1. Defined Terms

In these Terms:

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.
Confidential Information means:
(a) technical know-how, know-how, methods, and systems; and
(b) all other information which by its nature or circumstances of its disclosure to or would reasonably be expected to be regarded as confidential relating to Toro's products.
Credit Application means the term and conditions of credit for Toro products.
Current Quotation means the quoted price for goods or services.
Entity means Toro Australia Group Sales Pty Limited and any related bodies corporate in connection with the Products, including:
(a) business names, trade names and domain names;
(b) patents, copyrights, rights in circuit layouts, registered designs, trademarks and trade secrets; and
(c) any application, or right to apply, for registration of any of the foregoing
Force Majeure Event means an occurrence or omission as a result of which Toro is prevented from or delayed in performing any of its obligations under these Terms that is beyond its reasonable control including the failure of any machinery used by Toro or the failure by a supplier to Toro.
Intangible Property means all intellectual property in connection with the Products,
(a) business names, trade names and domain names;
(b) patents, copyrights, rights in circuit layouts, registered designs, trademarks and trade secrets; and
(c) any application, or right to apply, for registration of any of the foregoing.
Person means in relation to a person, its officers, employees and agents;
2. Interpretation

Website corporate, including that the Customer:
(a) is made for the Customer's use only in connection with the Products; or
(b) provides adequate information or cooperation to Toro so as to enable Toro to perform its obligations; or
(c) any event that is beyond Toro's control, including a Force Majeure Event; or
(d) is made for the Customer's use only in connection with the Customer's business,
(e) is made for the Customer's use only in connection with the Customer's business,
(f) makes the agreement comprise
(g) is made for the Customer's use only in connection with the Customer's business,
(h) is made for the Customer's use only in connection with the Customer's business,
(i) makes Toro liable for any loss or damage to property or premises owned by the Customer or any of its property, a mortgagee takes possession of any of its property, or
(j) makes Toro liable for any loss or damage to property or premises owned by the Customer or any of its property, a mortgagee takes possession of any of its property, or
(k) makes Toro liable for any loss or damage to property or premises owned by the Customer or any of its property, a mortgagee takes possession of any of its property, or
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Toro Australia - Supply Terms

These Terms or the performance or non-performance of these Terms and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis of law or equity is limited as follows:

(1) Toro will have no liability whatsoever to the Customer for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or other loss of opportunity, loss of production stoppage or loss of data);

(2) Any exemption of Toro's liability to the Customer is in addition to any other limitation or exclusion of Toro's liability to the Customer or to third parties.

10. Amended Terms of These Terms may be amended by Toro at any time by sending a copy of the change to the Customer or by displaying the change on the Website.

11. Force Majeure If there is a Force Majeure Event:

(a) as soon as reasonably practicable, Toro must give the Customer notice of the Force Majeure Event;

(b) Toro's obligations are suspended during the time and to the extent that it is prevented from or delayed in complying with its obligations due to the Force Majeure Event;

(c) Toro is not liable to the Customer as a third party or for any Damages sustained as a result of the Force Majeure Event; and

(d) If the Force Majeure Event continues for more than 20 days, Toro may terminate this Agreement as soon as reasonably practicable.

12. Measures

(a) Any representation made by Toro as to weight, length, quantity, quality or other characteristics (Characteristics) of Products are approximate and Toro will supply Products on either the actual or approximate basis.

(b) A calculated basis will be in accordance with the applicable Australian standards.

(c) Any variance in the Characteristics must be notified to the Customer in accordance with clause 6(b) and the Customer must give Toro the opportunity to inspect the Products not sooner than 30 days from the date when the Products are received by the Customer.

13. Defective Products

(a) When the Products are delivered to the Customer, the Customer must inspect the Products for any defect in the Products or error or omission in specifications (in respect of which Toro's liability is not limited under these Terms), or defect in the Customer for the relevant order under these Terms, and

(b) Toro's liability in respect of a Claim brought against it by the Customer or any third party, is reduced proportionately to the extent that any breach of these Terms, or act or omission of the Customer, or its Personnel, causes or contributes to any Damages suffered (including lost profit) (excluding (b) any loss not otherwise less than one of those Damages).

(c) This clause does not apply to:

(1) information independently created, or known, by the Customer;

(2) information that is public knowledge (except because of a breach of these Terms); or

(3) required to be disclosed by law.

14. Indemnity

(a) The Customer indemnifies Toro against all Damages that Toro sustains or incurs (directly or indirectly) because of:

(1) a breach of any of these Terms by the Customer; and

(2) any negligent, wilful, reckless or unlawful act or omission of the Customer or its Personnel; or

(3) any negligent, wilful, reckless or unlawful act or omission of Toro or its Personnel; or

(4) a breach of these Terms by Toro, but only to the extent that the act, omission or breach directly results in the Damages being suffered.

(b) The Customer's indemnity in clause (a) is in addition to any other indemnity or obligation provided for in these Terms.

15. Confidential Information

(a) The Customer must:

(1) keep Confidential Information confidential and secure;

(2) comply with Toro's directions regarding Confidential Information;

(3) return to Toro or destroy any Confidential Information to Toro on the request of Toro.

(b) The Customer must not:

(1) use Confidential Information for the purposes of these Terms;

(2) disclose Confidential Information to a third party in any manner;

(3) ensure the assets of the trust are sufficient to meet the Customer's financial obligations under these Terms; or

(4) ensure that it retains the right to be indemnified out of and lien over the assets of the trust in all liabilities incurred by it under these Terms.

16. Integration of Toro will have no liability whatsoever to the Customer for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or other loss of opportunity, loss of production stoppage or loss of data).

17. Return of goods to Toro by the Customer may only be made if

(1) the Customer gives notice of the Goods to be returned to Toro, specifying the reason for the return; and

(2) Toro has the benefit of the Customer's right of return in accordance with clause 6(j) and

(3) Toro will use reasonable endeavours to replace the Goods within 15 working days.

18. GST

(a) This clause is subject to any necessary or required GST law.

(b) Any representation made by Toro as to weight, length, quantity, quality or other characteristics (Characteristics) of Products are approximate and Toro will supply Products on either the actual or approximate basis.

(c) The Customer must immediately terminate this Agreement if Dealer violates any of the provisions of this clause.

(d) Toro's dealers of this result in a Claim against Toro, the Dealer must indemnify Toro against all Damages arising from the Customer's breach.

22. Miscellaneous

(a) If an order is accepted, these Terms can only be varied in writing by Toro and the Customer. Toro can amend these Terms before it accepts an order.

(b) Any representation or approval to be given in writing and may be given conditionally or unconditionally or withheld in Toro's absolute discretion.

(c) The Customer may not assign a right under these Terms with Toro's prior written consent.

(d) Toro may assign a right under these Terms.

(e) Any indemnity or any obligation of confidence under these Terms is independent and survives termination of these Terms.

(f) Any provision of these Terms that is illegal or unenforceable may be severable and the remaining terms continue in force.

(g) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

(h) These Terms are governed by the laws of South Australia and the Customer irrevocably submits to the jurisdiction of its courts.

23. Privacy Act

(a) The Applicant, and signatories on behalf of the Applicant in their personal capacity, agree to the terms of the Privacy Statement pursuant to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Protection & Privacy) Act 2012) contained in this document.