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# BioCare

Terms and Conditions  
& Standards for resellers



## Terms and Conditions of Sale for Authorised UK Resellers

### 1. Scope of these Terms and Conditions

- a) These terms and conditions of sale (“Terms and Conditions”) apply to all sales of the Company’s products (“Products”) to any person who is appointed in writing by the Company as an authorised reseller of the Products in the United Kingdom (“Reseller”).
- b) These Terms and Conditions apply to the exclusion of any other terms or conditions subject to which any order for the Products is made or purported to be made by the Reseller.

### 2. Orders for the Products

- a) The quantity, quality and description of the Products and any specification for them shall be as set out in the Reseller’s order (if accepted by the Company).
- b) The Company reserves the right to make any changes in the specification of the Products which are required to conform with any applicable UK, EU or other statutory requirements or which do not materially affect their quality or performance.
- c) All orders submitted by the Reseller are subject to acceptance by the Company.
- d) The Reseller shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Reseller, and for giving the Company any necessary information relating to the Products within a sufficient time to enable the Company to fulfil the order in accordance with its terms.
- e) Each order for the Products shall be final, but the Company may at its discretion accept an amendment to an order prior to despatch of the Products.
- f) No order which has been accepted by the Company may be cancelled by the Reseller except with the agreement in writing of the Company and on terms that the Reseller shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- g) The Reseller takes full liability for the quantity of Products on all orders, and the Company shall have no liability for any excess quantity ordered but not sold for any reason, including stocks being out of date.
- h) Each order for the Products shall be deemed to constitute a separate contract.
- i) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

- j) The Company reserves the right to discontinue or withdraw the manufacture or supply of any of the Products and make changes and improvements at any time in the formulation or process of manufacture of any of the Products without incurring any obligation to the Reseller.

**3. Delivery of the Products**

- a) Upon receipt of each order (and subject to acceptance by the Company) the Company shall as soon as is practicable inform the Reseller of the Company's estimated delivery date for the consignment.
- b) The Company shall use all reasonable endeavours to meet the delivery date, but time of delivery shall not be of the essence and the Company shall not be in breach of these Terms and Conditions or have any liability to the Reseller if, notwithstanding those endeavours, there is any delay in delivery, unless the Reseller has given 120 days' notice to the Company requiring delivery to be made and the Company has not made the delivery within that period.
- c) The Products will be delivered to any address in Mainland Britain specified in the order, subject to a delivery charge (which will be notified by the Company to the Reseller on acceptance) in case of orders below the minimum order value specified by the Company from time to time.
- d) The Reseller shall, within seven days of the arrival of each consignment of the Products at the place for delivery specified by the Reseller, notify the Company in writing of any defect in Products or any other matter by reason of which the Reseller alleges that the Products delivered do not comply with these Terms and Conditions, and which should be apparent on reasonable inspection, and shall at the same time provide the Company with sufficient information to enable the Company to establish whether or not the Products in question do so comply.
- e) If the Reseller fails to give notice of any defect or other matter specified in paragraph d) then, except in respect of any defect or other matter which is not apparent on reasonable inspection, the Products shall be conclusively presumed to comply in all respects with these Terms and Conditions, and the Reseller shall be deemed to have accepted delivery of the Products in question and the Company shall have no liability to the Reseller with respect to that delivery.
- f) If the Reseller fails to take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Reseller's reasonable control or by reason of the Company's fault) the Company may:
  - (i) store the Products until delivery and charge the Reseller for the reasonable costs (including insurance) of storage; or

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- (ii) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Reseller for the excess over the price under these Terms and Conditions or charge the Reseller for any shortfall below the price under these Terms and Conditions.

## 4. Risk and Property

- a) Risk of damage to or loss of the Products shall pass to the Reseller at the time of delivery or, if the Products are delivered to the delivery address specified by the Reseller, and the Reseller wrongfully fails to take delivery of the Products, at the time when the Company has tendered delivery of the Products.
- b) Notwithstanding the delivery of and the passing of risk in the Products, or any other provision of these Terms and Conditions, the property in the Products shall not pass to the Reseller until the Company has received in cleared funds payment in full of the price of the Products and any delivery charge.
- c) Until property in the Products passes to the Reseller:
  - (i) the Reseller shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Reseller and third parties and properly stored, protected and insured and identified as the Company's property;
  - (ii) the Reseller may resell the Products (as principal and not as the agent of the seller, and on the basis that the property in the Products shall pass to the Reseller immediately prior to resale) in the ordinary course of its business, but this right shall cease automatically if any of the events referred to in clause 12(a)(ii)-(iv) (inclusive) occurs in relation to the Reseller;
  - (iii) provided the Products are still in existence and have not been resold, the Company may at any time require the Reseller to deliver up the Products to the Company and, if the Reseller fails to do so forthwith, enter upon any premises of the Reseller or any third party where the Products are stored and repossess the Products.
- d) The Reseller may not pledge, create a lien over, or in any way charge by way of security for any indebtedness, any of the Products which remain the property of the Company, but if the Reseller does so, all money owing by the Reseller to the Company shall become due and payable.

