

These terms and conditions regulate the business relationship between You and Us. By using Our Website and by buying from Us in any way, You agree to be bound by them.

We are Paul Munns Garden Centre Pty. Ltd, trading as Paul Munns Instant Lawn

Our physical address is 356 Brighton Rd, Hove, South Australia 5048

Our website address is <http://paulmunnsinstantawn.com.au>

You are a visitor to Our Website / Our customer.

## Definitions

In this agreement:

“Carrier”	refers to any person or business contracted by Us to carry Goods from Us to You.
“You”	refers to a party that receives or consumes products (goods or services) from Paul Munns Garden Centre P/L.
“Content”	refers to any Content in any form published by Us or any third party with our consent.
“Goods”	refers to any of the goods We offer for sale, or, if the context requires, goods We sell to You.
“Us” and “We” and “the Company”	refers to Paul Munns Garden Centre
“Our Website”	refers to any website of ours, and includes all web pages controlled by Us.

## 1. Interpretation

In this agreement:

- 1.1. A reference to a person is a reference to one or more individuals, whether or not formally in partnership, or to a corporation, government body, or other association or organisation.
- 1.2. These terms and conditions apply to all supplies of Goods by Us to any customer. They prevail over any terms proposed by You.
- 1.3. Except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.

- 1.4. In this agreement references to a party include references to a person to whom those rights and obligations are transferred or passed as a result of a merger, division, reconstruction or other re-organisation involving that party.
- 1.5. The headings to the paragraphs and schedules (if any) to this agreement do not affect the interpretation.
- 1.6. A reference to an act or regulation includes new law of substantially the same intent as that act or regulation.
- 1.7. In any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, such cost calculated at \$80 per hour.
- 1.8. These terms and conditions apply in any event to You as a buyer or prospective buyer of our Goods and Services and so far as the context allows, to You as a visitor to our website or our store.
- 1.9. This agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

## **2. Our contract with You**

- 2.1. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
- 2.2. Each party acknowledges that, in entering into this agreement, they do not rely on any representation, warranty, information or document or other term not forming part of this agreement.
- 2.3. If You purchase goods from Us in any way and make an order on behalf of another person, You warrant that You have full authority to do so and You accept personal responsibility for every act or omission by You.
- 2.4. Because We rely on our suppliers, We do not guarantee that goods advertised on our website or in any other way are available. We may change these terms from time to time. The terms that apply to You are those posted on our website on the day You order goods.
- 2.5. If in future, You buy goods from Us under any arrangement which does not involve your payment via our website; these terms still apply so far as they can be applied.
- 2.6. We only sell goods in Australia. We will refuse to deliver the goods if You live in any other country.

### 3. Your order

Your order is an offer to buy from Us. Nothing that We do or say will amount to any acceptance of that offer until We actually dispatch the goods to You

AND

3.1. At any time before the goods are despatched, We may decline to supply the goods to You without giving any reason.

3.2. If We do not have all of the goods You order in stock, We may offer You alternatives. If this happens You may:

3.2.1. Accept alternatives that We offer; or

3.2.2. Cancel all or part of your order

3.3. In the case of instant turf orders, the following conditions apply:

3.3.1. The order must be paid for in full by no later than 11am the day prior to delivery. Failure to do so will result in the order not being harvested or delivered;

3.3.2. We accept no responsibility for the quantity of goods ordered;

3.3.3. The customer may not return unused instant turf;

3.3.4. You are responsible to check the variety of instant turf ordered is correct;

3.3.5. Orders cannot be cancelled or changed without 48 hours notice prior to the date of delivery;

3.3.6. No refunds will be given without 48 hours notice;

3.3.7. Instant turf delivered must be laid on the same day as delivery to prevent deterioration. We accept no liability or responsibility for the condition of instant turf that is not laid on the day of delivery, that being the delivery date shown on the order. No claim will be recognised in relation to the condition of instant turf delivered on the order overleaf after the day of delivery; and

3.3.8. When the forecasted temperature exceeds 30 degrees on the day of harvest and/or the day of delivery, We will not deliver instant turf to locations where the instant turf will spend an extra night on the pallet during transit. This is due to the level of internal combustion increasing in the product causing discolouration and degradation of the instant turf.

3.3.9. Instant turf is a perishable, made-to-order product which is harvested specifically to fulfil your order, typically on the day prior to delivery.

Once harvesting has commenced or been completed for your order, the order is deemed to be final and non-cancellable and non-variable.

