



UnderRaps Pty Ltd t/a Intercept Australia
(ACN 117 915 652)
Intercept Australasia Pty Ltd
(ABN 470 899 08832)

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Standard Terms and Conditions of Trade

1. **DEFINITIONS & INTERPRETATION**

1.1 “**ADI**” means authorised deposit-taking institution and has the same meaning as in the Banking Act 1959;

1.2 “**Agreement**” includes the agreement for the supply of the Goods and Services by Under Raps Pty Ltd t/a Intercept Australia to the Customer pursuant to these Terms and Conditions;

1.3 “**Confidential Information**” means all information relating to Under Raps Pty Ltd t/a Intercept Australia’s business, Goods or Intellectual Property that is not in the public domain (or, if in the public domain, is not in the public domain by reason of a breach of this Agreement), including but not limited to:

(i) information about the compositions and materials used in the Goods, products, processes, systems, equipment, dealings, transactions, policies, finances, organisation or personnel, or about clients or customers or anyone associated with either Party;

(ii) any information regarding **Under Raps Pty Ltd t/a Intercept Australia’s** business methods, business policies, product designs, stock information, related suppliers, procedures, techniques, research or development, projects or results, sales information of any kind, financial information of any kind, intellectual knowledge, know-how, trade secrets, customer lists or

other customer information, sales strategy, tactics or methods, marketing research strategy, information pertaining to products or services under development, marketing, advertising, concepts, promotions or strategies, supplier information, hardware types, product lists and ranges, price list; and

(iii) information relating to any and all of the Parties’ involvement with each other under the Agreement.

1.3 “**Customer**” means the Customer (or any person acting on behalf of and with the authority of the Customer) who is the recipient of the Service in accordance with this Agreement;

1.4 “**Fee(s)**” means the price payable for the Services as agreed between Under Raps Pty Ltd t/a Intercept Australia and the Customer in accordance with Clause 8 of this Agreement.

1.5 “**Goods**” means goods or products supplied by **Under Raps Pty Ltd t/a Intercept Australia** (including but products of Absorbtech Australia, Monarflex containment systems, Mascoat, **Under Raps Pty Ltd t/a Intercept Australia** to the Customer (and where the context so permits shall include any supply of Services);

1.6 “**Guarantor**” means that person (or persons) or entity who agrees to be liable for the debts of the Customer on a principal debtor basis;

1.7 “**Intellectual Property**” includes but is not limited to all trade marks, patents, copyright, designs, marks, processes,

- know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings and data or other like property or rights owned or held by **Under Raps Pty Ltd t/a Intercept Australia**. These rights include but are not limited to:
- (i) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
 - (ii) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, whether unregistered, registered or registrable.
- 1.8 **"Intellectual Property Rights"** means all present and future rights conferred by statute, common law or equity anywhere in the world in or in relation to copyright, trade marks, designs, patents, methodology, concepts, models, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:
- (i) all rights in all applications to register these rights including all rights to claim Paris Convention priority;
 - (ii) all renewals and extensions of these rights; and
 - (iii) all rights in the nature of these rights, such as moral rights.
- 1.9 **"Invoice"** means a taxation invoice for Goods and Services supplied by **Under Raps Pty Ltd t/a Intercept Australia** to the Customer;
- 1.10 **"Loss"** means
- (i) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (ii) liability;
 - (iii) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (iv) cost or expense including legal costs on a full indemnity basis;
- 1.11 **"Party(ies)"** means the parties to the Agreement including but not limited to **Under Raps Pty Ltd t/a Intercept Australia** and the Customer;
- 1.12 **"Personal"** is given the meaning by the Information Privacy Act 1988 (Cth);
- 1.13 **"Personal Property Securities Act"** or **"PPSA"** means the Personal Property Securities Act (Cth) 2009, as amended from time to time;
- 1.14 **"Premise"** means the place where the Service is to be provided.
- 1.15 **"Price"** means the price of the Goods and Services;
- 1.16 **"Proposal"** means any proposal provided by **Under Raps Pty Ltd t/a Intercept Australia** to the Customer in relation to the Goods and Services and to which this Agreement is attached.
- 1.17 **"Scope of Services"** means the Services as described in Annexure A of this Agreement.
- 1.18 **"Security Agreement"**, **"Collateral"**, **"Commingled Goods"**, **"Financing Statement"**, **"Financing Change Statement"**, **"Personal Property"**, **"All Present and After Acquired Property"**, **"Purchase Money Security Interest"**, **"Registration"** and **"Security Interest"** have the meanings given to them in the Personal Property Securities Act;
- 1.19 **"Services"** means all services supplied by **Under Raps Pty Ltd t/a Intercept Australia** to the Customer and may include packaging goods.;
- 1.20 **"Service Order"** means an order request for Goods and Services by the Customer to **Under Raps Pty Ltd t/a Intercept Australia**;
- 1.21 **"Terms and Condition"** means these terms and conditions of **Under Raps Pty Ltd t/a Intercept Australia** supply
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of the Goods and Service to the Customer pursuant to the Agreement;