## 5. Price of the Products

- a) Subject to the following provisions, the prices for all Products to be supplied under these Terms and Conditions shall be based on the Company's trade prices from time to time, subject to any further discount that the Company in its absolute discretion may grant in writing (and which it may withdraw at any time on 30 days' notice). All orders below the minimum order value specified

by the Company from time to time will be subject to an additional delivery charge, which will be payable at the same time and in the same manner as the price.

- b) **The Company shall:**
- (i) supply the Reseller with copies of the Company's trade price lists for the Products in force from time to time; and
  - (ii) give the Reseller not less than 3 months' notice in writing of any alteration in those prices, and the prices as so altered shall (subject to any further discount granted by the Company) apply to all Products delivered on and after the applicable date of the increase, including outstanding orders.
- c) The price of the Products is exclusive of any applicable value added tax, for which the Reseller shall be liable in addition to the price.
- d) The Company reserves the right, by giving written notice to the Reseller at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Reseller, or any delay caused by any instructions of the Reseller or failure of the Reseller to give the Company adequate information or instructions.

## 6. **Terms of Payment**

- a) The Reseller shall pay the invoiced price in respect of all deliveries of the Products by the last day of the month following the month in which the invoice is submitted by the Company.
- b) The Company reserves the right to apply a credit limit to the total amount payable by the Reseller in respect of the supply of the Products (including outstanding orders), which the Reseller shall not exceed, but if it does so the Company may (without limiting any other right or remedy) suspend any orders for the Products until such time (if any) as the Reseller pays the Company such amount as is necessary to come within the credit limit.
- c) All payments shall be made by the Reseller in sterling by transfer to a bank account nominated by the Company in writing, without any set off or deduction.
- d) Time for payment of the price of the Products shall be of the essence of the contract.
- e) Receipts for payment shall be issued only upon request.
- f) If the Reseller fails to pay in accordance with these Terms and Conditions the price for any Products (less any discount to which the Reseller is entitled)

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together with any applicable delivery charge by the due date for payment, the Company may:

- (i) cancel or suspend any further delivery to the Reseller under any order; and
- (ii) charge the Reseller interest on the price, both before and after any judgment, at the rate of 5 per cent per annum above the Bank of England base rate in force from time to time from the date the payment became due until actual payment is made.

## 7. **Defective Products**

- a) In the event of any of the Products supplied to a customer of the Reseller being found to be defective within one year of despatch by the Company or within six months of sale by the Reseller, whichever is the shorter, the Reseller shall submit a full report to the Company about it immediately together with a sample of the defective Products. In respect of such Products being found by the Company to be defective, the Company shall replace such Products at its own cost, or if the end-user has requested a refund in respect of the Products, issue a credit to the Reseller for the price thereof paid by the Reseller to the Company.
- b) Except in the case of death or personal injury resulting from the negligence of the Company, or as required by law, any liability of the Company in respect of defective Products shall be limited to that specified in paragraph 7(a).

## 8. **Intellectual Property Rights**

- a) In this clause “Intellectual Property Rights” means any copyright, trade marks, patents, designs, and all other intellectual property rights throughout the world, whether registered or unregistered including applications for such protection which in any way relate to the Products (including, but not limited to, information relating to the manufacture, formulation and use of the Products and sales and promotional literature relating to the Products).
- b) The Reseller acknowledges that title to the Intellectual Property Rights is and remains at all times exclusively the Company's, and that the Reseller has no right to use, disclose, copy or otherwise dispose of the same except in accordance with any express authority given by the Company.

## 9. **Reselling the Products**

- a) The Company shall provide the Reseller with technical support to enable it to market and resell the Products in accordance with the standards laid down by the Company from time to time, and the Reseller undertakes to accept, implement and make full use of the same in order to market and resell the Products.
- b) The Reseller shall at all times comply with such standards as are laid down

by the Company from time to time for its authorised UK resellers, concerning the resale of the Products (including their advertising and promotion), any premises from where they are resold and (subject to clause 10) any online or other electronic means for their resale.