3.3.10. Where harvesting has commenced or been completed, you may not cancel, reduce, defer or otherwise vary your order. Any request to do so may be declined at our absolute discretion.

3.3.10.1. Where turf has been harvested for your order, you agree that:

3.3.10.2. the full contract price remains payable, and

3.3.10.3. no refund, credit or reduction in price will be provided, regardless of whether you request cancellation, refuse delivery, are not present to accept delivery or otherwise fail to take possession of the goods

3.3.11. Where you hold a credit account with us, any harvested turf supplied for your order will be invoiced in full in accordance with your trading terms, and payment remains due and payable notwithstanding any attempted cancellation or refusal of delivery.

#### **4. Price and Payment**

4.1. You agree to pay Us within the agreed time for payment

4.2. The price payable for the goods that You order is either clearly set out on our website, on the order or is available from Us at your request.

4.3. Prices include goods and services tax ("GST") unless where otherwise stated.

4.4. If, by mistake, We have under-priced goods, We will not be liable to supply those goods to You at the stated price, provided that We notify You before We dispatch it to You.

4.5. The price quoted for goods may in some cases not include a delivery charge which will be charged at the rates applicable at the date You place your order.

4.6. If We owe You money, We will credit your credit or debit card or account as soon as reasonably practicable but in any event, no later than 14 days from the date when We accept that repayment is due.

4.7. If we have quoted you a price for our products and services, the quote is valid for thirty (30) days from the date of the issue of the quote.

4.8. Where a credit facility has been granted to You, payment will be due thirty (30) days after the end of the month of the date indicated on the invoice, quotation, purchase order, or any other documentation as provided by You to Us.

4.9. Any variation from the original agreed works or specifications may affect the price, and any variations of the price will be shown on the invoice.

## **5. Rise and Fall**

5.1. In the instance where We have quoted You for goods, We shall be entitled to claim an increase to the quoted sum if We can demonstrate to You that We have necessarily and unavoidably suffered increased costs of services and materials greater than which could be allowed for in the quoted sum, as a direct consequence of changes in economic or market conditions outside the control of Us.

## **6. Security of your credit card**

6.1. We take care to make our website is safe for You to use.

6.2. Credit card payments are not processed through pages controlled by Us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.

6.3. Once processed, We will not store your credit card details on our website or any of our software systems for future use.

## **7. Delivery of goods**

7.1. Deliveries will be made by the Carrier to the address stipulated in your order. You must ensure that someone is present to accept the delivery.

7.2. We may deliver the goods on your order in instalments if they are not all available at the same time for delivery.

7.3. Should We fail to deliver all or part of the goods/services, We shall not be liable for any loss or damage incurred by You.

7.4. Should You need to arrange carriage for the goods, any additional costs incurred by Us shall be added to the price, and will be due on the agreed date for payment.

7.5. All goods must be signed for on delivery by an adult aged 18 years or over. If no one of that age is at the address when the delivery is attempted the goods may be retained by the driver. When your goods arrive, it is important that You check immediately the condition and quantity ordered. If your goods have been damaged in transit, You must immediately contact Us so that We may resolve the situation if We can, though We make no undertaking to do so.

7.6. Signing "unchecked", "not checked" or similar is not acceptable.

7.7. If We agree with You to deliver on a particular day or at a particular time, We will do our best to comply. But no time given is to be treated as contractual. We are

not liable to You for any expense or inconvenience You incur on account of delayed delivery or non-delivery.

7.8. Time for delivery specified on the order, if any, is an estimate only. Any delivery time specified is done so for your convenience, as an indicator rather than a guarantee of delivery time.

7.9. If You purchase and/or pick up goods from our premises then:

7.9.1. The goods are at your risk from the moment they are picked up by You or your Carrier from our shop / warehouse; and

7.9.2. You agree that You are responsible for everything that happens after You take possession of the goods, both on and off our premises, including damage to property of any sort, belonging to any person.

7.10. The following delivery conditions apply to instant turf deliveries.

7.10.1. We are a kerbside deliverer only. Delivery instructions may be given but it is up to our discretion as to whether the instructions can be adhered to.

7.10.2. We accept no liability for damage to surfaces driven on at the delivery address by the Carrier where instruction has been given by the customer or their receiving agent to drive on the surface.

7.10.3. We require the delivery address and site to be accessible by a prime mover truck and tri-axle semi trailer. It is your responsibility to ensure that the access noted above is available at the time of delivery. If at our discretion there is not enough access at the time of delivery, the goods will be delivered to the Carrier's transport depot where You shall arrange delivery your own expense.