1.22 In interpreting these Terms and Conditions:

- (i) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (ii) any obligation on the part of two (2) or more persons or entities binds them jointly and severally;
- (iii) words in the singular number include the plural and vice versa;
- (iv) words importing a gender include any other gender;
- (v) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (vi) a reference to the Customer includes the Customer's officers, employees, agents or sub-contractors;
- (vii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (viii) a reference to a Schedule includes a reference to any part of that Schedule which is not physically annexed to these Terms and Conditions but which is incorporated by reference;
- (ix) monetary references are references to Australian dollar currency ("AUD") unless otherwise stated by the Parties; and
- (x) in the interpretation of these Terms and Condition, no rule of contract interpretation applies to the disadvantage of a Party on the basis that it put forward these Terms and Conditions or any part of them.

1.23 "**Under Raps Pty Ltd t/a Intercept Australia**" means Under Raps Pty Ltd (ACN 117 915 652) trading as 'Intercept Australia' and include without limitation its officers, agents, sub-contractors, successors and assigns or any person acting on behalf of and with the authority

of **Under Raps Pty Ltd t/a Intercept Australia**;

2. **APPLICATION OF TERMS AND CONDITIONS**

2.1 The Customer wishes to engage **Under Raps Pty Ltd t/a Intercept Australia** for the purposes of supplying the Customer with the Goods and Services in accordance to these Terms and Conditions.

3. **ORDERING PROCEDURE**

3.1 The Customer must place the order for the Goods and Services in writing **Under Raps Pty Ltd t/a Intercept Australia** ("the Order").

3.2 The Customer must provide sufficient details of its requirements (e.g description of the Goods and Services, quantity, time of delivery) and/or specifications for the Goods and Services.

4. **QUOTATION**

4.1 Upon receipt of the Order, **Under Raps Pty Ltd t/a Intercept Australia** will provide a written quotation ("Quotation") to the Customer within a reasonable time.

4.2 The Quotation is valid for thirty (30) days from the date of the Quotation. If the Customer accepts the Quotation after the thirty (30) days, the Price in the Quotation may be revised at **Under Raps Pty Ltd t/a Intercept Australia's** sole discretion.

4.3 The prices in the Quotation do not include GST (unless otherwise indicated).

5. **SERVICE ORDERS**

5.1 The Customer will provide **Under Raps Pty Ltd t/a Intercept Australia** with a Service Order for the supply of the required Services.

5.2 The Service Order will be in writing and will specify:

- (a) the description of the Services;
- (b) the specifications for the Services;
- (c) proposed time frame for the completion of the Services;
- (d) any special requirements; and

- (e) an address (or place which the Services will be conducted).

5.3 **Under Raps Pty Ltd t/a Intercept Australia** will endeavour to notify the Customer of the following within three (3) business days from the date of receipt of the Service Order:

- (f) confirmation that **Under Raps Pty Ltd t/a Intercept Australia** has received the Service Order;
- (g) whether **Under Raps Pty Ltd t/a Intercept Australia** reasonably believes that the Services can be supplied and whether **Under Raps Pty Ltd t/a Intercept Australia** can meet the Customer's requirements; and
- (h) whether **Under Raps Pty Ltd t/a Intercept Australia** accepts the Service Order.

6. ACCEPTANCE OF THE TERMS AND CONDITIONS

6.1 Any instructions received by **Under Raps Pty Ltd t/a Intercept Australia** from the Customer in relation to the following:

- (a) acceptance of the Quotation;
- (b) provision of the Service Order to **Under Raps Pty Ltd t/a Intercept Australia**;
- (c) supply of Services; or
- (d) the Customer's acceptance of the Service,

will constitute acceptance of these Terms and Conditions.

6.2 The Customer agrees that, notwithstanding any terms and conditions of any document (including the Service Order) provided by the Customer to **Under Raps Pty Ltd t/a Intercept Australia** purportedly regulating the legal relations between them, this Agreement and these Terms and Conditions will prevail and **Under Raps Pty Ltd t/a Intercept Australia** will only be bound by the terms and conditions of such documents to the extent, not inconsistent with this Agreement and these Terms and Conditions, that **Under Raps Pty Ltd t/a**

Intercept Australia agrees with the Customer in writing to be so bound.

7. DEPOSIT

7.1 **Under Raps Pty Ltd t/a Intercept Australia** may require the Customer to pay a deposit ("Deposit") before **Under Raps Pty Ltd t/a Intercept Australia** processes the Order. In certain circumstances, **Under Raps Pty Ltd t/a Intercept Australia** may at its absolute discretion waive the payment of the Deposit. If the Customer's credit application is not approved, the Customer must provide a Deposit.

7.2 If a Deposit is required, **Under Raps Pty Ltd t/a Intercept Australia** is not obliged to supply the Goods until the Deposit has been received by **Under Raps Pty Ltd t/a Intercept Australia**.

