

# Toro Australia - Supply Terms

## 1. Defined Terms

In these Terms:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Claim** means any claim, demand or proceeding.

**Confidential Information** means:

- technical know-how, concepts, methods and systems; and
- all other information which by its nature or circumstances of its disclosure is or would reasonably be expected to be regarded as confidential,

relating to Toro's products.

**Credit Application** means any application for commercial credit provided to Toro.

**Current Quotation** means an authorised quotation issued by Toro which is no older than 30 days from the date of the order.

**Customer** means a person who orders or purchases a product from Toro.

**Damages** mean any liability, expense, loss, or cost (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)).

**Dealer Agreement** means the agreement between Toro and the Customer authorising the Customer to be a Toro dealer.

**Force Majeure Event** means any 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.

**Intellectual Property** means all intellectual property in connection with the Products, including:

- business names, trade names and domain names;
- patents, copyright, rights in circuit layouts, registered designs, trademarks and trade secrets; and
- any application, or right to apply, for registration of any of these.

**Personnel** mean in relation to a person, its officers, employees and agents;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

**Product** means a product supplied by Toro and available for purchase.

**Price** means the price for a Product.

**Purchase Order** means an order in writing for a Product in a form approved by Toro from time to time.

**Toro** means Toro Australia Group Sales Pty Limited and any related bodies corporate, including any business division that accepts an Order from the Customer.

**Website** means Toro's website at [www.toro.com.au](http://www.toro.com.au).

## 2. Interpretation

In these Terms:

- the singular includes the plural and vice versa;
- reference to a gender includes the other genders;
- "person" includes a firm, a body corporate, an unincorporated association or any authority;
- a reference to any instrument includes a reference to that instrument as varied from time to time;
- a reference to a person includes its executors, administrators, successors and permitted assigns;
- where two or more persons are a party they are bound jointly and severally;
- a reference to any legislation includes all amendments to it and any legislation enacted in substitution for it and all statutory instruments issued under it and in force;
- a reference to \$A, dollar or \$ is to Australian currency;
- anything after "including" does not limit what else might be included;
- a term may not be construed to the disadvantage of Toro merely because these are its Terms; and
- where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## 3. Orders

- An order is only effective if the Customer makes it using a Purchase Order and complies with the reasonable directions of Toro from time to time about orders.
- An order must be made for the multiples of any standard pack size or quantity, and in compliance with any minimum order requirements, advised by Toro from time to time.
- Toro only accepts an order by confirming its acceptance in writing to the Customer or by delivering some or all of the order.
- Toro may accept or refuse an order in its own discretion.
- Toro may impose any condition on its acceptance of an order it sees fit, including that the Customer:
  - submit a Credit Application, provide the information about its financial position that Toro requests or be the subject of a credit assessment; or
  - provide payment before delivery for the whole or part of the value of any order.
- If a Customer cancels an order at any time prior to the Products being delivered to the Customer or its agent (as applicable), other than in accordance with clause 5(i), the Customer agrees to pay a cancellation fee equal to 15% of the price payable for the Products in accordance with clause 5 (Cancellation Fee).
- Toro and the Customer agree that the Cancellation Fee:
  - constitutes a genuine pre-estimate of loss likely to be suffered by Toro as a result of the Customer cancelling an order;
  - is reasonably proportionate to the loss that Toro will likely suffer due to building-up inventory as a result of the Customer cancelling an order accepted by Toro in accordance with this clause; and
  - for the avoidance of doubt, will not apply if:
    - if an order is cancelled by Toro in accordance with these Terms; or
    - to any part of an order that is cancelled by the Customer in accordance with clause 5(i).

## 4. Contract

- These Terms apply to each supply of a Product by Toro.
- Toro's Products are subject to regular change or improvement. Changes to any specifications and performance data may be made by Toro without notice and without Toro incurring any liability to the Customer.
- An agreement for supply is made when Toro accepts an order from the Customer and the agreement comprises (in descending order of precedence):
  - any terms imposed on the acceptance of an order by Toro;

- any specific term agreed by Toro and the Customer in writing, including a Dealer Agreement (if applicable); and
- these Terms.

