



# TERMS & CONDITIONS OF SALE

## 1. INTERPRETATION

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) as amended.

"**Agreement**" means these Terms of Trade and any Schedules.

"**Coolabah**" means Shear Turf Pty Ltd (ACN 089 554 487) trading as Coolabah Turf or any of its associated entities.

"**Customer**" means the party named on the Tax Invoice, or, if no party is named, the party to whom Coolabah provides this Agreement.

"**GST**" means the Goods and Services Tax as defined in A New Tax System (Goods and Services Act) 1999 (Cth) as amended.

"**Order**" means a request by the Customer to purchase Products or obtain Services from Coolabah.

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) as amended.

"**Products**" means any Products which Coolabah sells or provides to the Customer from time to time.

"**Product and Service Price List**" means the list of prices for Products and Services kept and updated from time to time by Coolabah.

"**Schedule**" means the schedule on the front page of or attached to this Agreement.

"**Services**" means any services which Coolabah sells or provides to the Customer from time to time including but not limited to the delivery of Products to Customers.

"**Site**" means any location to which the Customer requests that Products be delivered or at which Services are to be performed.

## 2. ACCEPTANCE OF AGREEMENT

The Customer may enter into this Agreement with Coolabah by either-

- Making payment of a Tax Invoice in which these Terms & Conditions are referenced.
- Signing a copy of the Agreement; or
- Requesting Products or Services from Coolabah after having received a copy of this Agreement at some prior time.

## 3. ENTIRE AGREEMENT

- These terms shall constitute a full and complete statement of the agreement between Coolabah and the Customer and no variations or modifications of any term of the Agreement shall be binding unless agreed to in writing by Coolabah.
- Coolabah may vary or amend these terms by written notice to the Customer at any time. Any variations so made will only apply to orders placed by the Customer after the time that the variation has been brought to the Customer's attention.

## 4. TERM OF AGREEMENT

This Agreement shall cover all dealings between the parties until it is replaced by an alternate written agreement or is terminated in accordance with its terms.

## 5. SUPPLY OF THE PRODUCTS AND SERVICES

- The Customer shall order from Coolabah from time to time such quantities of Products and Services it requires, with orders to be in such format (whether written or otherwise) as Coolabah shall prescribe from time to time.
- Whilst Coolabah will use its best endeavors to ensure that it is able to provide Products and Services to the Customer when required, it does not warrant or guarantee that it will be able to do so and will not be responsible or liable for any losses alleged to have been suffered by the Customer as a result of failure to supply or delay in supplying Products and Services, regardless of the reason for the failure to supply. Coolabah retains the absolute discretion at all times to refuse to accept any order made by the Customer for Products or Services.
- Any period or date for delivery of Product or Services stated by or on behalf of Coolabah shall be regarded by the Customer as an estimate only and not a contractual commitment.
- The Customer shall notify Coolabah immediately upon delivery if there are any issues whatsoever with the quality of any Products where that Product is turf (of any size or variety). If no such notification is given to Coolabah within 8 hours of delivery, the turf Products will be deemed to have been received in an acceptable quality (as defined in the ACL).
- The Customer acknowledges that Coolabah may engage agents or subcontractors in the provision of Products and Services to the Customer.

## 6. INSTALLATION

- Turf is a perishable product and must be laid on the same day of purchase / delivery.
- Failure to install the turf and water in on the same day of purchase / delivery will void any warranty or claims by the customer.

## 7. SITE DELIVERY REQUIREMENTS

- The Customer shall provide suitable and practical means of access to the Site and ensure that the Site is suitable to allow the efficient and safe delivery of Products and Services. In the event that the Site is unsafe for delivery, Coolabah reserves the right to refuse to deliver the Products and the Customer shall be charged for all expenses (if any) incurred as a result of an unsafe delivery Site including but not limited to the cost of Coolabah delivering to another Site.

