

## **Customer Agreement**

THIS CUSTOMER AGREEMENT is made as of the date set forth on the reverse hereof, by and between Berry Dental Lab, Inc. an Georgia corporation ("Company") and the customer set forth on the reverse hereof ("Customer"), and WHEREAS, the Company values its customers and desires to avoid any and all misunderstandings between it and its customers regarding the terms and obligations of orders placed by the customers; NOW, THEREFORE, the Company and the undersigned customer, do hereby agree as follows:

Full payment, as set forth on the Company's current price sheet (which is subject to change from time to time without prior notice) for all products, work, services or shipments requested by Customer pursuant to each order placed by Customer shall be due within thirty (30) calendar days after the date of the invoice therefore, regardless of when actually received by Customer. All balances remaining past such date shall be considered PAST DUE. Any promotional discounts will be void if invoice total has not been paid. The Customer also authorizes the Company to obtain and report credit information on Customer.

While the Company shall use its best reasonable commercial efforts to prepare all products, work, services or shipments requested by the Customer in a timely fashion, the Company cannot and does not represent or warrant that the same may be prepared or delivered by any particular date. The Customer may not claim any offset or reduction in price for any alleged late delivery, discrepancies, shortages, claims or incorrect shipments.

ALL PAST DUE BALANCES shall incur and bear and Customer agrees to pay a interest charge equal to one and one half percent (1.5%) of any PAST DUE balance per month or portion thereof from and after the invoice date until the unpaid PAST DUE balance is paid in full, or as otherwise provided by the laws of your state. Notwithstanding the foregoing, the above interest charge equates to an ANNUAL PERCENTAGE RATE (APR) of eighteen percent (18%).

All payments made by (or credits or discounts granted to) Customer while a PAST DUE balance shall be applied first to late charges and second to PAST DUE balances before being applied to current balances, unless elected otherwise by the Company.

The Company reserves the right to grant, at its sole discretion and a case by case basis, credits or discounts for pre-paid accounts or otherwise. Notwithstanding the foregoing, no such credits or discounts shall be allowed while a PAST DUE balance or default by Customer under this Agreement exists, unless elected otherwise by the Company and provided to Customer in writing.

All agreements between the Customer and the Company are expressly limited so that in no contingency or event whatsoever shall the amount of any interest charge exceed the highest lawful rate permissible under applicable usury laws. If, for any circumstances whatsoever, any interest charge hereunder shall involve transcending the limit of validity

prescribed by law which a court of competent jurisdiction may deem applicable thereto, then ipso facto, the interest charge shall be reduced to the limit of such validity, and if from any circumstances the Company shall receive an amount which might otherwise be deemed to be interest in excess of such limits, the same shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between the Customer and the Company.

Company shall, unless specified otherwise in writing by Customer, determine the method of shipping or transport. On all cases for delivery outside Gwinnett County, the Customer shall be responsible for all shipping and transport costs including, but not limited to, the payment and maintenance of any shipping or transport insurance. Customer shall bear all risk of loss or damage during shipping or transport.

All orders/requests for products, work, services or shipments requested by the Customer shall be made in writing pursuant to the forms made available by the Company for such purposes. The Company reserves the right to disregard any other orders/requests. The Customer shall supply the Company in writing with all specifications and information reasonably required by the Company to prepare the prosthesis or appliance requested by the Customer. While the Company reserves the right to request, from time to time, further specifications and information, it expressly disclaims any duty to do so and may rely entirely upon the original specifications and information provided by the Customer without any duty of investigation. The Customer shall be solely responsible for the accuracy of any such specifications or information. Further, the Customer shall be responsible to inspect the products, work, services or shipments requested by Customer, including without limitation, all prostheses and appliances for proper application, fit, alignment and ultimate use. The Customer shall indemnify, defend, and hold the Company and its principals, shareholders, directors, officers, employees, representatives, agents, successors and assigns, free and harmless from any and all claims, liabilities, and damages, known and unknown, arising by reason of treatment of any patient of the undersigned or the actual application, fit, alignment or ultimate use of any prosthesis or appliance by the Company hereunder.