7.10.4. The Carrier We engage to deliver goods to You reserves the right to select the type of delivery vehicle they deem appropriate to deliver the turf with. We do not guarantee that all delivery vehicles will carry a loader to unload turf. In some instances, a hand-operated mechanical device such as a pallet jack may be used to unload turf from a truck which may restrict where the turf is placed at the delivery address. A delivery cannot be rejected where a loader has not been provided by the Carrier to deliver the turf. We cannot provide a refund where a delivery is rejected by You where turf has been delivered on a vehicle without a loader. We accept no responsibility for loss or damage to You, financial or otherwise, arising from a delivery that has been made to You without a loader.

7.10.5. In circumstances where the final destination delivery address given by You is outside of the Adelaide metropolitan area, You must engage the services of a third party transport Carrier to deliver goods from the Adelaide metropolitan area to the final destination. Once We have delivered the goods to the

transport company depot in the Adelaide metropolitan area nominated by You, our obligations under this agreement have been met in full and the goods are said to have been delivered. We can then take no further responsibility and cannot be held liable in any way whatsoever for the manner and timeliness in which the goods are delivered thereafter to the final destination.

## **8. Liability for subsequent defects**

### **8.1. For goods other than instant turf:**

8.1.1. We will repair or replace Goods which fail to comply with the provisions of the Competition and Consumer Act 2010 or which show a defect. If You claim that the item is defective, the following conditions apply:

8.1.1.1. The defect must be reported to Us within 14 days of becoming apparent except in the case of perishable goods such as instant turf where the defect must be reported on the day of delivery (see 7.2).

8.1.1.2. The defect results only from faulty design or manufacture.

8.1.1.3. You have returned the defective goods or parts to Us if We have so requested.

8.1.1.4. If We agree that We are liable, We will refund the cost of return carriage and will repair or replace the goods free of charge.

8.1.2. If We repair or replace the goods, You have no additional claim against Us either under this agreement or by statute or common law, in respect of the defect.

### **8.2. For instant turf:**

8.2.1. You shall inspect the instant turf upon delivery and notify Us within (24) hours of any alleged defect, or failure to fulfil the order. We must be given access to the instant turf on the day of delivery in order to witness any alleged defects in the instant turf. Should You fail to give such notification, the instant turf will be deemed to be in compliance with the order, and free from any defects whatsoever.

8.3. Our obligation for liability under clause 7 will not be applicable in a situation where:

8.3.1. You have failed to follow instructions supplied by Us in relation to proper use of the goods or services;

8.3.2. The goods have been used in a manner other than their original intended purpose;

8.3.3. You fail to maintain the goods in a condition fit for their intended purpose;

8.3.4. The goods continue to be used after any fault or defect has become known to You, or would have become known to a reasonable person; or

8.3.5. The defect or fault has occurred from reasonable wear and tear in use.

8.4. We accept no responsibility for loss or damage to You, financial or otherwise, arising from a delay in the time taken for Us to replace or repair any goods covered by any applicable warranty.

## **9. Limitation of Liability**

9.1. The liability from Us to You for any reason related to the performance of the goods/services under this agreement shall be limited to the amount paid by You to Us pursuant to this agreement.

9.2. In circumstances where We recommend a third party to carry out services, We accept no responsibility whatsoever for any action or works provided by the third party. You hereby acknowledge that any third party who is engaged by You is an entirely independent contractor to Us who will deal with You directly, independent from Us.

## **10. Indemnity**

10.1. You agree to indemnify Us against all costs, claims and expense arising directly or indirectly from:

10.1.1. Your failure to comply with Australian law;

10.1.2. Your breach of this agreement;

10.1.3. Any act, neglect or default by any agent, employee, licensee or customer of yours;

10.1.4. A contractual claim arising from your use of the goods; or

10.1.5. A breach of the intellectual property rights of any person.

## **11. Intellectual Property**

11.1. We will defend the intellectual property rights in connection with our goods and our website, including copyright in the Content whether provided by Us or by any other Content provider (including copyright in text, graphics, logos, icons, images, audio clips, digital downloads, data, and software).

- 11.2. Except as set out below, You may not copy, modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of our Content, in whole or in part.
- 11.3. You may not use our name or logos or trademarks or any other Content on any website of yours or that of any other person or in any other way.
- 11.4. Subject to the other terms of this agreement, You may download or copy Content only for your own personal use, provided that You maintain all copyright and other notices contained in it. You may not store electronically any portion of any Content.