7.3 To the extent permitted by law, any Deposit paid is non-refundable.

8. PRICE AND PAYMENT

8.1 At **Under Raps Pty Ltd t/a Intercept Australia's** sole discretion the Price is either:

- (a) as indicated on the Invoices provided by **Under Raps Pty Ltd t/a Intercept Australia** to the Customer; or
- (b) as indicated in the Quotation (subject to clause 4.2).

8.2 All written quotes, invoices and Proposals do not include the costs in relation to and/or associated with the following, unless otherwise specified in writing:

- (a) the induction and training as required by **Under Raps Pty Ltd t/a Intercept Australia** and/or its subcontractor, employee, agent etc prior to entering the Customer's Premise to provide the Service;
- (b) dismantling of frame work;
- (c) disposal and/or removal of plastic films or coverings;
- (d) disposal and/or dismantling of any plastic films or covering that have been used to contain lead of any form or asbestos. In such event, the Customer will pay for the expenses associated with the

engagement of a licenced removalist.

- 8.3 **Under Raps Pty Ltd t/a Intercept Australia** reserves the right to change the Price in the event of variations to the Services supplied.
- 8.4 Time for payment for the Services shall be on delivery or within thirty (30) days from the date of the Invoice or as **Under Raps Pty Ltd t/a Intercept Australia** dictates. If **Under Raps Pty Ltd t/a Intercept Australia** has approved the Customer's credit application, the time for payment will be as agreed between the Parties.
- 8.5 Payment can be made by cash, or by cheque, or by EFT transfer to **Under Raps Pty Ltd t/a Intercept Australia** If payment is made by EFT, the Customer must provide a reference (name, Quotation number or the delivery or site address).
- 8.6 GST and other taxes and duties that may be applicable will be shown separately and are not included in the Price.
- 8.7 All freight and delivery costs are to be paid by the Customer, unless the Parties agree in writing.
- 8.8 The Price will be in Australian dollars and payment shall be made in Australian dollars.
9. **Under Raps Pty Ltd t/a Intercept Australia OBLIGATIONS**
- 9.1 **Under Raps Pty Ltd t/a Intercept Australia** agrees to provide the Services to the Customer in accordance with the Scope of Services.
- 9.2 **Under Raps Pty Ltd t/a Intercept Australia** must use reasonable endeavours to provide the Services by the date for completion (if applicable) as agreed by the Parties.
10. **THE CUSTOMER'S OBLIGATIONS**
- 10.1 The Customer shall provide **Under Raps Pty Ltd t/a Intercept Australia** with a copy of the Service Order prior to the commencement of Services being provided.
- 10.2 The Customer shall pay the Fees in accordance with clause 8.
- 10.3 The Customer agrees to expeditiously provide **Under Raps Pty Ltd t/a**

Intercept Australia with instructions, information and materials that are reasonably necessary and within a reasonable time so that **Under Raps Pty Ltd t/a Intercept Australia** can carry out its obligations under this Agreement and provide the Services.

- 10.4 The Customer agrees to pay **Under Raps Pty Ltd t/a Intercept Australia** for:
- (a) any non-compliance with clause 5.2 that causes delays to **Under Raps Pty Ltd t/a Intercept Australia** in providing the Services;
- (b) any additional Services or work outside the Scope of Services
- 10.5 at the hourly rate specified in the Proposal or as agreed by the Parties in writing from time to time.
- 10.6 The Customer shall give **Under Raps Pty Ltd t/a Intercept Australia** access to the Premise where (including access during non-business hours) for the purpose of **Under Raps Pty Ltd t/a Intercept Australia** performing the Services under this Agreement.
- 10.7 The Customer shall ensure that **Under Raps Pty Ltd t/a Intercept Australia** representative and any other person(s) authorised by **Under Raps Pty Ltd t/a Intercept Australia** has safe access to any part of the Premise.
- 10.8 The Customer shall comply with any Worksafe or Occupational Safety and restraints.
- 10.9 The Customer agrees to arrange for any permits (ie Hot Work permit) and/or licences required by **Under Raps Pty Ltd t/a Intercept Australia** for the purposes of the Services.
11. **SERVICES TO BE PROVIDED**
- 11.1 The Services will be conducted at the Customer's nominated address (or place of installation) as indicated in the Service Order.
- 11.2 All Services specified in the Service Order are estimated to be commenced within:
- (a) the estimated timeframe specified in the Quotation or as agreed between the Parties; or