- b) For the sake of certainty, the Customer shall not be entitled to cancel its Order in the event that the delivery is not made pursuant to this clause or if a cancellation does occur, the Customer shall still be required to pay for the costs incurred up to the time of cancellation including the cost of the Products.
- c) The Customer shall advise Coolabah in advance of delivery if there are any potential hazards, risks or difficulties which may be encountered either at, or close to, the delivery Site including but not limited to narrow roads, low hanging electrical wires or trees, traffic islands and a lack of parking. Coolabah reserves the right to refuse to deliver to the Customer at a Site designated by the Customer based on such instructions and it will be the Customer's responsibility to provide an alternative suitable location for delivery and the Customer shall be charged for all expenses (if any) incurred as a result of such a change.
- d) Delivery shall be kerbside to the address of the Site unless otherwise agreed between the parties. In the event that delivery is within the Site, (that is, beyond the kerbside), the Customer accepts all responsibility and liability for any damage, loss, injury or claim of any sort which results from Coolabah being instructed to deliver the Products within the Site including where such damage, loss, injury or claim is made/suffered by Coolabah.
- e) The Customer warrants that it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow for Services being performed at the Site and/or for Products to be installed or delivered to the Site.
- f) The Customer shall ensure that any other parties performing works at the Site do not interfere with or otherwise hinder Coolabah's provision of the Services, including delivery. In this regard to the Customer shall provide to Coolabah any information reasonably required by it in respect to the activities or proposed activities of any other party performing works at the Site.
- g) The Customer shall ensure that either the Customer or the Customer's agent are present at the time of the Delivery to receive the Products. In the event that the Customer or the Customer's Agent are not present but have consented to Coolabah delivering the Products in their absence, the Customer acknowledges that without limiting the application of any other terms of this Agreement, clause 12(a) of these terms applies to such deliveries. Where the Customer or the Customer's agent is not on site to accept delivery whether by Coolabah or Coolabah's agent, the Customer expressly agrees and acknowledges the signature of the delivery driver denoting the time, date and place of delivery shall be deemed acceptance by the Customer of such delivery.
- h) At no time does Coolabah take or accept any responsibility for the Site and all risk and liability in and relating to the Site remains with the Customer at all times.
- i) Turf orders detailed on the face of the delivery docket and the corresponding pallet labels must be double checked by the customer on delivery. Coolabah will not be held

responsible if this check is not made prior to dispatch and leaving the jobsite.

- j) The customer authorises Coolabah to subcontract delivery in its absolute discretion.

## **8. CANCELLATION OF ORDERS**

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- c) No cancellation, variation or suspension of order can be made within 48 hours of the delivery date / time without the express agreement by Coolabah.
- d) No purported cancellation, variation or suspension of an Order for Products or Services (or any part of an order for Products or Services) by the Customer shall be binding upon Coolabah once the order has been placed with Coolabah.
- e) In the event that the Customer cancels delivery of Products and/or the provision of Services, the Customer shall be liable for any costs incurred by Coolabah up to the time of the cancellation.

## **9. PRICING AND PAYMENT**

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- a) Unless the Customer has been provided with a fixed quote, the Customer shall be charged for the Products and Services as set out in Coolabah's Product and Service Price List as it applies at the time of the Customer placing an order for Products and or Services. If a Product or Service does not appear on the Product and Service Price List then Coolabah shall be entitled to charge a reasonable amount for that Product or Service.
- b) Turf orders detailed on the face of the delivery docket and the corresponding pallet labels must be double checked by the customer on delivery. Coolabah will not be held responsible if this check is not made prior to dispatch and leaving the jobsite.
- c) The Customer acknowledges that the Products and the prices in the Product and Service Price List may be modified by Coolabah from time to time without notice throughout the currency of this Agreement and it shall be the responsibility of the Customer to check with Coolabah as to the availability and price of any particular Product or Service immediately prior to placing any Order.
- d) The terms of payment shall be as set out in the Tax Invoice provided to the Customer save that Coolabah shall be free at any time, at its sole discretion, to revoke payment terms in regard to any future orders and require payment in advance of supply of further Product or Services.
- e) Should the Tax Invoice be silent as to terms of payment then payment shall be made in advance of at least 48 hours of delivery of any Products or Services.
- f) Payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- g) The Customer shall be liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by Coolabah) for all costs incurred for any cheque being dishonored for whatever reason.
- h) All prices are in Australian Dollars (AUD) and unless otherwise stated quotes for Products or Services (including delivery) are exclusive of GST and any other applicable taxes or duties. In addition to the price for the Products and

Services the Customer shall also pay any applicable GST, taxes or duties.

- i) Any quotation provided by Coolabah to the Customer shall be valid only for 30 days from the time it was made and may be withdrawn at any time by Coolabah within that period.
- j) In the event that the Customer seeks to alter the scope of the works after work has commenced Coolabah shall be free, if it agrees to the alterations, to charge additional reasonable amounts over and above the quoted amount to take into account the alterations, including any additional labour and materials required.
- k) In respect of payments required to be made by the Customer under this Agreement, time shall be of the essence.