## **12. Default**

### 12.1. Where a credit account has been established:

12.1.1. Should You fail to pay any invoice when due, You will be responsible for any additional costs associated with recovery of the outstanding amounts, including but not limited to the cost of a solicitor, and any cost incurred by our nominated collection agency.

12.1.2. Interest on overdue invoices will be charged from the date when payment becomes due and will be charged at a rate equal to the current benchmark overdraft interest rate per calendar month, and shall accrue at such a rate until payment in full is received from You.

### 12.2. Should the invoice remain in arrears for a period of over sixty (60) days, We;

12.2.1. Reserve the right to suspend or terminate the supply of goods/services to You if You are in breach of any obligations to Us including obligations in relation to payment.

12.3. We will not be liable to You for any loss or damage You suffer because We exercised our rights under this clause.

## **13. Retention of Title**

### 13.1. We and You agree that property in the goods shall remain with Us until:

13.1.1. You have paid all amounts owing to Us for the particular goods/services; and

13.1.2. You have met all other obligations due by You to Us in respect of all contracts between You and Us.

## **14. Guarantee to Us**

### 14.1. Corporations

14.1.1. Where You are a corporation, You warrant that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Us in relation to the your obligations to the Us.

#### 14.2. Trustee capacity

14.2.1. Where You are the trustee of a trust (whether disclosed to Us or not), You warrant Us that:

14.2.1.1. You enter into this agreement in both capacity as trustee and personal capacity;

14.2.1.2. You have the right to be indemnified out of trust assets;

14.2.1.3. You have the power under the trust deed to sign this agreement; and

14.2.1.4. You will not retire as trustee of the trust or appoint any new or additional trustee without advising Us.

14.2.2. You must give Us a copy of the trust deed upon request.

#### 14.3. Partnership

14.3.1. If You enter into this agreement the partners of a partnership, You warrant that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with Us in relation to the your obligations to Us.

14.3.2. If You enter into this agreement the partners of a partnership, the partnership must not be altered (for example, adding or removing partners or altering the partnership agreement) without advising Us. In the case of a change of partners, We may ask for new guarantors to sign a guarantee and indemnity.

### 15. Privacy

15.1. We are committed to ensuring that your privacy is protected. Should We ask You to provide certain information by which You can be identified, then You can be assured that it will only be used in accordance with our Privacy Policy and Terms and Conditions of Sale. Our Privacy Policy can be found on our website at <http://paulmunnsinstantlawn.com.au>. This privacy policy sets out how We use and protect any information that You give Us.

15.2. In the case where an account for credit is being sought, the following conditions apply in addition to our Privacy Policy:

15.2.1. You and the Guarantor agree for Us to obtain a credit report from a credit-reporting agency containing individual credit information about You and the Guarantor in relation to credit provided to You by Us.

15.2.2. You agree that We may obtain information about You and the Guarantor from a Credit Reporting Agency, or other credit providers named in the Application for Credit Account, or named in a Credit Report issued by a Credit Reporting Agency for the following purposes:

- 15.2.2.1. To assess a credit application from You and the Guarantor;
- 15.2.2.2. To notify other credit providers of a default by You and the guarantor;
- 15.2.2.3. To exchange information with other credit providers as to the status of this credit account, where You and the Guarantor are in default with other credit providers; and
- 15.2.2.4. To assess the credit worthiness of You and the Guarantor.

15.2.3. You agree that Individual Data provided may be used and retained by Us for the following purposes and for other purposes as shall be agreed between You, the Guarantor and Us or required by law from time to time:

- 15.2.3.1. Provision of Goods/Services;
- 15.2.3.2. Assessing the credit worthiness of You and the Guarantor in relation to extending further credit;
- 15.2.3.3. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by You and the Guarantor; and
- 15.2.3.4. Collection of amounts outstanding from You and the Guarantor in relation to the Goods/Services.

## **16. General:**

- 16.1. We assume no responsibility for changes in the laws of South Australia which may affect the supply of Goods/Services under this agreement.
- 16.2. We may sub-contract part or all of our obligations under this agreement without your consent.
- 16.3. We accept no responsibility whatsoever for any loss or damage incurred by You either directly or indirectly, as a result of a breach by Us of these terms and conditions.
- 16.4. No parties to this agreement shall be liable for any breach of any provisions of this contract arising from an act of God, natural disaster, terrorism or war.
- 16.5. If any Terms or Conditions contained in this document are found to be unenforceable for reasons of validity or legality, the remaining provisions shall not be affected in any way whatsoever.