- (b) if Clause 11.2(a) is unreasonable or impossible, as mutually agreed between the Parties or within a reasonable time.
- 11.3 **Under Raps Pty Ltd t/a Intercept Australia** will notify the Customer as soon as possible if **Under Raps Pty Ltd t/a Intercept Australia** becomes aware of any delay in conducting the Services pursuant to the Service Order.
- 11.4 The Customer must make all arrangements necessary to take delivery of the Goods for the commencement of the Services whenever they are tendered for delivery and in the event that the Customer is unable to take delivery of the Goods as arranged then **Under Raps Pty Ltd t/a Intercept Australia** will be entitled to charge a reasonable fee for re-delivery and storage costs.
- 11.5 All Goods must be adequately packaged and labelled in accordance with:
- (a) good commercial practice to avoid damage in transit to their final destination; and
 - (b) any legal or regulatory requirements.
- 11.6 **Under Raps Pty Ltd t/a Intercept Australia** will specify if the delivery costs are:
- (a) included in the Price; or
 - (b) in addition to the Price.
- 11.7 **Under Raps Pty Ltd t/a Intercept Australia** may deliver the Goods by separate instalments and each separate instalment will incur delivery costs. The Customer agrees to pay all the delivery costs.
- 11.8 Delivery of the Goods to a carrier or the Customer's nominated delivery address, is deemed to be a delivery of Goods to the Customer.
- 11.9 Delivery shall be on FOB basis, to the part of shipment nominated by **Under Raps Pty Ltd t/a Intercept Australia** (or otherwise agreed between the Parties).
- 11.10 The costs of carriage and any insurance which the Customer reasonably directs **Under Raps Pty Ltd t/a Intercept Australia** to incur must be reimbursed by the Customer without any set-off or other withholding (whatsoever) and is due on the date for payment of the Price.
- 11.11 The failure of **Under Raps Pty Ltd t/a Intercept Australia** to deliver will not entitle the Customer to treat the Agreement as repudiated.
- 11.12 **Under Raps Pty Ltd t/a Intercept Australia** will not be liable for any loss or damage to the Customer resulting from late delivery of the Goods for any reason.
- 11.13 **Under Raps Pty Ltd t/a Intercept Australia** reserves the right to withhold delivery of the Goods until the Customer has fully paid all outstanding Invoices.
- 11.14 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery (time being of the essence) notify **Under Raps Pty Ltd t/a Intercept Australia** in writing of any alleged defect, damage in the Goods or failure to comply with the description or Quotation. If the Customer fails to give the written notice within the specified timeframe, the Goods will be presumed to be free from any defect or damage and **Under Raps Pty Ltd t/a Intercept Australia** is not liable to replace or repair the Goods.
- 11.15 The Customer must upon delivery of the Goods ensure that:
- (a) The complete consignment as per the carrier's note or Service Order has been received; and
 - (b) Any shortage or visible damage to the outer packaging has been recorded on the carrier's note.
12. **CANCELLATION**
- 12.1 **Under Raps Pty Ltd t/a Intercept Australia** may cancel the Order or cancel the Services at any time before the Services are conducted, by giving written notice to the Customer. On giving such notice **Under Raps Pty Ltd t/a Intercept Australia** must repay to the Customer any sums paid in respect of the Price. **Under Raps Pty Ltd t/a Intercept Australia** will not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Customer cancels the Order at any time after **Under Raps Pty Ltd t/a Intercept Australia** has accepted the Order, the Customer will be liable for any costs, expenses or
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losses incurred by **Under Raps Pty Ltd t/a Intercept Australia** (including but not limited to any loss of profits, manufacturing costs) up to the time of cancellation.

12.3 The Customer must reimburse **Under Raps Pty Ltd t/a Intercept Australia** for any expenses (including but not limited to administrative, storage or delivery costs) incurred by **Under Raps Pty Ltd t/a Intercept Australia** as a result of the Customer's cancellation.

13. PASSING OF RISK

13.1 Goods supplied by **Under Raps Pty Ltd t/a Intercept Australia** to the Customer will be at the Customer's risk upon:

- (a) delivery to the Customer (or the carrier); or
- (b) delivery to the Customer's custody, possession or control,

whichever is the sooner.

14. THE PERSONAL PROPERTY SECURITIES ACT

14.1 **Under Raps Pty Ltd t/a Intercept Australia** and the Customer agree that ownership of any documents, reports or advice that make up the Services will not pass until:

- (a) the Customer has paid **Under Raps Pty Ltd t/a Intercept Australia** all amounts owing for the Services; and
- (b) the Customer has met all its obligations pursuant to this Agreement.

14.2 For the avoidance of doubt, any form of payment other than cash shall not be deemed to be effectual until that form of payment has been honoured, cleared or recognised and until such time, the Consultant's ownership or rights in respect of the Services shall continue.

14.3 The Customer agrees that **Under Raps Pty Ltd t/a Intercept Australia** can commence legal proceedings to recover the Fees for the Services provided notwithstanding that ownership of the Services may not have passed to the Customer.

14.4 The Customer consents to **Under Raps Pty Ltd t/a Intercept Australia** affecting and maintaining a registration (in any manner that **Under Raps Pty Ltd t/a**

Intercept Australia considers appropriate) on the Personal Properties Securities Register (PPSR) in relation to any security interest contemplated or constituted by this Agreement including but not limited to **Under Raps Pty Ltd t/a Intercept Australia** goods, Services or Intellectual Property.

14.5 The Customer agrees to sign any documents and provide all assistance and information to **Under Raps Pty Ltd t/a Intercept Australia** required to facilitate the registration and maintenance of any security interest.

14.6 **Under Raps Pty Ltd t/a Intercept Australia** may at any time register a financing statement or financing change statement in respect of a security interest and the Customer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest.

