

(c) You agree that:

- (1) your access to and use of the Platform

may occasionally be limited due to maintenance;

- (2) access to the Platform is reliant upon various factors outside our control, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider or equipment used to access the Platform;
- (3) although we will use reasonable endeavours to ensure you have continuous access to the Platform, we are not liable to you or any other person for any Claim or to any other extent for Loss or damage caused by such factors; and
- (4) you will have no Claim against us in respect of loss of access or functionality to the Platform referred to in this clause 3.4.

#### **4. Products and Availability**

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- (a) Unless otherwise stated, product information displayed on our Platform is provided to us by our Sellers or Third Party Suppliers. This includes (but is not limited to) Product descriptions, inclusions or exclusions, images and Product availability. We are not responsible for such information and we rely on the accuracy of the information supplied by our Sellers and Third Party Suppliers.
- (b) If we become aware that the information provided by a Seller or a Third Party Supplier is incorrect or incomplete, we reserve the right to but are not responsible for correcting the information.
- (c) Some Sellers or Third Party Suppliers may impose additional terms and conditions on your purchase. If applicable, please read such terms and conditions carefully before proceeding. You acknowledge that if your purchase is of alcohol, the Seller or Third Party Supplier may require photographic ID showing that you are aged 18 or over. If valid photographic ID showing you are aged 18 or over is not produced, the Product may not be delivered. By proceeding, you signify your

agreement to abide by those additional terms and conditions.

- (d) You acknowledge that Products listed for auction on the Platform may be withdrawn at any time, including, without limitation, before the conclusion of an auction.

#### **5. Pricing; payments**

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##### **5.1 Prices and money**

- (a) We do not charge you any fees for you using our Platform, including in relation to viewing Products or posting a request or other enquiry on our Platform.
- (b) Unless otherwise specified, the Purchase Price for a Product:
  - (1) is in Australian dollars;
  - (2) is inclusive of applicable GST and other sales taxes, or any other Australian local taxes or usage fees (as specified at the time of purchase); and
  - (3) does not include any shipping or transport fees, customs or import duties, or excise taxes.

##### **5.2 Payment**

- (a) You are responsible for paying the Purchase Price plus shipping or transport costs and any applicable taxes for each Product you agree to buy through our Platform, in a timely manner and with a valid payment method.
- (b) If your payment method fails, we or the Seller may collect fees (including, without limitation, our Commission and any fees imposed by any third party providers) owed using other collection methods.

##### **5.3 Relationship**

You agree that by choosing to purchase a Product and pay the Purchase Price, you are not entering into any contract with us in respect of that purchase.

#### **6. Better That community**

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##### **6.1 Your comments and reviews**

- (a) We encourage you to publish legitimate, constructive comments and reviews of Products on the Platform. When you do so,

you are allowing other users to view, access and use such content and associate it with you (that is, against your name and public profile information).

(b) You must not:

- (1) post any material, content or comments, or do anything which is (or is likely to be) unlawful, offensive, abusive, indecent, defamatory, vulgar, derogatory, inappropriate or menacing, or in breach of any rights of others;
- (2) request to purchase any Product that is illegal to buy in, or import into, Australia;
- (3) cause (or do something that is likely to cause) annoyance, inconvenience or needless anxiety to others;
- (4) post commercial advertisements or promotional material; or
- (5) collect information (including information about other users) from the Platform for any purposes outside these Terms of Use.

## 6.2 Community standards

- (a) We reserve our rights to delete your post, content or any comments, and suspend your access or terminate your account in accordance with clause 3.2, if in our sole opinion, you have breached your community obligations under this clause 6
- (b) We are not required to publish any content submitted by you under clause 6.1, and we can remove it in our sole discretion, without notice to or Liability to you.
- (c) Please support the "Better That" community and report any violation of these Terms of Use by contacting us by email at [support@betterthat.com](mailto:support@betterthat.com).

## 6.3 Links to third party websites

For your convenience, the Platform may provide links or references to external websites or applications. We do not control or endorse those external websites or applications, and are not responsible or Liable for the accuracy, legality, or any other aspect of the content of such websites or for any damage or injury arising in connection with your access to such websites.

## 7. Your indemnity

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### 7.1 Your indemnity

- (a) You agree to indemnify us and our Related Entities (as that term is defined under the *Corporations Act 2001* (Cth)) and agents from all Claims, Liabilities and expenses (including legal fees) that arise from:
  - (1) your breach of these Terms of Use;
  - (2) your breach of any obligation imposed on you or any warranty you have provided to us under clause 2.2;
  - (3) your breach of any applicable law or third party rights; and
  - (4) your use (including misuse) of the Platform.
- (b) We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

## 8. Intellectual Property Rights

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### 8.1 Our Intellectual Property

- (a) Better That Technology and the Platform are protected under Australian and international copyright and other laws governing the protection of Intellectual Property Rights.
- (b) Intellectual Property Rights in images, trade marks and other content in the Platform (other than Products) are owned by us or our licensors. You must not sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, create derivative works from, adapt, or edit such materials.

### 8.2 Permission to use your posts

- (a) You (or your licensors) retain ownership of the content in any posts you make on the Platform.
- (b) You grant to us a perpetual, irrevocable, worldwide, royalty-free, transferable, licensable and sub-licensable right to use, copy, modify, distribute, publish and process

any content that you post on the Platform, including under clause 6.

- (c) You give us your complete and genuine consent to our use of all or any portion of any content that you post in use of the Platform, including under clause 6, for the purposes of allowing you to use our Platform (and including such other ancillary purposes), even if such use would otherwise be an infringement of your moral rights (as that term is defined in the *Copyright Act 1968* (Cth)).

## 9. Privacy

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### 9.1 Our privacy policy

- (a) We maintain a privacy policy that sets out how we handle your personal information. You should read our Privacy Policy at [www.betterthat.com](http://www.betterthat.com).
- (b) By accepting these Terms, you will be taken to have read our privacy policy.
- (c) Our privacy policy is a non-contractual document prescribed by the *Privacy Act 1988* (Cth). It does not impose any contractual obligations on us, and we disclaim any such contractual obligations.

### 9.2 Overseas disclosure

- (a) We may transfer or store your personal information at a destination outside of Australia. By accepting these Terms of Use and our privacy policy, you expressly acknowledge, consent and agree to the disclosure, transfer, storing or processing of any of your personal information outside of Australia.
- (b) The *Privacy Act* requires us to take such steps as are reasonable in the circumstances to ensure that any recipients of personal information outside of Australia do not breach the privacy principles contained within *Privacy Act*.

### 9.3 Protection of your personal information

- (a) We acknowledge the importance of protecting personal information and we take reasonable steps, to ensure that any personal

information is used by third parties securely and in accordance with our privacy policy.

- (b) Each Seller who uses our Platform has warranted to us that it has sought the necessary consent required by the *Privacy Act*, the *Spam Act 2003* (Cth) and the *Do Not Call Register Act 2006* (Cth) from all users whose personal information the Seller discloses to us, and we rely on that warranty.

## 10. Customer service; RRR Terms

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### 10.1 Help with your auction or purchase

- (a) If you need assistance or have a complaint about any Product or the Platform, please contact us by email on [support@betterthat.com](mailto:support@betterthat.com) and we will do our best to settle it promptly and fairly.
- (b) If your complaint is in relation to a Product, we may refer your complaint to the Seller involved who may deal with your complaint.

### 10.2 Compliance with RRR Terms

- (a) While Sellers are required to comply with our RRR Terms, we are not liable to you for how the Seller chooses to deal with your complaint or compensate or reimburse you.
- (b) Seller may also require you to comply with Seller's RRR Terms as a condition of obtaining any refund, return or replacement of a Product you have purchased through the Platform.

## 11. Disclaimer and limitation of our liability

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### 11.1 Disclaimers

- (a) You acknowledge and agree that the Platform contains general information and may include material from many different sources. We make no representation and do not warrant that the information provided (including but not limited to information about Products) is complete, accurate or current. You will take reasonable steps to verify any information about Products (including fitness for purpose) that you may see on the Platform.
- (b) The information accessible via the Platform is

not a replacement for professional advice, and does not take into account your specific circumstances.

- (c) You agree that we provide the Platform only, and we are not responsible or Liable to you or any third party for the actions or inactions of the Seller or another member in relation to you.
- (d) Neither we nor any of our directors, employees, contractors or other representatives will be Liable for any Loss, damage or personal injury whatsoever which may arise out of or in connection with your use of the Platform, to the extent permitted by law.
- (e) To the extent you purchase any Product through the Platform, the Products will be supplied by the Seller with all non-excludable consumer warranties under the *Australian Consumer Law*. Better That does not provide any consumer guarantees itself, or on behalf of the Sellers.

## 11.2 Implied terms

- (a) To the full extent permitted by law:
  - (1) any term which would otherwise be implied into these Terms of Use is excluded. However nothing in these Terms of Use excludes a compulsory consumer guarantee which applies under the *Competition and Consumer Act 2010* (Cth) and which cannot be excluded, restricted or modified and as applicable to the Seller and any Product; and
  - (2) you acknowledge that we provide the Platform on an 'as is, where is' basis, and we make no warranties or representations, express or implied, as to the Platform (and any information or documentation provided in connection with it), whether provided by us, the Seller, third parties or other users.
- (b) If any law implies or imposes terms into these Terms of Use which cannot be lawfully excluded, such terms will apply, save that our

liability for breach of any such term will be limited in accordance with the remainder of this clause 11.

