

Toro Australia – Supply Terms and Conditions

- 1. Defined Terms**
In these Terms and Conditions:
Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in South Australia, Australia.
Claim means any claim, demand or proceedings arising out of any cause of action of a party including for breach of these Terms and Conditions or under any indemnity, in tort (including negligence) and any other common law, equitable or statutory cause of action in connection with the operation of these Terms and Conditions.
Confidential Information means:
(a) all information, know-how and intellectual property in relation to the Products; and
(b) all other information treated by Toro as confidential, regardless of its form and whether the person receiving the information becomes aware of it before or after the date of these Terms and Conditions.
Credit Application means any completed application for commercial credit provided to Toro by the Dealer for Toro to provide the Dealer with commercial credit.
Current Quotation means authorised quotation issued by Toro which is no older than 30 days at the date an Order is received by Toro.
Damages means liabilities, expenses, losses, penalties, fines, sanctions, damages and costs (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)) including those associated with any third party claim.
Dealer Agreement means the agreement executed by the Customer for the Customer to be an authorised Toro dealer, if that agreement exists.
Force Majeure Event means:
(a) any act or omission of a third party that is beyond the reasonable control of Toro;
(b) fire, flood, earthquake, elements of nature or act of God;
(c) riot, civil disorder, rebellion or revolution;
(d) failure of any machinery used by Toro or any supplier of Products or services to Toro; or
(e) failure of a supplier to Toro.
Intellectual Property Rights means all intellectual property rights in the Products, including:
(a) patents, copyright, rights in circuit layouts, registered designs, trademarks and trade secrets; and
(b) any application, or right to apply, for registration of any of the rights referred to in paragraph (a).
Personnel means, in relation to a party, officers, employees and agents of the party.
Products means the products notified by Toro either in writing or via the Website as being available for purchase by the Customer, as varied from time to time, and any other products supplied by Toro to the Customer.
Prices means the price for the Products as set in clause 5.
Purchase Order means an order in writing for the Products in a form nominated or approved by Toro from time to time, including the form made available on the Website or any other form provided by, or approved by, Toro.
Terms and Conditions means these terms and conditions for the supply of Products to the Customer by Toro pursuant to an Order, as amended or varied by Toro from time to time in accordance with clause 16.
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 located at www.toro.com.au, including any customer, dealer or member only sections of that website.
- 2. Interpretation**
In these Terms and Conditions, except where the context otherwise requires:
(a) the singular includes the plural and vice versa;
(b) another grammatical form of a defined word or expression has a corresponding meaning;
(c) a reference to these Terms and Conditions includes any schedule or annexure;
(d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
(e) a reference to AS, SA, dollar or \$ is to Australian currency;
(f) a reference to a party is to a party to these Terms and Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
(g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
(h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
(i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
(j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
(k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms and Conditions or any part of them; and
(m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.
- 3. Orders**
(a) All orders for Products must be placed by the Customer using a Purchase Order and in accordance with any reasonable direction issued by Toro regarding orders or ordering procedure (Order).
(b) All Orders for Products must be placed in multiples of any standard pack size or quantity, and in compliance with any minimum order requirements, as advised by Toro from time to time.
(c) An Order is only accepted upon written confirmation from Toro to the Customer that is has been accepted or upon delivery of some or all of the Products contained in the Purchase Order, whichever occurs first.
(d) Toro may accept or refuse an Order acting entirely in its own discretion.
(e) Toro may impose such conditions on the acceptance of an Order as it sees fit, including that the Customer:
(i) submit a Credit Application or be the subject of a credit assessment by Toro; and/or
(ii) provide payment upfront for the whole or part of the value of any Order.
- 4. Contract**
(a) Each supply of the Products by Toro to the Customer will form a separate agreement for the supply of Products in accordance with these Terms and Conditions.
(b) Toro's Products are subject to regular change and/or improvement. Changes to any relevant specifications and performance data may be made by Toro without notice and without incurring any liability to the Customer.
