

UNDER-RAPS
TERMS AND CONDITIONS OF SALE

1 DEFINITIONS

“Agreement” means the agreement for supply of goods between Under-Raps and the Customer of which these terms and conditions form part.

“Under-Raps” means Under Raps Pty Ltd ABN 28 117 915 652, its servants, agents and assigns.

“Customer” includes that person’s servants, agents and permitted assigns.

2 INTERPRETATION

In these terms and conditions of sale unless the subject matter of the context otherwise requires:

- (a) The singular includes the plural and vice versa.
- (b) Words importing any gender includes other genders.
- (c) All headings have been inserted for convenience of reference only, and do not define, limit or affect the meaning or interpretation.

3 TERMS AND CONDITIONS

3.1 The agreement constituted by Under-Raps’ acceptance of the Customer’s offer to purchase incorporates these terms and conditions and (subject to Condition 7) no other terms and conditions unless expressly acknowledged in writing by Under-Raps and the Customer.

3.2 Any variation, waiver or cancellation of these terms or conditions of the Customer’s order shall be of no effect unless accepted in writing by Under-Raps.

3.3 Any term or condition contained in the Customer’s order or offer or anywhere else which is inconsistent with, qualified or is contrary to these terms and conditions shall be of no effect unless that term or condition is expressly accepted in writing by Under-Raps.

4 PRICE

4.1 Under-Raps’ prices are based on rates and costs as at the date of quotation and are subject to alteration without notice to the Customer. The amount payable for the goods ordered shall be the amount set out in the invoice or credit note or failing any amount being noted therein shall be the amount prevailing at the date the goods are dispatched for delivery to the Customer.

4.2 Under-Raps prices are exclusive of taxes, duties and other imposts which if chargeable, are payable by the Customer whether they are imposed or brought into force before or after acceptance of the Customer’s offer.

4.3 If the goods are exported, the price and other moneys due by the Customer shall be paid in Australian currency.

4.4 Unless otherwise agreed expressly in writing, the payment terms shall be thirty days from date of statement of the account issued at the end of the month. Any indulgence or extension of time which Under-Raps may allow to a customer in relation to payment of the price or any charges shall not in anyway prejudice interfere with or constitute a waiver of Under-Raps’ right to require payment of any other charges due to Under-Raps.

4.5 If the Customer fails to pay the price or any other charges due to Under-Raps when due, Under-Raps may without prejudice to its other rights and remedies charge the Customer interest on any overdue amount until payment at the rate which is two percent (2%) per annum greater than the current commercial overdraft rate charges by Under-Raps’ principal banker. The Customer shall reimburse Under-Raps the amount of any legal costs and disbursements incurred in recovering overdue amounts. Under-Raps shall have the right to suspend delivery under any agreement or contract entered into with the Customer until all overdue amounts are paid.

4.6 The Customer will reimburse Under-Raps for any costs incurred in relation to dishonoured cheques and “present again cheques.

5 DELIVERY

5.1 Delivery dates are estimates only and are not of the essence of the Agreement, Under-Raps shall not be bound by any such estimate and delay in such delivery shall not entitle the Customer to cancel the Agreement or render Under-Raps liable for damages for such delay.

5.2 The Customer will be deemed to have accepted the goods on delivery. Delivery shall be decreed to have been completed when the goods are delivered to a place or carrier designated by the Customer or the place such goods are normally delivered on behalf of the Customer unless otherwise specified by the Customer.

5.3 Unless otherwise agreed, all freight cost are to be paid by the Customer.

6 DAMAGE

6.1 The Customer acknowledges that goods leaving Under-Raps are adequately packed. Claims for damage in transit must be made against the carrier and while Under-Raps will not accept liability for such damage details of any claim must be advised to Under-Raps. In addition, prior to acknowledging delivery to the carrier, the Customer must ensure that:

- (a) the complete consignment as per the carrier’s note has been received; and
- (b) any shortage or visible damage to outer packaging has been endorsed on the carrier’s note.

7 PROPERTY RISK

7.1 This provision protects Under-Raps against a default in payment for goods supplied and the events of bankruptcy, receivership or liquidation by or of the Customer.

7.2 Risk in goods sold (including insurance responsibility) passes to the Customer on delivery of the goods to the Customer but ownership and property in each item of goods is retained by Under-Raps and will not pass to the Customer until Under-Raps receives payment in full of the purchase price for such goods and any other goods delivered by Under-Raps to the Customer prior to such payment having been made.