- The Customer warrants that it does not enter into any agreement with Toro in reliance on, or as a result of, any statements, representations or conduct of any kind (including but not limited to, any representation, warranty, advice or undertaking) made by Toro or any third party.

- Trade custom or trade usage does not apply in interpreting an agreement between Toro and the Customer.

## 5. Price

- The Customer must pay to Toro for all Products supplied by Toro either:
  - the price listed in a Current Quotation for the Products; or
  - where there is no Current Quotation, Toro's prevailing market price (as made available by Toro from time to time, including on the Website) as at the date of the order.
- Toro may notify the Customer of a change in price for any Product, but Toro is under no obligation to do this.
- All prices are provided on a net basis and do not include any freight, insurance, dealer delivery, transport charges, import and export taxes or any other applicable taxes, duties or charges (all of which the Customer must pay, if applicable).
- Toro may make available indicative delivery prices from time to time, including on the Website. These prices are merely a guide and may not apply in a particular case.
- Subject to clauses 5(g)(h) and (i), the prices, terms for payment and any discounts applying to Products ordered by the Customer will apply as at the date an order is accepted by Toro.
- Where Toro makes available any price list or other information that contains a recommended resale price, if any, the resale prices is only a recommended resale price. The Customer need not comply with the recommendation.
- Toro may, in its sole discretion, vary the price or terms of payment for any Product after the date an order has been accepted by Toro if:
  - such variation is required because of additional costs incurred by Toro due to factors outside its control, such as a raise in prices by its suppliers or adverse macroeconomic conditions; and
  - such variation is necessary in order to protect Toro's legitimate business interests.
- Should Toro vary the price or terms of payment for a Product under clause 5(g), it will provide the Customer with at least 10 Business Days written notice of the variation.
- If such variation will result in the price of a Product increasing by more than 2%, the Customer may elect to cancel that part of the order affected by the increase in price by giving Toro written notice within 10 Business Days of receiving the notice referred to in clause 5(h). If no notice is given by the Customer within that timeframe, the variation will be deemed to be accepted by the Customer.

## 6. Delivery and Packaging

- Toro will make reasonable efforts to have the Products delivered to the Customer or its agent:
  - as specified in the Purchase Order; or
  - if not specified in the Purchase Order, by the means and to the location Toro decides, acting reasonably.
- Toro reserves the right to make partial deliveries.
- All Products are at the Customer's risk immediately they leave Toro's premises. The Customer is responsible for insuring the Products from then.
- Subject to any direction issued by Toro or agreement in writing with Toro, the Customer must pay any transportation costs and associated costs (including, for example, import duties and insurance).
- If requested by Toro the Customer must pay to Toro any reasonable costs incurred by Toro as a result of a failure by the Customer to accept a delivery of the Products or for any delay in acceptance of a delivery.
- Unless otherwise agreed by Toro in writing, prices include packing by Toro in accordance with Toro's standard procedures. Any special packing will be at an additional cost payable by the Customer in accordance with any direction issued by Toro.
- Any pallets used by Toro for a delivery remain the property of Toro and the Customer must pay Toro for any pallets not returned to Toro (at the Customer's expense) in good order and condition within 14 days of delivery.
- Toro will not under any circumstance be liable for:
  - any Damage due to transport, unloading or packaging of Products; or
  - damage to property caused by entering premises to deliver the goods.
- While Toro will endeavour to meet any agreed delivery timeframes requested by the Customer, Toro is not be liable for any delay.
- The Customer must give Toro notice of any discrepancy (either oversupply or undersupply) in the quantity of Products ordered compared to the Products delivered within 5 Business Days of delivery. Failure to provide notice within this time or failure to provide adequate information or cooperation to Toro absolves Toro from any liability for any undersupply.