## **10. BREACH BY CUSTOMER**

- a) Interest shall be payable on any amounts outstanding outside payment terms by the Customer to Coolabah at the rate of 2% over and above the rate applicable from time to time under the Penalty Interest Rates Act 1983 (Vic).
- b) Coolabah shall be free to suspend or cancel any Order in circumstances where the Customer has failed to make any payment within the payment terms.
- c) The Customer hereby indemnifies Coolabah in respect of any costs incurred by Coolabah (including legal costs on a solicitor/client basis) as a result of any breach of this Agreement by the Customer, including any breach of terms of payment for Products or Services. Such costs include but are not limited to the costs of any demands made of the Customer to remedy any breach, and any legal proceedings to recover unpaid money.

## **11. DIRECTOR'S GUARANTEE**

In the event that the Customer is an incorporated entity-

- a) The person signing these terms on behalf of the Customer hereby guarantees to Coolabah the Customer's obligations under this Agreement, including the due and punctual payment of any money payable by the Customer to Coolabah, for any reason, at any time. The guarantee provided is a continuing guarantee. The obligation under the guarantee are principal obligations and may be enforced against the guarantor without Coolabah being first required to exhaust any remedy it may have against the Customer.
- b) The Customer agrees that it will, if called upon at any time by Coolabah to do so, procure from any one or more of its directors (as directed by Coolabah) a personal guarantee of the Customer's obligations pursuant to this Agreement in a form acceptable to Coolabah, with such guarantee to cover both future liabilities and any liabilities of the customer to Coolabah which predate the signing of the guarantee.

## **12. RETENTION OF TITLE TO PRODUCTS**

- a) Until Coolabah receives full payment (in the form of clear funds) for any Products or Services supplied by it to the Customer together with any other amounts owing by the Customer to Coolabah-
  - I. Title and property in all of the Products yet to be paid for remains vested in Coolabah and does not pass to the Customer;

- II. The Customer must hold the goods as bailee for Coolabah;
- III. The Customer must hold the proceeds of any sale of the Products on trust for Coolabah;
- IV. May issue proceedings for the amount of the Products sold to the Customer notwithstanding that ownership of the Products may not have passed to the Purchaser; and
- V. In addition to its rights under the PPSA Coolabah may without notice, enter any premises where it suspects that the Products are and remove them, and for this purpose the Customer irrevocably licenses Coolabah or its agents to enter onto such premises and also indemnifies Coolabah from and against all costs, claims, demands or actions by any party arising from such action.
- b) The Customer acknowledges that where any Products are delivered on pallets, unless otherwise expressly advised by Coolabah, the pallets remain the property of Coolabah and the Customer shall hold the pallets as bailee for Coolabah until such time as they are collected by Coolabah.

## **13. PERSONAL PROPERTY SECURITY ACT**

- a) For the purposes of the PPSA –
  - I. terms used in this clause have the corresponding meaning to their use in the PPSA;
  - II. this Agreement constitutes a Security Agreement between Coolabah and the Customer and Coolabah has a Purchase Money Security Interest in all present and future Products supplied by Coolabah to the Customer and the proceeds of those Products;
  - III. the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to Coolabah at any particular point in time.
- b) For the purposes of the PPSA, by executing this Agreement the Customer agrees to grant to Coolabah a Security Interest in the Products and Coolabah shall be entitled to register the Security Interest on the relevant Security Register.
- c) The Customer must do whatever shall be necessary in order to give a valid Security Interest over the Products and their proceeds which is able to be registered by Coolabah on the Personal Property Securities Register. Without limiting the Customer's obligations under this clause, the Customer must immediately upon Coolabah's request –
  - i. execute all documents and do any other things necessary to give effect to the Security Interest created under these terms; and
  - ii. procure from any person considered by Coolabah to be relevant to its security position such agreements and waivers as Coolabah may require at any time.
- d) The Security Interest arising under this clause attaches to the Products when the Products are collected from or dispatched from Coolabah's premises and not at any later time.
- e) Coolabah shall be free to allocate sums received from the Customer in any manner Coolabah determines, including in any manner required to preserve any Purchase Money

Security Interest or any other Security Interest it has arising by virtue of supply of Products to the Customer.