- c) The Reseller shall conduct the resale of the Products (including their advertising and promotion) in accordance with all applicable laws, and with any codes of practice issued from time to time by the Company.
- d) The Reseller shall not:
  - (i) obtain any of the Products for resale from any person other than the Company or any other Authorised UK Reseller;
  - (ii) resell any of the Products to any other person within the United Kingdom (other than an end-user) who is not an Authorised UK Reseller;
  - (iii) resell to an individual end user more than a given quantity of Products laid down from time to time by the Company;
  - (iv) establish or maintain outside the United Kingdom any branch, sales outlet, warehouse or distribution depot for the resale of the Products;
  - (v) actively market any of the Products in any part of the European Economic Area ('EEA') which has been notified by the Company to the Reseller as being exclusively allocated by the Company to another reseller or customer group of the Company (whether before or after the date hereof), or in any other part of the EEA (all of which is hereby exclusively reserved to the Company itself), without prejudice to the right of the Reseller to make passive sales to such territories; or
  - (vi) market or resell any of the Products to any person outside the EEA, or to any person inside the EEA if the Reseller knows, or ought reasonably to know, that the person intends to resell the Products to any person outside the EEA.
- e) For the purposes of paragraph (d)(v), "actively market" means actively approaching individual customers by direct mail, unsolicited email or otherwise, or advertising in the media or on the internet or other promotions specifically targeted at customers in the relevant area, and "passive sales" means sales responding to unsolicited requests from individual customers in the relevant area.
- f) The Reseller shall not:
  - (i) act as, or represent itself as, an agent of the Company for any purpose;
  - (ii) in any way pledge the credit of the Company;
  - (iii) give any condition or warranty on the Supplier's behalf;
  - (iv) make any representation on the Supplier's behalf;

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- (v) attempt to bind the Company to third parties in any manner whatever;
- (vi) make any representation or give any warranty in relation to the Products unless such representation or warranty has been previously approved in writing by the Company or is contained in any literature published (and not, to the knowledge of the Distributor, withdrawn) by the Company; or
- (vii) deface or alter the Products or their packaging in any manner whatever or, in particular, alter, remove or in any way tamper with any warnings or instructions for use of the Products or any indication of the source of origin of the Products, or alter, remove or in any way tamper with the Company's trade marks or numbers on the Products.

## 10. Internet sales

- a) Subject to the following provisions, the Reseller may sell the through the Reseller's own website ('Site') provided that:
  - (i) the Site has been approved by the Company, which approval the Company may grant subject to such conditions as it, in its absolute discretion, think fit;
  - (ii) the Site conforms at all times, in terms of form, content, colour schemes and layout, with any requirements laid down by the Company from time to time;
  - (iii) all depictions of the Products and all text concerning the Products are in the form supplied by the Company from time to time;
  - (iv) the Site contains such links to other websites (including those of the Company) as the Company may require;
  - (v) the Reseller notifies the Company in advance of any links which the Reseller proposes to make between the Site and the websites of third parties, and does not put into effect any such links without the Company's prior approval in writing; and
  - (vi) the content of the Site (including sitemaps) shall be subject to the prior written approval of the Company, which shall not be unreasonably withheld and which shall be notified to the Reseller within 14 (fourteen) business days of receipt by the Company of details of the relevant content of the Site.
- b) The Reseller shall not:
  - (i) resell the Products through any website other than the Site approved by the Company (by way of illustration, this means the Reseller is not permitted to resell the Products on Amazon or eBay);
  - (ii) resell to any online customer more than a given quantity of Products laid down from time to time by the Company;



- (iii) target customers outside the United Kingdom (for example, by way of links on websites aimed at customers outside the United Kingdom, or by the use of any language other than any official language of the United Kingdom, or the quoting of prices in currencies other than the official currency of the United Kingdom, or quoting costs of postage to other territories);
- (iv) purchase or apply to register as a domain name, any word or phrase which is the same as or similar to any of the Company's trade names or trade marks; or
- (v) sell any of the Products to any person if the Reseller knows, or ought reasonably to know, that the person intends to resell such Products through any other website or by any other electronic means.