Any and all discrepancies, shortages, claims or incorrect shipments must be reported immediately to the Company by Customer and in no event later than ten (10) calendar days from the date of receipt. All notifications shall be made in writing and delivered to Company, provided, however, that Customer may notify Company orally, by telephone or otherwise, so long as it also contemporaneously prepares and delivers to Company a written record of such notification and such oral notification shall be deemed effective as of the date made. Unless notification is made and delivered as set forth above, Customer shall be deemed to have inspected and accepted all products, work, services or shipments of or by Company. The Company shall reasonably cure any discrepancies, shortages, claims or incorrect shipments for which it may be responsible only if notified as set forth above. Discrepancies, shortages, claims or incorrect shipments shall be handled as follows:

Errors, omissions or mistakes made by Company shall be corrected by Company at its own expense. Customer shall request a return authorization from Company which Company shall reasonably provide. The Company will not remake or otherwise remedy any prosthesis unless and until proper return authorization has been requested and provided. Upon obtaining a return authorization, Customer shall promptly return any prosthesis or appliance or product in question, clearly and conspicuously identifying the same pursuant to the return authorization, or as otherwise directed by the Company. The Company shall, at its option, either remake or repair any prosthesis or appliance in question or credit to Customer, in the invoice amount, for the prosthesis in question returned to Company as set forth above.

Errors, omissions or mistakes made by Customer may be corrected by the Company, and depending on the nature of the case, at the expense of the Customer; provided however, that it is the policy of the Company not to profit from the mistake of the Customer. The Company shall use discretion in any such matters.

**THE COMPANY AND THE CUSTOMER ACKNOWLEDGE THAT REQUESTS FOR PROSTHESIS OR APPLIANCE IS MADE BY A LICENSED DENTIST AND THE COMPANY HAS PREPARED THE SUBJECT PROSTHESIS OR APPLIANCE TO THE SPECIFICATIONS OF THE CUSTOMER AND THAT THE CUSTOMER IS SOLELY RESPONSIBLE FOR SUCH SPECIFICATIONS. THE COMPANY MAKES NO WARRANTIES AND ALL EXPRESS OR IMPLIED WARRANTIES, ARE EXCLUDED. THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT THE COMPANY IS NOT LICENSED TO PRACTICE DENTISTRY AND DOES NOT KNOW THE PARTICULAR CIRCUMSTANCE AND APPLICATION UNDER WHICH THE PROSTHESES OR APPLIANCES IS TO BE UTILIZED, AND THEREFORE, THE COMPANY DOES NOT AND CANNOT WARRANT THAT THE PROSTHESES OR APPLIANCES ARE FIT FOR ANY PARTICULAR PURPOSE OR THAT THE SAME IS IN ANY WAY MERCHANTABILITY.**

**THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT THE COMPANY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS THAT MAY BE OBTAINED BY USING THE PROSTHESIS OR APPLIANCE. THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT IN NO EVENT WILL COMPANY BE LIABLE TO ANY PARTY, INCLUDING BUT NOT LIMITED TO PATIENTS OF THE UNDERSIGNED, FOR ANY DAMAGES RESULTING FROM ANY USE OF THE PROSTHESIS OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER CLAIMED BY THE UNDERSIGNED, ANY PATIENT OF THE UNDERSIGNED OR ANY OTHER PARTY. IN ADDITION, THE UNDERSIGNED UNDERSTANDS THAT NO PATIENT OF THE UNDERSIGNED OR ANY OTHER PERSON NOT A PARTY TO THIS AGREEMENT WILL BE CONSIDERED A THIRD PARTY BENEFICIARY TO THIS AGREEMENT AND THAT NO SUCH PERSON WILL BE ABLE TO ENFORCE AGAINST THE COMPANY ANY REPRESENTATIONS OR**

**WARRANTIES, IF ANY, MADE HEREIN OR BY THE UNDERSIGNED TO SUCH PATIENT.**

This agreement shall be read in conjunction with the provisions set forth on the reverse hereof and with written work authorizations (including name, descriptions of products, work, services or shipments, etc.) shall be incorporated herein and all of which shall constitute the entire agreement between the parties hereto pertaining to the subject matter contained herein and therein and shall supersede all prior and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Should any provision or portion of this Agreement be held or otherwise become unenforceable or invalid for any reason, the remaining provisions and portions of this Agreement shall be unaffected by such unenforceability or invalidity.

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and assignees, except as set forth herein, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, except as set forth herein, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement, except as set forth herein.

This Agreement shall be binding on, and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns.

If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover as an element of their damages reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which said prevailing party may be entitled.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Georgia.

This Agreement is deemed to have been entered into, and primary performance will be deemed to be in Gwinnett County, Georgia and Customer acknowledges and agrees to jurisdiction of the appropriate Georgia Court.