## 11.3 Consequential loss

To the maximum extent permitted by law, in no event will we be Liable to you under any theory of Liability (whether in contract, tort, statute or otherwise) for any Consequential Loss arising out of or in connection with these Terms of Use or the subject of these Terms of Use, however caused, even if we have been advised of or should have known of the possibility of such damages.

## 11.4 Limitation of liability

- (a) Despite anything else in these Terms of Use, to the extent we are held Liable in connection with these Terms of Use (whether in contract, under a right of indemnity, tort or statute), then our cumulative Liability in the aggregate (to the fullest extent permitted by law) will be capped at the amount of our Commission received from the Seller in relation to the applicable Product you purchased through the Platform under these Terms of Use.
- (b) This limitation of our Liability extends to Loss, damage or personal injury caused directly or indirectly by your access to or inability to access the Platform and your reliance on any information provided in the Platform, even if we have been advised of the possibility of such damages or injury.
- (c) The parties acknowledge and agree that the foregoing provisions represent a reasonable allocation of risk and that the parties would not enter into this agreement absent such provisions.

## 12. General

### 12.1 No assignment

You must not assign, transfer or novate all or any part of your rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without our prior written consent.

### 12.2 Performance

In connection with our performance of our

obligations and exercise of our rights under these terms, we may (in our absolute discretion) have our obligations performed or rights exercised on our behalf by any of our affiliates and their respective agents, contractors, distributors, and service providers.

## 12.3 Jurisdiction

These terms will be governed by and construed in accordance with the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.

## 12.4 Severability

If a provision of these Terms of Use is ruled by a court to be illegal, invalid, unenforceable or void or in conflict with any law, it will not affect the validity or enforceability of the remaining provisions.

## 12.5 Waiver

The waiver or failure to require the performance of any provision herein will not be deemed to constitute a waiver of a later breach of the same or any other provision herein, and no such waiver will be effective unless in writing.

## 12.6 Whole agreement

This agreement is the entire agreement and understanding between the parties relating to the subject matter of these Terms of Use.

## 12.7 Notices

- (a) You can give us notice under this agreement by email at [support@betterthat.com](mailto:support@betterthat.com).
- (b) We can give you notice under these Terms of Use in a variety of ways, such as:
  - (1) a banner notice, post or push message on the Platform;
  - (2) by email at the address you provide in your account; or
  - (3) any other means including text message, telephone or mail (as appropriate).
- (c) You agree to keep your contact information up-to-date in your profile on the Platform, and understand that we will have no way of notifying you if your contact information is not

current.

## 13. Definitions and interpretation

### 13.1 Definitions

**Better That Technology** means all Intellectual Property Rights created, owned or licensed by Better That or its licensors, including in the software, algorithms and know-how used by (or comprised in) the Platform and any ancillary services, Better That tools, interfaces, application programming interfaces, extranets, computer software and any other Better That technology, and any products which may be developed from them.

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

**Consequential Loss** means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the above types of loss arising from an interruption to a business or activity.

**Exceptional Circumstance** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any

natural disaster;

- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes;
- (e) materials or labour shortage; and
- (f) acts or omissions of any third party network providers (such as internet, telephony or power provider).

**GST** has the meaning given in the GST Law.

**GST Law** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Liability** means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

**Login** means your personal username and password (or other credentials) for accessing the Platform.

**Loss** means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

**Platform** includes the BetterThat.com website and mobile application, and any related Better That services or tools.

**Product** means any product, including (but not limited to) products or services offered for sale, hire (rental) or purchase through the Platform by a Seller.

**Purchase Price** means any price that you agree to pay to the Seller to receive a Product.

**RRR Terms** of Better That or the Seller, means Better That's or Seller's (as applicable) policy in relation to return, replacement or refund of Products purchased or sold through the Platform.

**Scheduled Maintenance** means preventative or emergency maintenance in relation to any hardware, software, platform or communications network used, or relied upon, to provide the Platform.

**Seller** means a business who is authorised to use our Platform to offer Products for sale, or market Products (and any ancillary services).

**Third Party Suppliers** means any suppliers or their agents, other than us or the Seller.

## 13.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
  - (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
  - (2) one gender includes the others;
  - (3) the singular includes the plural and the plural includes the singular;
  - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
  - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
  - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - (8) money is to Australian dollars, unless otherwise stated; and



- (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

### 13.3 **Parties**

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.