(c) An agreement for supply will be formed when Toro accepts an Order and that agreement will comprise (in descending order of precedence):
(i) any terms imposed on the acceptance of an Order by Toro;
(ii) any specific term(s) agreed by the Parties in writing, including the Dealer Agreement (if applicable); and
(iii) these Terms and Conditions (together Agreement)
- (d) The Customer warrants that it has not entered into this Agreement 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.
(e) Trade custom and/or trade usage will not be applicable in the interpretation of this Agreement and the terms of this Agreement will prevail to the extent of any inconsistency.
- 5. Price**
(a) The Customer must pay to Toro for all Products supplied by Toro either:
(i) the price listed in a Current Quotation for the Products; or
(ii) 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 an Order.
(b) Toro may notify the Customer of a change in price for any Product, but Toro is under no obligation to do so.
(c) 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).
(d) Toro may make available standard delivery prices from time to time, including via the Website. These prices are indicative only.
(e) 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 under clause 3 of these Terms and Conditions.
(f) Where Toro makes available any price list or other material that contains a recommended resale price, if any, such resale prices are recommended resale prices only and there is no obligation on the Customer to comply with those recommendations.
- 6. Delivery and Packaging**
(a) Toro will make reasonable efforts to have the Products delivered to the Customer or its agent:
(i) as described in a Purchase Order as the place for delivery; or
(ii) as specified in an Order; or
(iii) by any means and to any location Toro decides acting reasonably.
(b) Toro reserves the right to make partial deliveries of any consignment of the Products.
(c) All Products are at the Customer's risk immediately upon the Products leaving the premises of Toro. The Customer acknowledges that it is responsible for insuring the products from that time.
(d) 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).
(e) If requested by Toro the Customer may pay to Toro any 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.
(f) 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.
(g) Any pallets used by Toro in a delivery of Products to the Customer remain the property of Toro and the Customer must pay for any pallets not returned to Toro (at the Customer's expense) in good order and condition within 14 days of the delivery of a pallet.
(h) Toro will not under any circumstance be liable for:
(i) any Loss or damage due to transport, unloading or packaging of Products; or
(ii) damage to property caused by entering premises to deliver the goods.
(i) While Toro will endeavour to meet any agreed delivery timeframes requested by the Customer, Toro will not be liable if it fails to meet such a date or for any other delay in the delivery of Products to the Customer.
(j) The Customer must give Toro notice of any discrepancy (either oversupply or undersupply) in the quantity of Products ordered compared to the Products delivered (Discrepancy) within 5 Business Days of delivery. Failure to provide notice within this time period will absolve Toro from any liability for any undersupply. Toro will not recognise any claim for a Discrepancy where a claim is made more than 5 Business Days after delivery or where the Customer fails to provide adequate information or cooperation to Toro.
- 7. Title**
(a) Notwithstanding that the risk in Products may pass to the Customer, Toro retains the right to claim payment for the Products in accordance with these Terms and Conditions.
(b) Toro and the Customer agree that:
(i) all Products must be safely stored by the Customer (Inventoried Products) and they must be clearly identifiable at all times as belonging to Toro for the purposes of these Terms and Conditions, including without limitation, by retaining the manufacturer's packaging intact.
(ii) the Inventoried Products must be stored in a specifically designated and clearly identifiable storage area at the Customer's premises and must be kept separate from other products or goods of the Customer or third parties;
(iii) the Customer may move, sell or otherwise use the Inventoried Products in the ordinary course of business as agent for Toro and will hold any and all proceeds of sale of the goods in a separate account on trust for Toro and account to Toro for the proceeds;
(iv) in the event that the Customer uses any of the Inventoried Products in some manufacturing or construction process, or process of combination with other goods or products, of its own or in conjunction with any third party, the Customer must hold such part of the proceeds of the manufacturing or construction process as related to the Inventoried goods on trust for Toro and account to Toro for those proceeds. Such part of the proceeds will be deemed to equal in dollar terms the amount owing by the Customer at the time of receipt of the proceeds. Where the proceeds are not actually received by the Customer this clause remains operative as against the book debt which is consequently created.