## 7. Title passes on payment

- Notwithstanding that the risk in Products passes to the Customer on delivery of the Products to the Customer, Toro retains the right of ownership for all Products delivered in accordance with these Terms until payment of the Price has been made in full by the Customer to Toro.
- Until title in the Products has passed to the Customer, if the Customer is in default in payment for those products, the Customer grants Toro the right to enter the Customer's premises or the place of business of any related company where the Products are located without any liability for trespass or any resulting damage to repossess the Products and to sell or dispose of those Products as desired.
- The Customer acknowledges that until payment of the Price for the Products has been recovered by Toro in full:
  - Toro has a security interest in each Product; and
  - Toro's interest in the Products automatically attaches to and extends to the proceeds of sale of the Products sold by the Customer and the Customer is under an obligation

to account to Toro for the proceeds of the sale of the Products sold by the Customer.

- If Toro supplies Products as the agent of another party, ownership of the Products contained in each delivery remains with that party until payment has been received in full and until title to the Product passes, and if the Customer is in default, the Customer also grants that party the right to enter the Customer's premises to repossess the products and to sell or dispose of the same.
- Toro and the Customer agree that on receipt of the Price by Toro:
  - Toro is not entitled to direct the disposition of the goods;
  - Toro cannot rescind the transaction;
  - Toro cannot prohibit the Customer from moving, selling or otherwise using the Product in the ordinary course of business; and
  - Toro otherwise has no rights that rest with the titleholder of property.

## 8. Payment and Trading Terms

- Toro will provide the Customer with an invoice in Australian dollars for the price of delivered Products and any other amount Toro is entitled to charge under these Terms.
- Any taxes, import duties or other charges will be added to the price of the Products either as a separate item or included in the invoice price.
- Subject to paragraph (d), the Customer must pay to Toro the amount set out in each invoice in Australian dollars without set-off or deduction on or prior to the delivery of the Products.
- Where the Customer has submitted a Credit Application and that Credit Application has been approved by Toro, payment for an invoice must be made on or before the last Business Day of the month following the month in which the invoice is dated, or such other date as Toro has agreed either on the invoice or in writing. Any payment made under these Terms must be made:
  - in cleared funds to a bank account nominated by Toro from time to time; or
  - in any other manner Toro may reasonably request (acting entirely in its own discretion).
- Notwithstanding any other agreement between Toro and the Customer, Toro will always be entitled to offset against any money it owes to the Customer, any amounts owed by the Customer to Toro under these Terms.
- If the Customer defaults in payment of any money due under these Terms, Toro may, in addition to other rights or remedies it may have:
  - withhold delivery of any order; or
  - charge interest on the unpaid amount from the due date until the date of actual payment at 2% per annum above the base overdraft facility rate charged by Toro's bankers from time to time;
- If any amount is paid using a credit or charge card, the Customer will incur the following additional payment processing fees:
  - 0.9% of the payment amount for payment by MasterCard or Visa; and
  - 1.836% of the payment amount for payment by AMEX.
- Toro may vary the payment surcharges in paragraph by providing notice on the Website.

## 9. Credit

- Toro may grant to the Customer credit in the amount it sees fit.
- The Customer must pay all amount due to Toro on demand if, the Customer breaches its agreement with Toro, a liquidator, administrator, receiver or receiver and manager is appointed to it or any of its property, a mortgagee takes possession of any of its property, or it enters into any compromise or arrangement for the benefit of any of its creditors, Toro determines, in its opinion, that there has been a material adverse change in the financial condition of the Customer or there is any change in its ownership.
- The Customer must notify Toro in writing if an event in paragraph (b) occurs.
- The Customer must if requested by Toro:
  - charge in favour of Toro all beneficial interests (freehold and leasehold) in any real or personal property held now or in the future by it as security for payment of all and any moneys payable by the Customer to Toro; and
  - execute a mortgage or other instrument of security in the form requested by Toro.
- If the Customer submits a Credit Application, the Customer warrants to Toro that all information provided to Toro are accurate and not misleading. Toro may use it to assess the credit-worthiness of the Customer.