## 11. **Liability**

- a) Subject to clause 7, and except in the case of fraudulent misrepresentation, or death or personal injury caused by negligence, the Company shall not be liable to the Reseller by reason of any representation, implied warranty, condition or other term, or under any express term or condition, or any duty at common law, for any loss of profit or contracts, goodwill or anticipated savings or wasted expenditure, or any indirect, special or consequential loss or damages (including costs), whether caused by the Company's negligence or that of its employees or agents or otherwise, arising out of or in connection with the manufacture or supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with these Terms and Conditions or at all) or their resale by the Reseller.
- b) The Company shall not be liable to the Reseller or be deemed to be in breach of any contract with the Reseller by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the supply of the Products, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
  - (i) Act of God, explosion, flood, tempest, fire or accident;
  - (ii) war or threat of war, acts of terrorism, sabotage, insurrection, civil disturbance or requisition;
  - (iii) flood, earthquake, hurricane, plague, epidemic or pandemic;
  - (iv) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - (v) import or export regulations, restrictions or embargoes;

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- (vi) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- (vii) difficulties in obtaining transport, raw materials, labour, fuel, parts or machinery; or
- (viii) power failure or breakdown in machinery.

## 12. Termination

- a) The Company may, without prejudice to any of its other rights or remedies, terminate the status of the Reseller as an authorised UK reseller of the Products by giving notice in writing to the Reseller at any time if:
  - (i) the Reseller commits repeated or persistent breaches of these Terms and Conditions (including non-compliance with the standards referred to in clause 9(a) of these Terms and conditions), or commits a material breach of these Terms and Conditions (including non-compliance with those standards) which is not capable of being remedied or which, if capable of being remedied, the Reseller does not remedy to the satisfaction of the Company within thirty (30) days, or such longer period as may be specified by the Company, after issue of a notice in writing specifying the breach and requesting it to be remedied; or
  - (ii) the Reseller makes any composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or a moratorium comes into force in respect of the Reseller (within the meaning of the Insolvency Act 1986); or
  - (iii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Reseller; or
  - (iv) the Reseller ceases, or threatens to cease, to carry on business; or
  - (v) the Company reasonably suspects that any of the events mentioned above is about to occur in relation to the Reseller and notifies the Reseller accordingly.
- b) The Company may, without prejudice to any of its other rights or remedies, and without incurring any liability to the Reseller, terminate the status of the Reseller as an authorised UK reseller of the Products at any time by giving not less than 3 months' notice in writing to the Reseller.

## 13. Disputes

- a) The parties shall attempt in good faith to settle promptly any claim, dispute, difference or question arising out of these Terms and Conditions or relating to the appointment of the Reseller as an authorised UK reseller of the Products

(“Dispute”), by negotiation between executives of each party, and if the Dispute has not been resolved by such negotiation within 45 days after either party gives notice to the other for this purpose, the parties shall endeavour to settle the dispute by mediation in accordance with the Procedures of the Centre for Dispute Resolution (“CEDR”). Any such mediation shall take place in London and shall be conducted in the English language.

- b) Subject to the outcome of any such mediation, either party shall be entitled to exercise such rights as it may have under these Terms and Conditions in respect of the Dispute.

#### **14. General**

- a) The Reseller shall not assign or otherwise transfer or purport to assign or otherwise transfer to any other person any of its rights or sub-contract any of its obligations under these Terms or Conditions or under any related contract without the prior consent in writing of the Company.
- b) These Terms and Conditions (together with any document referred to herein) contain the entire agreement between the parties with respect to its subject matter, supersede all previous agreements and understandings between the parties, and may not be modified except in writing signed by the duly authorised representatives of the parties.
- c) Each party acknowledges that it does not rely on any representation, warranty or other provision except as expressly provided in these Terms or Conditions, and accordingly all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms or Conditions shall affect the liability of either party for fraudulent misrepresentation.
- d) Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- e) No failure or delay by either party in exercising any of its rights under these Terms and Conditions (including any related non-contractual dispute or claim) shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Terms and Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- f) If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

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- g) These provisions and any contract for the supply of the Products (including any related non-contractual dispute or claim) shall be governed by the laws of England, and the parties irrevocably agree to submit to the exclusive jurisdiction of the English courts in relation to any dispute relating to them or the supply of the Products (including any related non-contractual dispute or claim).

## 15. Definitions

- a) In these Terms and Conditions:
  - (i) the “Company” means Biocare Limited, registered in England and Wales under company number 1948434 whose registered office is at 1 Hedera Road, Ravensbank Business park, Redditch, B98 9EY, England;
  - (ii) the “Reseller” means the person appointed in writing as an authorised reseller of the Products in the United Kingdom in accordance with these Terms and Conditions;
  - (iii) “these Terms and Conditions” means the standard terms and conditions of sale for UK authorised resellers set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Company and the Reseller;
  - (iv) “writing” and any similar expression, includes facsimile transmission and electronic mail, but not text messages or other forms of electronic communication.
- b) The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.