(c) Toro and the Customer further agree that, notwithstanding paragraphs (a) and (b):
(i) the Customer does not hold the Inventoried Products as bailee for Toro, and this clause 7 does not give rise to any relationship of bailment between the parties;
(ii) on delivery of Products to the Customer:
A Toro is not entitled to direct the disposition of the goods;
B Toro cannot rescind the transaction;
C Toro cannot prohibit the Customer from moving, selling or otherwise using the goods in the ordinary course of business; and
D Toro otherwise has no rights that rest with the titleholder of property that is subject to a lien under the United States Uniform Commercial Code; and
- (d) If the Customer breaches these Terms and Conditions, including obligation regarding payment, Toro may, without notice to the Customer, repossess the Inventoried Products and, if necessary, enter upon any premises at which Inventoried Products are or may be stored for the purposes of repossessing the Inventoried goods.
(e) If requested by Toro the Customer must cooperate with Toro to create and perfect a security interest over any of the Inventoried Products which remain unpaid by the Customer.
- 8. Payment and Trading Terms**
(a) Toro will provide the Customer with an invoice in Australian dollars for the price of delivered Products and any other charges Toro is entitled to charge pursuant to these Terms and Conditions.
(b) 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.
(c) Subject to paragraph (d), the Customer must pay to Toro the amount set out in each invoice in Australian Dollars without setoff or deduction on or prior to the delivery of the Products that are the subject of that invoice.
(d) 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 directed either on the invoice or in writing.
(e) Any payment made under these Terms and Conditions must be made:
(i) in cleared funds to a bank account nominated by Toro from time to time; or
(ii) in any other manner Toro may approve or reasonably direct (acting entirely in its own discretion).
(f) 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 and Conditions.
(g) If the Customer defaults in payment of any money due under these Terms and Conditions, Toro may, in addition to other rights or remedies it may have:
(i) withhold delivery of any Order; and/or
(ii) 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; and/or
(iii) enter any premises occupied by the Customer to recover Toro's property.
(h) If any fee or charge payable under this Agreement is paid using a credit or charge card, the Customer will incur the following additional payment processing fees:
(i) 1.6% of the payment amount for payment by MasterCard or Visa; and
(ii) 2.8% of the payment amount for payment by AMEX.
(i) Toro reserves the right to vary the payment surcharges outlined in paragraph (h) by providing notice on the Website.
- 9. Credit**
(a) Toro may grant to the Customer credit on the basis of the Credit Application and such other documents and information as may be required by Toro.
(b) The granting of credit does not obligate Toro to extend any particular amount of credit to the Customer.
(c) The Customer must notify Toro in writing if there is any change in the shareholding or ownership of the Customer or any material adverse change in the Customer's financial position.
(d) The Customer agrees that if requested by Toro the Customer will:
(i) charge in favour of Toro all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Customer to Toro; and
(ii) execute a mortgage or other instrument of security in the form requested by Toro.
(e) If the Customer submits a Credit Application, the Customer warrants to Toro that all documents provided by the Customer to Toro (if any) are accurate and that Toro is entitled to use all such documents for the purposes of these Terms and Conditions and/or assessing the credit worthiness of the Customer.
- 10. Intellectual Property**
(a) Nothing in these Terms and Conditions transfers or assigns to the Customer any Intellectual Property Right owned or used under licence by Toro.
(b) Subject to these Terms and Conditions, 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 (if at all) for the Customer to enjoy any right conferred to it under these Terms and Conditions.
(c) The Customer must not assign or sub-licence any of its rights under this clause 10.
(d) The Customer acknowledges that:
(i) the trade marks are the property of Toro; and
(ii) all existing goodwill in the trade marks 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 trade marks 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 trade marks or any other Intellectual Property Rights of Toro.
(f) Toro may, at its own expense, commence proceedings or take other actions for possible infringement of a trademark or other Intellectual Property Right. Any money paid or damages or costs awarded as a result of those proceedings or actions is for Toro's benefit.
(g) The Customer must not commence proceedings or take other actions against a third person for possible infringement of a trade mark or other Intellectual Property Right without Toro's prior written approval, which approval may be withheld entirely at Toro's discretion.
- 11. Liability**
(a) In this clause 11, Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.
(b) Subject to all other terms of these Terms and Conditions, 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 Purchase 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.