## 10. PPSA

- In this agreement 'financing statement', 'financing change statement', 'security agreement', and 'security interest' have the same meaning given to those terms by the PPSA.
- Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
  - all Products previously provided, and to be provided in the future, by Toro to Customer;
  - all of Customer's present and after acquired property being a charge, including anything in respect of which Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of Customer to Toro for Products and services that have previously been provided and that will be provided in the future by Toro to Customer.
- Customer undertakes to:
  - promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Toro may reasonably require to:
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - register any other document required to be registered by the PPSA;
    - correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);

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- (D) indemnify, and upon demand reimburse, Toro for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
- (2) not register a financing change statement in respect of a security interest without the prior written consent of Toro;
- (3) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products or services in favour of a third party without the prior written consent of Toro; and
- (4) immediately advise Toro of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- (d) Other than as outlined below, the parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (e) Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (f) Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (g) Unless otherwise agreed to in writing by Toro, Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- (h) Customer must unconditionally ratify any actions taken by Toro under this clause.
- (i) Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 11. Intellectual Property

- (a) Nothing in these Terms assigns to the Customer any Intellectual Property owned or used by Toro.
- (b) Subject to these Terms, Toro grants to the Customer a personal, non-transferable, royalty free licence to use any Toro trademarks notified to the Customer in writing by Toro to the extent necessary for the Customer to enjoy any right conferred to it under these Terms.
- (c) The Customer must not assign or sub-licence any of its rights under this clause.
- (d) The Customer acknowledges that:
- (1) the Intellectual Property is the property of Toro; and
  - (2) all existing goodwill in the Intellectual Property vests in Toro and, on creation, all future goodwill in the Customer's use of the Products arising out of the use by it of the Intellectual Property vests in Toro.
- (e) The Customer must not apply for registration as a trade mark, domain name, business or company name any word or logo that is the same as, substantially identical with or deceptively similar to any of Toro's trademarks or any other of its Intellectual Property.
- (f) Toro may, at its own expense, commence proceedings or take other actions for possible infringement of an Intellectual Property Right. Any money paid or damages or costs awarded as a result of those proceedings or actions are for Toro's benefit.
- (g) The Customer must not commence proceedings or take other actions against a third person for possible infringement of an Intellectual Property Right without Toro's prior written approval.

## 12. Liability

- (a) In this clause, **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- (b) Subject to the other provisions of the agreement between Toro and the Customer, Toro warrants to the Customer that all Products are fit for the purpose for which they were manufactured, supplied or any other purpose expressly confirmed by Toro in writing for a period that may be specified for each Product by Toro in writing, including on the Website.
- (c) If the Customer is aware (or should be aware) that the Products contained in an order are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics (together, **Particular Use**), the Customer must clearly specify that Particular Use in any order and Toro must agree in writing that the Products can be used for the Particular Use for the warranty provided under this clause to apply.
- (d) To the extent that the Customer acquires goods or services from Toro as a consumer within the meaning of the Australian Consumer Law, Toro's goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure. However, if a Product is not of unacceptable quality Toro has no liability if the reason for the unacceptable quality is specifically brought to the Consumer's attention before the order for the Product.
- (e) Nothing in this clause operates to exclude, restrict or modify the application of any implied condition or warranty or provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (1) contravene that statute; or
  - (2) cause any term of these Terms to be void, (**Non-excludable Obligation**).
- (f) Except in relation to Non-excludable Obligations and clauses 11(b) to 11(e), all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded.
- (g) Except in relation to Non-excludable Obligations, Toro's liability to the Customer arising directly or indirectly under or in connection with 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 in 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 revenue, loss of opportunity, loss of production, production stoppage or loss of data);

(2) the aggregate of Toro's liability to the Customer is otherwise limited to an amount not exceeding the amount paid by the Customer for the relevant order under these Terms; and

(3) Toro's liability in respect of a Claim brought against it by the Customer or any third party, is reduced proportionally 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 but not limited to negligent handling, disregard of operating or maintenance instructions, overloading or unsuitable operating conditions, defective civil or building work, lightning, accident, neglect or faulty use or other act beyond Toro's control).