14.7 The Customer undertakes to:

- (a) do anything (in each case, including executing any new document or providing any information) that is required by **Under Raps Pty Ltd t/a Intercept Australia** for the purposes of acquiring and maintaining one or more perfected security interests under the PPS and/or registering a financing statement or financial change statement;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Agreement without **Under Raps Pty Ltd t/a Intercept Australia** prior written consent;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in respect of a security interest contemplated or constituted by this Agreement in favour of a third party without **Under Raps Pty Ltd t/a Intercept Australia's** prior written consent.

14.8 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with this Agreement to which these terms and conditions apply, the Customer agrees that the following

provisions of the PPSA will not apply to the enforcement of the Agreement:

- (a) Section 95 (notice of removal of accession), to the extent that it requires **Under Raps Pty Ltd t/a Intercept Australia** to give a notice to the Customer;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) Section 125 (obligation to dispose of or retain collateral);
- (e) Section 130 (notice of disposal of collateral), to the extent that it requires **Under Raps Pty Ltd t/a Intercept Australia** to give a notice to the Customer;
- (f) Section 132(3)(d) (contents of statement of account after disposal);
- (g) Section 132(4) (statement of account if no disposal);
- (h) Section 135 (notice of retention of collateral);
- (i) Section 142 (redemption of collateral); and
- (j) Section 143 (reinstatement of security agreement).

14.9 Notices or documents required or permitted to be given to **Under Raps Pty Ltd t/a Intercept Australia** for the purposes of the PPSA must be given in accordance with the PPSA.

15. SECURITY AND CHARGE

15.1 Subject to clause 14 and the Personal Property Securities Act:

- (a) where the Customer and/or the Guarantor (if any) is the owner of any real property, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said real property to **Under Raps Pty Ltd t/a Intercept Australia** or Under-Rap's nominee to secure all amounts and other monetary obligations payable under the Agreement. The Customer and/or

the Guarantor acknowledge and agree that **Under Raps Pty Ltd t/a Intercept Australia** (or Under-Rap's nominee) is entitled to lodge an absolute caveat, where appropriate and the caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met.

- (b) should **Under Raps Pty Ltd t/a Intercept Australia** elect to proceed in any manner in accordance with this clause 15 and/or its sub-clauses, the Customer and/or the Guarantor will indemnify **Under Raps Pty Ltd t/a Intercept Australia** from and against all Under-Rap's incurred costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint **Under Raps Pty Ltd t/a Intercept Australia** or Under-Rap's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.

16. RETURNS

16.1 Goods will not be accepted for return other than in accordance with clause 9.13.

16.2 Under no circumstances shall any Goods that are made to order or are non-stocked Goods be returnable unless they are defective and the Customer must comply with clause 11.13.

16.3 Goods to be returned must be in their original condition and packaging and the Customer must not have used, installed or assembled the Goods.

16.4 If **Under Raps Pty Ltd t/a Intercept Australia** accepts a return of the Goods, **Under Raps Pty Ltd t/a Intercept Australia** may in its absolute discretion issue a credit note to the Customer instead of replacing the Goods.

16.5 All freight charges for the replacement of Goods shall be paid by the Customer.

17. WARRANTY

- 17.1 The warranty shall be the current warranty provided by the manufacturer or supplier of the Goods to **Under Raps Pty Ltd t/a Intercept Australia**. shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer or the supplier.
- 17.2 The warranty in clause 17.1 is subject to the conditions in clause 17.3.
- 17.3 The conditions applicable to the warranty given by clause 17.3 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer (or its employees, agents or contractors) to properly install or maintain the Goods; or
 - (ii) failure on the part of the Customer (or its employees, agents or contractors) to follow any instructions or guidelines provided by **Under Raps Pty Ltd t/a Intercept Australia**; or
 - (iii) any use of the Goods otherwise than for any application specified in the Order or the Quotation; or
 - (iv) the continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- 17.4 If **Under Raps Pty Ltd t/a Intercept Australia** installs the Goods and the Customer (or its employees, agents or contractors) modifies, alters or otherwise interferes with Under-Rap's workmanship without Under-Rap's consent, the warranty may be void by the manufacturer or the supplier. In such circumstances **Under Raps Pty Ltd t/a Intercept Australia** is not liable for the costs of rectifying the Goods or the workmanship.
- 17.5 **Under Raps Pty Ltd t/a Intercept Australia's** obligation under this warranty shall only be limited to replacement of the Goods if it is defective or as a result of defective workmanship.
- 17.6 To obtain replacement Goods under this warranty, the Customer must notify **Under Raps Pty Ltd t/a Intercept Australia** in writing of the claimed defect within one (1) month after receipt of the Goods by the end-user.
- 17.7 All freight charges for replacement Goods shall be paid by **Under Raps Pty Ltd t/a Intercept Australia** if it is a manufacturer default.
18. **IMPLIED GUARANTEES UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH) ("CCA") AND THE FAIR TRADING ACT ("FTA")**
- 18.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 18.2 **Under Raps Pty Ltd t/a Intercept Australia** liability for a breach of any term of this Agreement is limited to the following:
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
19. **EXCLUSION OF LIABILITY**
- 19.1 The Customer agrees that **Under Raps Pty Ltd t/a Intercept Australia** or its affiliates, agents and sub-contractors and each of their partners, principals, members, employees and other personnel will not be liable to the Customer for any actions, claims, or Loss in any way arising out of or relating to the Goods for an amount greater than the Price paid by the Customer to **Under Raps Pty Ltd t/a Intercept Australia** under this Agreement.
- 19.2 In no event will **Under Raps Pty Ltd t/a Intercept Australia** or its affiliates, agents or sub-contractors or any of their partners, principals, members, employees or other personnel be liable for special, incidental, indirect, consequential or punitive damages,
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costs expenses or losses of any kind, lost profits, lost revenue, loss of management time, opportunity costs, failure to realise anticipated savings, or lost data.

