

Ramos Sport Sales Agreement

1 Definitions: In this Agreement:

Agreement: means any Agreement, order, contract or security agreement entered into for the provision of Goods by Ramos Sport to the Customer which will be bound by the conditions contained herein;

Customer: means a person, firm or corporation, jointly and severally if there is more than one, acquiring Goods from Ramos Sport;

Goods: means goods and services supplied by Ramos Sport to the Customer;

GST: means the Goods and Services Tax as defined in *A New Tax System (Goods and Tax) Act 1999* as amended;

Intellectual Property: means all copyright, patents, trademarks, designs, formulae, specifications, confidential information, manufacturing processes and all modifications, improvements and derivations (whether registerable or not) owned or licensed by Ramos Sport in respect of the Goods;

2 Basis of Agreement

2.1 Unless otherwise agreed by Ramos Sport in writing, these conditions apply exclusively to every agreement entered for the sale of Goods by Ramos Sport to the Customer and cannot be varied or supplanted by any other condition, including the Customer's terms and conditions.

2.2 Any written quotation provided by Ramos Sport to the Customer concerning the proposed supply of Goods is:

- (a) valid for 30 days;
- (b) an invitation to treat only;
- (c) subject to the Customer offering to enter into an Agreement and accepting these conditions.

2.3 The Agreement is accepted by Ramos Sport when Ramos Sport confirms its acceptance of an offer from the Customer in writing or electronic means or provides the Customer with the Goods.

2.4 Ramos Sport in its absolute discretion may refuse to accept any offer.

2.5 It is the Customer's responsibility to provide Ramos Sport with its specific requirements in relation to the Goods.

3 Pricing

3.1 Unless specifically stated, prices and charges quoted for the supply of Goods exclude GST and any other taxes or duties imposed on or in relation to the Goods. In addition to payment of the price of Goods and any other charges, the Customer must pay any GST and any other taxes, duties or charges imposed on the Goods.

3.2 If the Customer requests any variation to the Agreement, Ramos Sport may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by Ramos Sport in relation to the Goods, Ramos Sport may vary its price for the Goods in order to take account of any such change, by notifying the Customer.

4 Payment

4.1 Unless otherwise agreed in writing Ramos Sport requires payment in full prior to delivery of the Goods.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the sole discretion of Ramos Sport immediately upon giving written notice to the Customer.

5 Payment Default

5.1 If the Customer defaults in payment of any amount payable to Ramos Sport, then all money which would become payable by the Customer to Ramos Sport at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Ramos Sport may, without prejudice to any other remedy available to it:

- (a) claim a general lien over all the Customer's Goods in the possession of Ramos Sport, and subject to giving 14 days' written notice to the Customer, sell the property by private treaty or public auction, whichever Ramos Sport in its sole discretion deems appropriate, and allocate the proceeds to the repayment of its sale costs and expenses and any sum which is due and payable by the Customer;
 - (b) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;
 - (c) charge the Customer for all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - (d) cease or suspend, for such period as Ramos Sport thinks fit, supply of any further Goods to the Customer;
 - (e) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Ramos Sport;
- without effect on the accrued rights of Ramos Sport under any contract.

5.2 Clauses 5.1(d) and 5.1(e) may also be relied upon, at the option of Ramos Sport:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

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- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6 Title

- 6.1 Full legal and equitable title and property in any and all Goods supplied by Ramos Sport to the Customer will remain with Ramos Sport until:
 - (a) the Customer has paid Ramos Sport all amounts owing for the Goods under this Agreement; and
 - (b) the Customer has paid all other amounts owed to Ramos Sport in respect of all Agreements between Ramos Sport and the Customer;
- 6.2 Receipt by Ramos Sport of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Ramos Sport's ownership of rights in respect of the Goods will continue.
- 6.3 It is further agreed that in addition to any rights Ramos Sport may have under Chapter 4 of the PPSA until payment of all amounts owing by the Customer to Ramos Sport:
 - (a) the Customer must hold the Goods as fiduciary bailee and agent for Ramos Sport and keep separate the Goods until Ramos Sport has received payment in full and all other obligations owed by the Customer are met;
 - (b) Ramos Sport may give notice to the Customer to return the Goods or any of them to Ramos Sport. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods will cease;
 - (c) Ramos Sport will have the right to stop the Goods in transit whether or not part or previous delivery has been made;
 - (d) if the Customer fails to return the Goods to Ramos Sport, then without prejudice to any other rights and without prior notice, Ramos Sport or Ramos Sport's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee and licensee of the Customer, where the Goods are situated and take possession of the Goods which remain the property of Ramos Sport pursuant to this Clause 6 and the Customer irrevocably licenses Ramos Sport to enter such premises and indemnifies Ramos Sport from and against all costs, claims, demands or actions by any party arising from such action;
 - (e) the Customer will hold any proceeds from its sale or disposal of the Goods on trust for Ramos Sport;
 - (f) the Customer will not encumber or charge the Goods in any way or grant or otherwise give any interest including granting a security interest (as defined by the PPSA) in the Goods while they remain the property of Ramos Sport;
 - (g) Ramos Sport may issue proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- 6.4 If there is any inconsistency between Ramos Sport's rights under this Clause 6 and its rights under Chapter 4 of the PPSA, this Clause 6 prevails.