7.3 Until property passes to the Customer, the Customers shall:

- (a) hold them as fiduciary agent and bailee of Under-Raps and keep them in good order and condition;
- (b) not remove any markings placed on the goods by Under-Raps and store and otherwise mark the goods so they can be readily identified and distinguished from other property in the Customer’s possession not held as fiduciary agent and bailee;
- (c) deliver them to Under-Raps immediately on demand and for this purpose Under-Raps is authorised and permitted to enter any premises on which the goods may be located (the cost incidental to which shall be borne by the Customer); and
- (d) keep Under-Raps indemnified against any loss or damage to the goods and against all claims (whether of the Customer or a third party) for loss, damage or injury arising out of the Customer’s possession of the goods.

7.4 Notwithstanding that property in any good has not yet passed to the Customer, the Customer may sell the same in any transaction entered into in the ordinary course of the Customer’s business in which event the Customer shall keep accurate account of such sale separate from the Customer’s own money and notwithstanding that the time for payment is not then due, pay in full to Under-Raps the purchase price for that item.

8 IMPLIED TERMS AND LIMITATIONS OF LIABILITY

8.1 It is acknowledged by Under-Raps and the Customer that the Trade Practices Act 1974 as amended (the “Trade Practices Act”) and other laws imply conditions or warranties in certain contracts and also give parties to those contracts certain other rights against suppliers of goods and services. To the extent that such conditions, warranties or other rights are implied or given in respect of the Agreement and it is not lawful or possible to exclude them, then such conditions, warranties and other rights shall (but only to the extent required by law) apply to the Agreement and all other conditions, warranties or rights which might be implied are hereby expressly excluded.

8.2 Section 68A of the Trade Practices Act enables suppliers in respect of certain contracts to limit their liability in certain circumstances for breach of certain conditions and warranties implied by the Trade Practices Act. Subject to the qualifications in Section 68A of the Trade Practices Act, Under-Raps’ liability for any breach of a condition or warranty implied by the Division 2 or Part V of the Trade Practices Act shall be limited to:

- (a) In the case of goods supplied, to any one or more of the following (as determined by Under-Raps):
 - (i) replacement of the goods or the supply of equivalent goods;
 - (ii) repair of the goods;
 - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) payment of the cost of having the goods repaired; and
- (b) in the case of services supplied, to one of the following (as determined by Under-Raps):
 - (i) re-supplying the services; or
 - (ii) paying the cost(s) of having the services supplied again.

8.3 Except as provided by condition 8.2 and notwithstanding any implication arising from any other condition, Under-Raps shall not be liable to the Customer or any person claiming under it in contract or in tort for, or in respect of any direct, indirect or consequential loss, damage, expense or injury suffered by the Customer or any other person whatsoever arising out of or relating to the Agreement, including, by way of illustration and not in limitation. Liability due to negligence of wilful default of Under-Raps.

9 CLAIMS

9.1 The Customer shall not make any claims unless such claim is made in writing and is received by Under-Raps within 7 days after delivery of the goods.

9.2 Any claims so made by the Customer shall not entitle the Customer to cancel or refuse delivery of, or payment for, any other order by the Customer which has been accepted by Under-Raps.

9.3 Notwithstanding any other term or condition contained within this Agreement Under-Raps shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery or failure to perform any other term or condition of the Agreement where such delay or failure is caused directly or indirectly by an Act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour or manufacturing facilities, accidents, interruptions or delay in transportation or any other cause beyond Under-Raps’ control.

10 ERRORS AND OMISSIONS

10.1 Clerical errors or omissions, whether in computation or otherwise, in any quotation, acknowledgement or invoice shall be subject to correction.

11 GENERAL

11.1 The Agreement shall be governed by the law of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State.

11.2 The provisions of each condition and paragraph of the Agreement and the rights conferred upon Under-Raps by them are distinct and severable from the provisions of each other condition and paragraph and any invalidity of any term or condition (whether as between Under-Raps and the Customer or Under-Raps and any other person) shall not affect the operation according to its terms of each other condition and paragraph.

11.3 Notwithstanding anything contained within this agreement, Under-Raps may at its absolute discretion decline to supply goods or grant credit to the Customer at any time.