19.3 This clause 19 will apply regardless of the form of action, damage, claim, liability, cost, expense or loss whether in contract, statute or tort (including without limitation to negligence) or otherwise. To the extent that this clause 18 refers to persons other than **Under Raps Pty Ltd t/a Intercept Australia**, holds the benefit of this clause 18 on trust for them.

20. **CUSTOMER'S INDEMNITY**

20.1 The Customer continually indemnifies **Under Raps Pty Ltd t/a Intercept Australia**, Under-Rap's affiliates, agents or subcontractors, against any claim or proceeding that is made, threatened or commenced, and against any liability, Loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:

- (a) A breach of this Agreement including any warranty;
- (b) A wilful, unlawful or negligent act or omission by the Customer or an officer, employee, agent or subcontractor of the Customer.

21. **DISCLAIMER**

21.1 Subject to clause 21.3, the Customer warrants that it has not relied on any representation made by **Under Raps Pty Ltd t/a Intercept Australia** in any form (including but not limited to Under-Rap's catalogues, proposals, brochures, website) which has not been stated expressly in these Terms and Conditions or upon any descriptions, illustrations or specifications or any documentation provided by **Under Raps Pty Ltd t/a Intercept Australia** does not warrant the suitability of the Goods. The Customer uses the Goods at its own risk and on its own judgement.

21.2 The Customer acknowledges and agrees that, to the extent **Under Raps Pty Ltd t/a Intercept Australia** has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Agreement or in any other document, the Customer has been provided with an opportunity

to independently verify the accuracy of that representation.

21.3 The Customer waives any right to rescind, terminate or cancel the Agreement with **Under Raps Pty Ltd t/a Intercept Australia** or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by **Under Raps Pty Ltd t/a Intercept Australia** and the Customer acknowledges that it is relying on its own skills and judgement when acquiring the Goods.

22. **CONFIDENTIAL INFORMATION**

22.1 A Party (the "Receiving Party") acknowledges that the Confidential Information is valuable to the Party disclosing the information ("the Disclosing Party").

22.2 The Receiving Party must keep the Confidential Information secret and preserve its confidential nature.

22.3 The Receiving Party must not disclose or permit the disclosure of Confidential Information to any person other than as permitted under clause 22.4.

22.4 The Receiving Party is permitted to disclose the Confidential Information in the following circumstances:

- (a) The Disclosing Party has consented in writing to such disclosure.
- (b) The disclosure is required by law and the Receiving Party has complied with clause 22.5.

22.5 If the Receiving Party considers that disclosure of Confidential Information is required by law, it must do the following:

- (a) Immediately notify the Disclosing Party of the requirement/
- (b) Take all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information.
- (c) Assist and co-operate with the Disclosing Party if the Disclosing Party seeks to limit or resist the requirement for the Confidential Information to be disclosed.

22.6 The Receiving Party will ensure that its employees, agents, and any sub-contractors engaged for the purposes of this Agreement, do not

make public or disclose the Disclosing Party's Confidential Information.

- 22.7 The Disclosing Party may at any time require the Receiving Party to arrange for its employees, agents, or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed at the Disclosing Party's expense.
- 22.8 The Receiving Party will on demand return to the Disclosing Party any Confidential Information supplied by the Disclosing Party to the Receiving Party in connection with this Agreement.
- 22.9 Notwithstanding any other provision of this clause 22, the Parties may disclose the terms of this Agreement to its employees, related companies, solicitors, auditors, insurers or accountants, and will ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Parties.