- (e) Nothing in this clause 11 operates to exclude, restrict or modify the application of any implied condition or warranty, 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:
- contravene that statute; or
 - cause any term of these Terms and Conditions 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 under these Terms and Conditions.
- (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 and Conditions or the performance or non-performance of these Terms and Conditions and whether arising under an indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
- 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);
 - 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 Conditions and
 - 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 Conditions, 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 and/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 and Conditions), Toro's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:
- in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - 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.
- 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 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) of these Terms and Conditions, and Toro must be given the opportunity to verify any variance using such means as Toro sees fit.
- 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 relation to the Order without delay.
- (b) If any defective Products or errors in relation to the Order are identified:
- the Customer must immediately give Toro notice of the defect in writing within 5 Business Days of delivery; and
 - the Parties must discuss which of the following be adopted to remedy the defects:
 - sorting and reworking of the Products;
 - returning the affected Products to Toro for exchange or repair; or
 - requesting Toro to deliver appropriate replacement parts to the Customer as soon as practicable.
- (c) Except as required by law or these Terms and Conditions, 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 Toro has agreed that the return will be subject to a 15% handling charge with freight costs and risk remaining the responsibility of the Customer.
- (e) Toro will use reasonable endeavours to rectify any error or omission in relation to 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.
- 14. Indemnity**
- (a) The Customer indemnifies Toro against all Damages (whether incurred by or awarded against Toro) that Toro sustains or incurs (directly or indirectly) because of:
- a breach of a term of these Terms and Conditions by the Customer;
 - a claim by a third party arising from any act or omission of the Customer or any of its Personnel in connection with these Terms and Conditions, whether negligent or not;
 - any negligent, wilful, reckless or unlawful act or omission of the Customer or any of its Personnel in connection with these Terms and Conditions;
 - any injury or death to Toro's Personnel arising out of or in connection with these Terms and Conditions; and
 - loss or damage to physical property caused by an act or omission of the Customer or its Personnel.
- (b) The indemnity in this clause 14 does not apply to the extent that the Damages are caused by:
- any negligent, wilful, reckless or unlawful act or omission of Toro; or
 - a breach of a term of these Terms and Conditions by Toro, but only to the extent that the act, omission or breach directly results in the Damages being suffered.
- (c) If a third party makes a Claim against Toro in respect of which the Customer must indemnify Toro under this clause 14:
- Toro will give the Customer notice;
 - the Customer must promptly admit its liability under this clause 14; and
 - the Parties must work together acting reasonably to agree how the Claim will be managed.
- 15. Confidential Information**
- (a) The Customer must:
- keep Confidential Information confidential and secure;
 - comply with Toro's directions regarding Confidential Information; and
 - return Confidential Information to Toro on:
 - the termination of these Terms and Conditions; or
- (b) B the request of Toro.
- The Customer may only:
- use Confidential Information for the purposes of these Terms and Conditions;
 - disclose Confidential Information to a third party if:
 - the third person must know for the purposes of these Terms and Conditions (but only to that extent); and
 - the third person has signed a confidentiality undertaking that is no less onerous than this clause 15.
- (c) This clause 15 does not apply to:
- information independently created, or known, by the Customer (whether alone or with a third person);
 - information that is public knowledge (except because of a breach of confidentiality referred to in these Terms and Conditions); or
 - information to be disclosed by law.
- 16. Amendment of Terms and Conditions**
- (a) These Terms and Conditions can be amended by Toro at any time and the Customer acknowledges and agrees that for the purpose of an amendment Toro may (at its discretion):
- send a copy of any amended terms and conditions to the Customer; and/or
 - display the new Terms and Conditions on the Website.
- (b) Before sending a Purchase Order the Customer should refer to the Website to obtain the current terms and conditions, as those terms and conditions will apply at the time an Order is accepted by Toro, or such other terms and conditions as Toro may nominate upon acceptance of an Order.
- 17. Force Majeure**
- (a) If a Force Majeure Event prevents Toro from performing any of its obligations under these Terms and Conditions:
- as soon as reasonably practicable, Toro may give the Customer notice of the Force Majeure Event; and
 - Toro will not be liable to the Customer or any third party for any Damages the Customer or any third party suffers or incurs as a direct or indirect result of the Force Majeure Event.