7 Risk and Insurance

- 7.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately on the Goods being delivered.
- 7.2 The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.
- 7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods sold by Ramos Sport, whether such Goods are used singularly, or in combination with other substances, or any process.

8 Acknowledgments

- 8.1 The Customer acknowledges that:
 - (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by Ramos Sport in relation to the Goods their use or application;
 - (b) it has the sole responsibility of satisfying itself that the Goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by Ramos Sport.
- 8.2 Any description of the Goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

9 Performance of Agreement

- 9.1 Any period or date for delivery of Goods stated by Ramos Sport is intended as an estimate only and is not a contractual commitment. Ramos Sport will use its best endeavours to meet any estimated dates for delivery of the Goods but will in under no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

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9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of Goods invoiced.

10 Delivery

10.1 Ramos Sport will, at its discretion, arrange for the delivery of the Goods to the Customer and shall designate the route and the means of transportation for the delivery of Goods. In the event that the Customer requires a more expensive route and/or means of transportation the Customer will reimburse Ramos Sport for any extra cost involved.

10.2 Unless otherwise agreed in writing by Ramos Sport, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of despatch of the Goods to the Customer to the point of delivery.

10.3 The Customer must provide reasonable and proper access to the location specified for delivery.

10.4 The Customer authorises Ramos Sport to subcontract delivery in its absolute discretion.

10.5 The Customer indemnifies Ramos Sport against any loss or damage suffered by Ramos Sport, its subcontractors or employees as a result of delivery, except where caused by the negligence of Ramos Sport.

11 Liability

11.1 Except as specifically set out herein, or contained in any warranty statement provided with the Goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

11.2 Replacement or repair of the Goods or re-supply of the Goods is the absolute limit of Ramos Sport's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.

11.3 Ramos Sport is not liable for any direct, indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

11.4 Ramos Sport will not be liable for any loss or damage suffered by the Customer where Ramos Sport has failed to deliver Goods or fails to meet any delivery date or cancels or suspends the supply of Goods.

11.5 Nothing in this Agreement is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of which cannot be excluded, restricted or modified.

12 Cancellation

12.1 If, through circumstances beyond the control of Ramos Sport, Ramos Sport is unable to affect delivery or provision of Goods, then Ramos Sport may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

12.2 No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Ramos Sport after that order has been accepted.

12.3 Ramos Sport, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

13 Specifications

13.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in Ramos Sport's catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

14 Intellectual Property

14.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

14.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part or any patents, inventions, trademarks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.

14.3 The Customer must not at any time create, sell, manufacture or process any Goods using or taking advantage of the Intellectual Property.

14.4 The Customer indemnifies and agrees to keep indemnified Ramos Sport against all liability, losses or expenses incurred by Ramos Sport in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights in relation to the supply of the Goods.

14.5 Any Intellectual Property provided to the Customer by Ramos Sport in connection with the Goods and remains the exclusive property of Ramos Sport and must be returned to Ramos Sport on demand and must not be copied or communicated to any third party without the express written consent of Ramos Sport.

15 Warranty

15.1 Subject to Clause 15.3, Ramos Sport, in its reasonable discretion if it deems necessary will replace any Goods or re-supply any Goods that do not meet the standard specified in the product description, provided that the Goods may have an acceptable variance.

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15.2 Provision of the Warranty is subject to:

- (a) payment in full in accordance with this or any Agreement;
- (b) written notice from the Customer within 14 days of delivery of any Goods that it believes does not meet specifications or Goods that are defective;
- (c) the provision of a sample of the Goods to Ramos Sport for testing;
- (d) correct storage of the Goods in accordance with instructions; and
- (e) using the Goods in accordance with their intended purpose.

15.3 The Warranty excludes damage or alteration to the Goods arising from circumstances outside the control of Ramos Sport, including, without limitation to where the Goods are not used for their intended purpose, or where Goods or any part of them have been treated, processed or changed in any manner.

15.4 The Customer warrants to use the Goods in accordance with:

- (a) any instructions provided to it by Ramos Sport from time to time;
- (b) all government and local regulations, including but not limited to all relevant environmental laws and regulations governing the storage, use, handling and maintenance of the Goods;
- (c) all necessary and appropriate precautions and safety measures relating to the storage, use, handling and maintenance of the Goods.

16 Miscellaneous

16.1 The law of Victoria from time to time governs this Agreement and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

16.2 Failure by Ramos Sport to enforce any part of this Agreement shall not be construed as a waiver of any of Ramos Sport's rights.

16.3 If any part of this Agreement is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from this Agreement without affecting the enforceability of the remaining conditions.

16.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.

17 Privacy

17.1 Ramos Sport is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Ramos Sport in accordance with the Privacy Act.

17.2 Ramos Sport requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Ramos Sport in connection with this Agreement.

The undersigned acknowledge that they are authorised to sign this Agreement on behalf of the respective parties.

Ramos Sport:	Customer:
On behalf of Ramos Sport: Date* _____ By* _____ Signed* _____ (Print Name) (Sign Name)	On behalf of the Customer: Date* _____ By* _____ Signed* _____ (Print Name) (Sign Name)