#### **14. RISK INSURANCE AND LIABILITY**

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- a) The risk in the Products and all insurance responsibility for theft, fire or damage of any other kind shall pass to the Customer immediately upon delivery of the Products to the Customer or upon collection by the Customer from the point of sale (whichever is applicable), regardless of whether there is any further work to be completed by Coolabah in regard to those Products.
- b) The Customer warrants that it has and will have at the time of making any particular order for Products all necessary licenses or permits under all relevant laws and regulations to possess and use the Products.
- c) Unless provided in writing, Coolabah gives no warranty whatsoever as to the suitability of any soil or climate in which the Customer intends to use any particular Products purchased by the Customer.
- d) Coolabah makes no express or implied statement, nor implied or express condition (other than those imposed by law) that the Products will be suitable for a particular purpose of end use and the Customer accepts all risk and responsibility for consequences arising for the use of the Products.
- e) Turf is a perishable product and the Customer acknowledges that Coolabah shall not be liable or responsible for the deterioration of the Product due to delays in installation, poor management of the Product following delivery by the Customer or any deterioration of the Product other than in accordance with the ACL.
- f) If Coolabah is liable for a breach of a guarantee implied by the ACL in respect to the provision of the Products or Services and those Products or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then, to the extent permitted by the ACL, its liability to the Customer will be limited to –
  - i. the replacement of the Products or the supply of equivalent Products;
  - ii. the payment of the costs of replacing the Products or acquiring equivalent Products;
  - iii. the supplying of the Services again; or
  - iv. the payment of the cost of having the Services supplied again.

#### **15. FORCE MAJEURE**

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Coolabah shall not be liable in any manner whatsoever to the extent that it has been prevented from performing any obligation under this Agreement by reason of matters beyond its control, including without limitation-

- a) inability to source Products;
- b) inability to access the site or part of the Site;
- c) lack of access to electricity or other required resources at the Site;
- d) lack of availability for whatever reason of staff or contractors;
- e) acts of God, accidents or machinery breakdown;
- f) acts or threats of terrorism or war; or

## **TERMS & CONDITIONS OF SALE**

- g) industrial disputes or strikes.

#### **16. PRIVACY**

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- a) Coolabah will comply with its obligations under the Privacy Act 1988 (Cth) in respect of personal information it collects, uses, handles and discloses in connection with this Agreement. Coolabah's Privacy and Credit Reporting Policy is available from its website (<https://www.coolturf.com.au>) and contains information about how it collects, uses and discloses personal information and how the Customer can access, correct or complain about the handling of that information.
- b) The Customer acknowledges and agrees that it has read and understood Coolabah's Privacy and Credit Reporting Policy.

#### **17. TERMINATION ON NOTICE**

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Either party may terminate this Agreement by giving the other party 30 days' notice of its intention to do so.

#### **18. IMMEDIATE TERMINATION OF AGREEMENT**

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Coolabah may terminate this Agreement immediately by giving written notice to the Customer if the Customer:

- a) goes into liquidation;
- b) has an administrator or a receiver to its property or assets appointed;
- c) is made bankrupt;
- d) materially breaches its obligations under this Agreement where such breach is either not capable of remedy or, if capable of remedy, the other party fails to remedy such breach within 14 days after receipt of written notice of such breach by the other party; or
- e) engages in any conduct (which includes any conduct by employees of the Customer) which in the opinion of Coolabah is or might be damaging to the reputation of Coolabah or any of the Products and or Services.

#### **19. EFFECT OF TERMINATION**

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The termination of this Agreement for whatever reason shall not in any way affect any rights or responsibilities accruing prior to the termination taking effect and Coolabah's rights in the event of default (including the ongoing accrual of interest and the right to indemnity for costs) shall continue beyond any termination.

#### **20. RELATIONSHIP OF PARTIES**

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Nothing in this Agreement shall give rise to a partnership or relationship of employment between the parties.

#### **21. WAIVER**

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Any failure or delay by Coolabah to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future of the exercise of any other power or right. A waiver is not effective unless it is in writing.

#### **22. READING DOWN OF AGREEMENT**

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If a clause in this Agreement is unenforceable it must be read down so as to be unenforceable or, if it cannot be so read down, it must be severed from this Agreement without affecting the enforceability of the remaining terms of the Agreement.

#### **23. JURISDICTION**

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This Agreement shall be governed by the laws of Victoria.