- (b) If Toro:
- is unable to fulfil an Order it may extend the date for delivery or amend the characteristics or specifications of any Products (including any Products forming part of an Order) entirely in its discretion; and/or
 - is prevented from performing any of its obligations under these Terms and Conditions to a material degree by a Force Majeure Event for more than 20 Business Days, Toro may terminate these Terms and Conditions (including by cancelling any Order) by giving seven days written notice to the Customer.
- 18. 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 and Conditions, 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 and Conditions, 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 and Conditions, unless specifically described in these Terms and Conditions as GST inclusive, does not include an amount on account of GST.
- (d) Despite any other provision in these Terms and Conditions, if Toro makes a supply under or in connection with these Terms and Conditions on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms and Conditions as GST inclusive):
- the consideration payable or to be provided for that supply under these Terms and Conditions but for the application of this clause (GST exclusive consideration) is increased by, and the Customer must also pay Toro, an amount equal to the GST payable by the Supplier on that supply; and
 - the amount by which the GST exclusive consideration is increased must be paid to Toro by the Customer without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (iii) If a payment to a Party under these Terms and Conditions 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.
- (iv) Toro must provide a tax invoice.
- 19. Notices and Communications**
- (a) A notice, demand, consent, approval, request or communication under these Terms and Conditions (Notice) must be:
- in writing, in English and signed by a person duly authorised by the sender; and
 - hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified on a Purchase Order or Order, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with paragraph (a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- if hand delivered, on delivery;
 - 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);
 - 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.
- 20. Trusts**
- (a) Where the Customer is a trustee of a trust, the Customer represents and warrants to Toro that:
- it has the right to be indemnified out of, and a lien over the assets of the trust;
 - Toro has the benefit of the Customer's right of indemnity against and lien over the assets of the trust;
 - these Terms and Conditions do not conflict with the operation or terms of the trust;
 - the assets of the trust are sufficient to meet the Customer's financial obligations under these Terms and Conditions;
 - it has full power and authority under the trust to enter into these Terms and Conditions; and
 - it enters into these Terms and Conditions 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 and Conditions.
- (c) Where the Customer is a trustee of a trust it must:
- not resign or be removed as trustee of the trust;
 - not do anything or permit anything which breaches the trust; and
 - 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 and Conditions.
- 21. Integrity Obligation**
- (a) The Customer shall ensure by ongoing organisational measures and instructions to its Personnel and third party business partners that it:
- 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, as such acts may be amended or replaced from time to time; 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 such may be amended or replaced from time to time;
 - will not incite, enable, or knowingly allow its third party business partners to commit acts prohibited under provisions (a) (i) to (iii) inclusive of this clause 21.
 - 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
 - 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 21, 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 21.
- (d) Should Dealer's violation of any of the provisions of this clause 21 result in a legal or regulatory action or other third party claim, Dealer shall indemnify Toro and hold it harmless against all damages arising therefrom to the greatest extent allowed by law.
- 22. Miscellaneous**
- (e) Once an Order is accepted, these Terms and Conditions can only be varied in writing and signed by both Parties. Prior to an Order being accepted Toro can amend these Terms and Conditions in accordance with clause 16.
- (f) Except where these Terms and Conditions expressly state otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under these Terms and Conditions. The Customer may only assign these Terms and Conditions or a right under these Terms and Conditions with the prior written consent of Toro.
- (g) Toro can assign these Terms and Conditions or a right under these Terms and Conditions in its discretion.
- (h) Any indemnity or any obligation of confidence under these Terms and Conditions is independent and survives termination of these Terms and Conditions. Any other term by its nature intended to survive termination of these Terms and Conditions survives termination.
- (i) Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to these Terms and Conditions.
- (j) A term or part of a term of these Terms and Conditions that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms continue in force.
- (k) 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.
- (l) Except where these Terms and Conditions state otherwise, these Terms and Conditions do not create a relationship of employment, trust, agency or partnership between the Parties.
- (m) These Terms and Conditions are governed by the law of South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.
- 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 Privacy Protection) Act 2012*) contained in this document.