23. USE OF THIRD PARTY MATERIALS

- 23.1 **Under Raps Pty Ltd t/a Intercept Australia** will notify the Customer of the need and any additional cost if the Services require the use of any third party materials or if the Customer has to enter into contracts with the third party supplier.
- 23.2 **Under Raps Pty Ltd t/a Intercept Australia** will be responsible for obtaining from the relevant third party the necessary rights or licences to use such materials in the manner and by the intended persons, including **Under Raps Pty Ltd t/a Intercept Australia** and where appropriate the Customer.
- 23.3 If **Under Raps Pty Ltd t/a Intercept Australia** cannot obtain from the third party the necessary rights to use the materials, **Under Raps Pty Ltd t/a Intercept Australia** must not use such materials.
- 23.4 If the Customer does not agree to the third party's terms and conditions for the use of its materials, then **Under Raps Pty Ltd t/a Intercept Australia** is not obliged to continue to provide the Services to the Customer.
- 23.5 The Customer acknowledges and agrees that **Under Raps Pty Ltd t/a Intercept Australia** is acting as its agent when obtaining the rights and

licences from the third party and the Customer and the third party are in a contractual relationship.

- 23.6 If there is any defect in any third party licences, services or other materials, the Customer agrees to seek any remedy from the relevant third party, not **Under Raps Pty Ltd t/a Intercept Australia**.

24. INTELLECTUAL PROPERTY

- 24.1 The Customer expressly agrees and acknowledges that:
- (a) any Intellectual Property in **Under Raps Pty Ltd t/a Intercept Australia** Goods (whether unregistered, registered or registrable) is the property of **Under Raps Pty Ltd t/a Intercept Australia**; and
- (b) nothing in the Agreement is intended to provide the Customer with any interest in the Intellectual Property in **Under Raps Pty Ltd t/a Intercept Australia's** Goods and Services.

25. DEFAULT AND CONSEQUENCES

- 25.1 Neither Party shall take any action (including legal action) against the other Party for a default of the Agreement without first giving the defaulting Party written notice specifying the default and providing the defaulting Party with seven (7) days to rectify such.
- 25.2 Interest on overdue Invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 8.85% per annum and such interest shall compound monthly at such a rate after as well as before any judgement.
- 25.3 If the Customer defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Customer will indemnify **Under Raps Pty Ltd t/a Intercept Australia** from and against all costs and disbursements incurred by **Under Raps Pty Ltd t/a Intercept Australia** in pursuing the debt including legal costs (on a solicitor and own client basis) and **Under Raps Pty Ltd t/a Intercept Australia's** debt recovery costs.
- 25.4 Without prejudice to any other remedies **Under Raps Pty Ltd t/a Intercept Australia** may have, if at any time the Customer is in breach of any terms of

this Agreement (including those relating to payment), **Under Raps Pty Ltd t/a Intercept Australia** may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms and Conditions. **Under Raps Pty Ltd t/a Intercept Australia** will not be liable to the Customer for any loss or damage the Customer suffers because **Under Raps Pty Ltd t/a Intercept Australia** has exercised its rights under this clause 25.4.

25.5 Without prejudice to **Under Raps Pty Ltd t/a Intercept Australia** other remedies at law **Under Raps Pty Ltd t/a Intercept Australia** is entitled to terminate this Agreement and all amounts owing to **Under Raps Pty Ltd t/a Intercept Australia** shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to **Under Raps Pty Ltd t/a Intercept Australia** becomes overdue, or in Under-Rap's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or
- (c) a trustee in bankruptcy, receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

26. TERMINATION

26.1 **Under Raps Pty Ltd t/a Intercept Australia** may at any time terminate this Agreement for any reason.

26.2 In the event that the Customer terminates the Services, the Customer is liable for any loss incurred by **Under Raps Pty Ltd t/a Intercept Australia** (including but not limited to any loss of profits, travelling costs, hire of third party equipment, insurances, inductions, training etc) up to the time of termination.

27. FORCE MAJEURE

27.1 If **Under Raps Pty Ltd t/a Intercept Australia** is delayed, hindered, or

otherwise prevented from complying with its obligations under these Terms and Conditions by reason of events or circumstances beyond the reasonable control of **Under Raps Pty Ltd t/a Intercept Australia** including but not limited to acts of God, wars, riots, strikes, lock-outs, trade disputes or labour disturbances, breakdown of plant or machinery, accidents, storm, fire, floods, difficulties in obtaining materials, goods, transport or labour or any other circumstances affecting the supply of goods and services, **Under Raps Pty Ltd t/a Intercept Australia** is not liable to the Customer for any loss or damage which is or may be suffered by the Customer whether as a direct or indirect result of any such events or circumstances.

28. PRIVACY ACT 1988 (CTH)

28.1 **Under Raps Pty Ltd t/a Intercept Australia** will comply with the Privacy Act and the Australia Privacy Principles if it collects any personal information from the Customer.

28.2 The Customer and/or its Guarantor/s agree that **Under Raps Pty Ltd t/a Intercept Australia** may obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by **Under Raps Pty Ltd t/a Intercept Australia**.

28.3 The Customer and/or its Guarantor/s agrees that **Under Raps Pty Ltd t/a Intercept Australia** may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Customer and/or Guarantor/s.

28.4 The Customer consents to **Under Raps Pty Ltd t/a Intercept Australia** being

given a consumer credit report to collect overdue payment on commercial credit (Section 21(J)(1) and (2)) Privacy Act 1988).