(h) In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Toro's liability is not limited under these Terms), Toro's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:

- (1) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (2) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

## 13. 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 calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.
- (c) Any variance in the Characteristics must be notified to Toro in accordance with clause 6(j) and the Customer must give Toro the opportunity to verify any variance using the means Toro sees fit.

## 14. 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 relation to the order without delay.
- (b) If any defective Products or errors in relation to the order are identified:
- (1) the Customer must immediately give Toro notice of the defect in writing within 5 Business Days of delivery; and
  - (2) the Parties must discuss which of the following be adopted to remedy the defects:
    - (A) sorting and reworking of the Products;
    - (B) returning the affected Products to Toro for exchange or repair; or
    - (C) requesting Toro to deliver appropriate replacement parts to the Customer as soon as practicable.
- (c) Except as required by law or these Terms, Toro will be under no obligation to accept goods returned for any reason.
- (d) Return of goods to Toro by the Customer may only be made if, subject to any Non-excludable Obligations, the Customer pays, a 15% handling charge and freight costs and the risk in the Products remain with the Customer.
- (e) Toro will use reasonable endeavours to rectify any error or omission in an order as soon as practicable after agreeing rectification is required, but no liability will be incurred for the error or omission or any delay in rectifying the same.

## 15. Indemnity

- (a) The Customer indemnifies Toro against all Damages that Toro sustains or incurs (directly or indirectly) because of:
- (1) a breach of a term of these Terms by the Customer; and
  - (2) any negligent, wilful, reckless or unlawful act or omission of the Customer or any of its Personnel.
- (b) The indemnity in this clause does not apply to the extent that the Damages are caused by:
- (1) any negligent, wilful, reckless or unlawful act or omission of Toro; or
  - (2) 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.

## 16. Confidential Information

- (a) The Customer must:
- (1) keep Confidential Information confidential and secure;
  - (2) comply with Toro's directions regarding Confidential Information; and
  - (3) return Confidential Information to Toro on the request of Toro.
- (b) The Customer may only:
- (1) use Confidential Information for the purposes of these Terms.
  - (2) disclose Confidential Information to a third party if:
    - (A) the third party must know for the purposes of these Terms (but only to that extent); and
    - (B) the third party has signed a confidentiality undertaking that is no less onerous than this clause.
- (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.

## 17. Amendment of Terms

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.

## 18. 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 or a third party for any Damages arising as a result of the Force Majeure Event; and
  - (d) if the Force Majeure Event continues for more than 20 days, Toro may by notice to the Customer cancel the order.

## 19. GST

- (a) In this clause 18, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.
- (b) For the purposes of these Terms, where the expression GST inclusive is used in relation to an amount payable or other consideration to be provided for a supply under these Terms, the amount or consideration will not be increased on account of any GST payable on that supply.
- (c) Any consideration to be paid or provided to Toro for a supply made by Toro under or in connection with these Terms, unless specifically described in these Terms as GST inclusive, does not include an amount on account of GST.
- (d) Despite any other provision in these Terms, if Toro makes a supply under or in connection with these Terms on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms and Conditions as GST inclusive):
- (1) the consideration payable or to be provided for that supply under these Terms is increased by, and the Customer must also pay Toro, an amount equal to the GST payable by the Supplier on that supply; and
  - (2) the amount by which the consideration is increased must be paid to Toro by the Customer without set off, deduction or requirement for demand, at the same time as consideration is payable or to be provided.
- (e) If a payment to a Party under these Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment is reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (f) Toro must provide a tax invoice.