## Standards For Authorised UK Resellers

Please note that the standards below are in addition to the provisions of the company's terms and conditions of sale for authorised uk resellers

### A - RESELLER STANDARDS

#### Introduction

- 1.1 This Section applies where an Authorised UK Reseller ("Reseller") is authorised to resell the Company's products ("Products"), whatever channel the reseller is doing business in.
- 1.2 Where this Section contains statements of fact about the business of the Reseller, the Reseller represents that such statements are true and correct to the best of its knowledge, information and belief.

#### 2. Financial Details

- 2.1 The Reseller shall provide up to date financial information to Company as required.
- 2.2 The financial information provided by the Reseller gives a true and fair view of the financial stability and profitability of the Reseller's business.

#### 3. Storage and Stocks

- 3.1 The Reseller has a storage area within its premises which can be dedicated to the storage of the Products so as to maintain them in perfect condition and suitable for resale.
- 3.2 From time to time and upon reasonable notice, the Reseller shall allow the Company or its authorised representative to inspect the Products when in storage under the control of the Reseller.
- 3.3 The Reseller shall maintain stocks of the Products in its premises sufficient to satisfy demands for the Products in the sales channels in which it operates.
- 3.4 The Reseller shall supply such reports regarding stock levels and movements as the Company may from time to time request.

#### 4 Marketing and Sales

- 4.1 The Reseller shall include a marketing and sales promotion programme for the Products during the Reseller's financial year.
- 4.2 The cost of all marketing, advertising and sales promotion activities shall, unless otherwise agreed in writing, be borne by the Reseller.

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- 4.3 The Reseller will maintain staffing capable of dealing with all pre-sales enquiries from their customers in the UK.
- 4.4 The Reseller will employ a sufficient number of technically trained sales staff to respond to technical enquiries and provide demonstrations of the Products if required. Staff should maintain up to date nutrition and product knowledge through accessing the Company's extensive technical resources.

## **B - RETAILER STANDARDS**

### **1. Introduction**

- 1.1 Alongside Section A, this section also applies where an Authorised UK Reseller is authorised to resell the Company's products on a retail basis.
- 1.2 The Reseller's has brick-and-mortar premises ("Stores") that are suitable for the retail sale of the Products.
- 1.3 Any new Stores shall be in quality shopping mall or high street locations.
- 1.4 Where the Stores are organised for the display and sale of different brands of products, including third party brands, the Reseller shall display the Products in a suitable section of the Store.
- 1.5 The Reseller shall not exhibit or sell any item whose trade mark or brand name might give rise to confusion with the Company's Trade Marks
- 1.6 The Reseller shall mount continual and changing displays of the Products in prominent and appropriate positions in the outside windows and on the floor of each Store.
- 1.7 The Reseller shall maintain a sufficient number of competent, conscientious trained staff, including at least one fully trained, full-time manager per Store, who shall preserve good customer relations and comply with the dress codes specified by the Company in writing.

## **C- PRACTITIONER STANDARDS**

### **1. Introduction**

- 1.1 Alongside Section A, this section also applies where an Authorised UK Reseller is authorised to resell the Company's products as a practitioner.
- 1.2 The Reseller carries on business as a health and/or wellness practitioner, in which it has



a recognised relevant professional qualification, equipping them to make nutritional product recommendations. The practitioner should make recommendations within the scope of their practice and in line with the standards of their Professional Regulatory Body. If in doubt, they should access expert support from the BioCare Clinical Nutrition team.

## **D – ONLINE PARTNER STANDARDS**

1. Introduction
- 1.1 Alongside Section A, this section also applies where an Authorised UK Reseller is authorised to resell the Company's products as an online partner.
- 1.2 The Reseller shall only use images and product information supplied by the Company for BioCare® products.
- 1.3 The Reseller shall hold and promote the appropriate BioCare® product range selection for their customer profile.
- 1.4 The Reseller shall offer excellent customer service with quick and efficient delivery options.
- 1.5 The Reseller will ensure that the website is at all times managed by staff experienced in the safe, ethical promotion of food supplements.
- 1.6 The Reseller will have and maintain an established strong brand identity that does not detract from BioCare's professional image.

**BioCare<sup>®</sup>**



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