28.5 The Customer agrees that personal credit information provided may be used and retained by **Under Raps Pty Ltd t/a Intercept Australia** for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:

- (a) provision of the Goods;
- (b) marketing of the Goods by **Under Raps Pty Ltd t/a Intercept Australia**, its agents or distributors in relation to the Goods;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of the Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

28.6 **Under Raps Pty Ltd t/a Intercept Australia** may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

29. GENERAL

29.1 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

29.2 This Agreement shall be governed by the laws of Western Australia and the

Parties unconditionally submit to the jurisdiction of the courts of Western Australia.

29.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by **Under Raps Pty Ltd t/a Intercept Australia**.

29.4 **Under Raps Pty Ltd t/a Intercept Australia** may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

29.5 **Under Raps Pty Ltd t/a Intercept Australia** reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which **Under Raps Pty Ltd t/a Intercept Australia** notifies the Customer of such change.

29.6 The failure by **Under Raps Pty Ltd t/a Intercept Australia** to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect **Under Raps Pty Ltd t/a Intercept Australia** right to subsequently enforce that provision.

29.7 Upon acceptance of this Agreement by the Customer, the Terms and Conditions are binding and can only be amended with the written consent both the Parties.

29.8 Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for all payments of the Price.

29.9 The Customer shall give **Under Raps Pty Ltd t/a Intercept Australia** not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by **Under Raps Pty Ltd t/a Intercept Australia** as a result of the Customer's failure to comply with this clause 29.9.

SCOPE OF SERVICES

In addition to the standard **Under Raps Pty Ltd t/a Intercept Australia** Terms and Conditions of Sale, the following conditions shall apply:

- 30 30.1 Customer's Purchase Order Number to be supplied by the customer before the commencement of the work and on receipt of the purchase order it will be deemed that the customer has accepted all of the terms and conditions.
- 30.2 Customer shall provide Access to Site 24hrs / 7 days.
- 30.3 Hot Work Permits to be arranged by the customer if required.
- 30.4 Induction Times not included in the quoted price and will be invoiced separately.
- 30.5 Stand by rates payable by customer: **Under Raps Pty Ltd t/a Intercept Australia's** standard hourly charge-out rate as used to calculate the quotation will apply to any downtime and any hired machinery and operator costs incurred.
- 30.6 Cancellation or Postponement Fee. Work accepted by **Under Raps Pty Ltd t/a Intercept Australia** and cancelled or postponed within 24 hours prior to the agreed scheduled time of commencement may incur a fee which may include travel time to and from the place of work and any **Under Raps Pty Ltd t/a Intercept Australia** incurred expenses, such as but not limited to: hire costs for additional third-party equipment; insurances; time spent on site specific inductions; etc.
- 30.7 Disposal - The customer will at their expense supply bins for disposal of plastic.
- 30.8 Warranty – **Under Raps Pty Ltd t/a Intercept Australia** obligation under this warranty shall be limited to replacement of product that proves to the manufacture and or supplier to **Under Raps Pty Ltd t/a Intercept Australia** of the product to be defective.
- To obtain replacement product under this warranty, the customer must notify **Under Raps Pty Ltd t/a Intercept Australia** in writing of the claimed defect within 1 month after receipt of product by the end-use customer.
- All freight charges for replacement products shall be paid by **Under Raps Pty Ltd t/a Intercept Australia**, if **Under Raps Pty Ltd t/a Intercept Australia** concurs with material deficiency. **Under Raps Pty Ltd t/a Intercept Australia** shall have no liability for any injury, loss or damage arising out of the use of, or the inability to use, the product.
- Before using, user shall determine the suitability of the product for its intended use, and user assumes all risk and liability in connection therewith. No representative or recommendation not contained herein shall have any force or effect unless in a written document signed by an officer of **Under Raps Pty Ltd t/a Intercept Australia**.
- The foregoing warranty is exclusive and in lieu of all other warranties, express, implied or statutory, including. Without limitation, any implied warranty of merchantability or of fitness for a particular purpose. In no case shall **Under Raps Pty Ltd t/a Intercept Australia** be liable for incidental or consequential damages. Nothing contained herein shall be construed as a license to operate under, or recommendation to infringe, any patents.”
- 30.9 **Under Raps Pty Ltd t/a Intercept Australia** provides no warranty and accepts no responsibility for covering fixed to structures or framework.
- 30.10 Inclement Weather – All jobs performed in exposed outdoor locations are subject to postponement under conditions of inclement weather (rain, precipitation, excess wind, excess heat, excess cold, fog, etc). **Under Raps Pty Ltd t/a Intercept Australia** shall be the sole determinate of inclement conditions. **Under Raps Pty Ltd t/a Intercept Australia** takes no responsibility for consequential damages due to delays caused by inclement weather. Under no circumstances shall the customer hold
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Under Raps Pty Ltd t/a Intercept Australia liable for losses or other damages resulting from delays caused by inclement weather.

3.11 Transportation – **Under Raps Pty Ltd t/a Intercept Australia** provides no warranty and accepts no responsibility for items during transport as it out of **Under Raps Pty Ltd t/a Intercept Australia** control.