## 20. Notices and Communications

A notice, demand, consent, approval, request or communication under these Terms:

- (a) must be in writing, signed by a person duly authorised by the sender;
  - (b) must be hand delivered or sent by prepaid post or facsimile to the recipient's address specified on a Purchase Order, as varied by any Notice given by the recipient to the sender; and
  - (c) is taken to be received:
    - (1) if hand delivered, on delivery;
    - (2) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
    - (3) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 21. Trusts

- (a) Where the Customer is a trustee of a trust, the Customer represents and warrants to Toro that:
- (1) the trust was validly created and is in existence;
  - (2) it was properly appointed as and is the sole trustee of the trust;
  - (3) it has an unrestricted right to be indemnified out of, and a lien over the assets of the trust;
  - (4) Toro has the benefit of the Customer's right of indemnity against and lien over the assets of the trust; the assets of the trust are sufficient to meet the Customer's financial obligations under these Terms;
  - (5) the assets of the trust are sufficient to meet the Customer's financial obligations under these Terms;
  - (6) it has full power and authority under the trust to enter into these Terms; and
  - (7) it enters into these Terms for the benefit of all of the beneficiaries of the trust.
- (b) If the Customer breaches the warranty in paragraph (a) then the Customer is personally liable to Toro for any amounts due and payable by the Customer under these Terms.
- (c) Where the Customer is a trustee of a trust it must:
- (1) not resign or be removed as trustee of the trust;
  - (2) not do anything or permit anything which breaches the trust;
  - (3) ensure the assets of the trust are sufficient to meet the Customer's financial obligations under these Terms; and
  - (4) ensure that it retains its right to be indemnified out of and lien over the assets of the trust of all liabilities incurred by it under these Terms.

## 22. Integrity Obligation

- (a) The Customer shall ensure by ongoing organisational measures and instructions to its Personnel and third party business partners that it:
- (1) understands and will not take any action that would cause Toro to violate any applicable law, including but not limited to the Australian Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999, the Corporations Act 2001, the U.S. Foreign Corrupt Practices Act of 1977, or any other applicable legal acts prohibiting corrupt or otherwise harmful business practices;

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- (2) understands and will not take any action that would cause Toro to violate Australian or U.S. export controls or trade and economic sanctions, or any other applicable legal acts restricting transactions with specified persons or entities, as may be amended or replaced from time to time;
  - (3) will not incite, enable, or knowingly allow its third party business partners to commit acts prohibited under provisions (a) (1) to (3) inclusive of this clause.
  - (4) has reviewed and agrees to abide by Toro's Anti-Corruption Policy, and agrees to review and abide by all other related guidance or training materials as Toro may issue from time to time; and
  - (5) will establish, implement, and maintain such anti-corruption and export compliance policies and procedures as may be required to ensure that its practices meet the standards contained within Toro's Anti-Corruption Policy and all other related guidance or training materials as Toro may issue from time to time.
- (b) If the Customer suspects or discovers that it has violated any of the provisions of this clause, it shall immediately notify Toro and cooperate in good faith with any investigation Toro commences into such violation.
  - (c) Toro may immediately terminate this agreement if Dealer violates any of the provisions of this clause.
  - (d) If a Dealer's breach of this clause result in a Claim against Toro, the Dealer must indemnify Toro against all Damages arising from the Dealer's breach.

## 23. 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) A consent or approval must be 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 without 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 these Terms that is illegal or unenforceable may be severed 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 do not create a relationship of employment, trust, agency or partnership between Toro and the Customer.
- (i) These Terms are governed by the laws of South Australia and the Customer irrevocably submits to the jurisdiction of its courts.

## 24. Privacy Act

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 Privacy Protection) Act 2012) contained in this document.