

Conditions of sale

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods, whose details are set out in the invoice.

Goods means the products and, if any, services specified in the invoice.

Seller means Turfco Australia Pty Ltd.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.

2 General

These conditions (which will only be waived in writing signed by the Seller and Buyer) will prevail over all conditions of the Buyer's order, to the extent of any inconsistency.

These conditions are to be read in conjunction with the Seller's delivery term and conditions, which can be found at <https://turfco.com.au/about/delivery-terms-conditions/>.

3 Terms of sale

The Goods and all other products sold by Seller are sold on these terms and conditions.

4 Seller's quotations

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 45 days only after its date.

5 Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense, even if that cost has been omitted from any quotation.

6 Shortage

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 8 hours from the time of receipt of Goods by the Buyer.

7 Delivery

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.

- (b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- (c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
 - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (e) The Buyer is responsible for providing the Seller with an accurate and suitable address to deliver the Goods to (**Delivery Address**).
- (f) The parties agree that the Seller:
 - (i) is authorised and required to deliver the goods to the kerbside nearest to the Delivery Address; and
 - (ii) is authorised to leave the Goods unattended at the kerbside nearest to the Delivery Address.
- (g) At the time of delivery, the Seller may, in its sole discretion, deliver the Goods as close as possible to the Buyer's preferred location at the Delivery Address and the Buyer authorises the Seller to leave the Goods at that location.
- (h) If the Seller is unable to deliver the Goods for any reason the Seller shall be entitled to handle and store the Goods at the Buyer's risk and in such manner as it may in its discretion determine and shall be entitled to make a reasonable charge in respect of such handling and/or storage and additional charges for each call until the delivery is accomplished.
- (i) The Goods are at the Seller's risk until delivered to the address stated in the quote or invoice. Once the Goods are delivered to the destination stated in the quote or invoice, the risk is transferred to the Buyer.

8 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by part 3-2, division 1 of the Australian Consumer Law (**ACL**) is limited to:

- (a) in the case of Goods, any one or more of:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (iv) the payment of the cost of having the Goods repaired; or

- (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

9 Limitation of Liability

- (a) The Seller shall not be liable to the Buyer nor to any other person, company or corporation for any loss or damage whatsoever suffered, or that may be suffered (whether in contract or in tort), as a result of any act or omission, whether negligent or otherwise, by or on behalf of the Seller in relation to the provision of the Goods, except to the extent that the loss or damage is a direct result of the fraud or wilful misconduct of the Seller.
- (b) The Seller will not be liable for any consequential, special or indirect loss whatsoever in connection with the Goods.
- (c) The Buyer agrees to indemnify the Seller against any loss or damage which Seller may suffer directly as a result of any action proceeding, claim, demand or prosecution arising from any failure by the Seller to comply with the requirements of these conditions.

10 Prices

- (a) Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (**GST**).
- (b) Prices quoted are calculated at the date of issue of a relevant quotation.
- (c) A quote is open for acceptance by the Buyer for period of 45 days after it is issued by the Seller.

11 Payment

- (a) The purchase price for the Goods plus GST where applicable is payable on or before the date that is two (2) Business Days prior to the day that the Goods are due to be delivered to the Buyer (**Payment Due Date**) unless other terms of payment are agreed in writing between the parties.
- (b) The Buyer must pay interest on any outstanding amount not paid by Payment Due Date. Interest will be calculated on the basis of the National Australia Bank Business Indicator Rate as published from time to time plus 2%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

12 Returned Goods

- (a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by the Buyer. The Seller will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under clause 19(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business.

13 Goods sold

All Goods to be supplied by the Seller to the Buyer are as described on the quote or invoice (as the case may be) and the description on such quote or invoice prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

14 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

15 Termination

- (a) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for amalgamation or reconstruction).
- (b) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 7 days after receipt of a written notice by the other party requiring rectification of the breach.
- (c) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (d) The obligations of the parties that by their nature could be reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

16 Place of contract

This agreement shall be governed by and construed in accordance with New South Wales law. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction.