

Terms and conditions

1. Dictionary

In these Terms and Conditions, the words below have the following meanings:

Agreement means each Offer which is accepted by Lush Turf under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Queensland.

Change in Control means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

Confidential Information means all information and other content disclosed by Lush Turf to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than Lush Turf (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Customer means the entity or person who has agreed to be bound by these Terms and who requested that Goods and/or Services be supplied to it by Lush Turf.

Customer Background Materials means all material (including designs, names, logos and information) provided by or on behalf of the Customer to Lush Turf for the purposes of an Agreement, including any Customer Specifications.

Customer Specifications has the meaning given to it in clause 5.1.

Default Rate means the standard default contract rate which is fixed from time to time by the Queensland Law Society.

Delivery Fee means:

- (a) the delivery fee set out in a Quote or agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs of Lush Turf incurred in delivering the Goods to the Customer.

Deposit means an amount equal to 25% of the price specified in the Quote or Order or such other amount specified in the Quote or Order.

Due Date is defined in clause 7.7.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including without limitation the weather.

Goods means the goods to be supplied by Lush Turf to the Customer under an Agreement.

H&S Laws means all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or

any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

Invoice has the meaning provided to it in clause 7.5.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Lush Turf means Hensh Pty Ltd trading as Lush Turf Solutions Pty Ltd (ABN 30 636 014 778).

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to Lush Turf to supply to the Customer any Goods or provide it with any Services (or both), whether the order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Purchase Price has the meaning provided to it in clause 7.1, as may be varied under clause 7.3.

Quotation or Quote means a quote or proposal, if any, provided by Lush Turf to the Customer in respect of the Goods and/or Services.

Services means the services to be supplied by Lush Turf to the Customer under an Agreement, which may include the installation of Goods at the Site.

Site means the premises of the Customer and any other premises where the Goods are to be delivered or the Services provided.

Site Conditions means any physical conditions and characteristics of, on, above, below or over the surface or about the Site or its surroundings.

Specifications means any physical, qualitative, technical or descriptive specifications, dimensions, measurements, weights or other particulars of the Goods or Services or photographs or illustrations of the Goods which are supplied by Lush Turf or which may be available on the internet, including as provided in any Quote, Order, price list, catalogue, brochure or other document which describes the Goods or Services.

Tax or Taxes means any tax, levy, duty, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, consumption tax, value added tax or any other taxes, levies or charges) which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of those amounts.

Terms means these Terms and Conditions.

2. Application

These Terms apply to and govern the supply by Lush Turf of Goods and provision of Services to the Customer from time to time and, more specifically, apply to and govern the supply by Lush Turf of Goods and/or Services to the Customer which are to be provided under an Offer accepted by Lush Turf.

3. Formation of Agreement

3.1. The Customer acknowledges and agrees that by submitting an Order to Lush Turf the Customer makes an irrevocable offer to Lush Turf for Lush Turf to supply it with the Goods and/or provide it with the Services on the terms of:

- (a) these Terms;
- (b) the Order; and
- (c) the Quote (if any),

(Offer).

- 3.2. A contract will be formed between Lush Turf and the Customer in respect of each Offer upon the earlier of Lush Turf:
- notifying the Customer in writing that it accepts the Customer's Offer;
 - accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
 - making delivery of the Goods the subject of the Offer to the Customer; or
 - performing the Services the subject of the Offer.
- 3.3. An Agreement formed under clause 3.2 will comprise these Terms, the Order (only to the extent that any additional terms in the Order are accepted by Lush Turf in writing), the Quote (if any) and the Invoice.
- 3.4. Lush Turf is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of Lush Turf.

4. Scope of Agreement

The Customer acknowledges and agrees that, unless otherwise agreed in writing by Lush Turf:

- the Services do not include the removal or relocation of any obstacles which may be encountered in the course of providing the Services, such as tree stumps, roots, rocks, pipes and cables or the supply of any additional sub base materials or edging which may be required to deal with such obstacles;
- the Services do not include the removal or destruction of any vegetation including weeds such as broad leaf or nutgrass and the Customer is responsible for the removal or destruction of any vegetation which may grow or otherwise appear after the installation of the Goods; and
- the Customer is responsible for obtaining all licences, permits, consents, permissions and approvals which are required in order for Lush Turf to provide the Goods or Services.

5. Information

- 5.1. If an Offer has been accepted by Lush Turf, the Customer acknowledges that the Offer was accepted and the Purchase Price determined by Lush Turf on the basis of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer (**Customer Specifications**).
- 5.2. The Customer must, prior to Lush Turf providing any Goods or Services, provide Lush Turf with all instructions, material and information (including clear and accurate plans of the Site) required or necessary for Lush Turf to provide the Goods and Services, including without limitation details of the specific location of any systems, services and facilities above or below the surface of the Site such as water, electricity, gas, telephone, drainage and sewerage.
- 5.3. Where any instructions, materials or information in whatever form (including any Customer Specifications) are required or necessary to be provided by the Customer to Lush Turf before Lush Turf can proceed with or complete the provision of the Goods or Services, those instructions, materials or information must be:
- supplied by the Customer to Lush Turf within a reasonable time (as determined by Lush Turf) so as to enable Lush Turf to deliver the Goods or Services within any agreed time frame; and
 - complete, accurate and not misleading.

6. Deposit

- 6.1. Lush Turf may require that the Customer pay a Deposit to Lush Turf at the time of making the Offer.
- 6.2. Subject to clause 6.3, the Deposit will not be refundable and Lush Turf will be entitled to keep the Deposit at the time it accepts the Offer.
- 6.3. The Deposit will only be refundable if Lush Turf does not accept the Offer.

7. Price and payment

- 7.1. Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under each Agreement will be:
- the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Order; plus

(b) the Delivery Fee,
(**Purchase Price**).

- 7.2. The Customer acknowledges and agrees that if the Customer wishes to pay for the Purchase Price using a credit card, Lush Turf may charge the Customer a credit card fee on the relevant amount of the Purchase Price which the Customer intends to pay using a credit card which Lush Turf will advise the Customer of from time to time.
- 7.3. Lush Turf may, no less than three weeks prior to delivery of the relevant Goods and/or Services amend the Purchase Price by notice in writing to the Customer however if the Customer does not wish to accept the new Purchase Price it may, within five Business Days of receipt of the notice from Lush Turf, terminate the Agreement by notice in writing to Lush Turf and Lush Turf must refund any monies already paid by the Customer in respect of that Agreement.
- 7.4. Subject to clause 20, unless otherwise expressly specified by Lush Turf or in these Terms, all prices stated are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services and must immediately upon request by Lush Turf provide Lush Turf with evidence of payment of any Taxes.
- 7.5. Lush Turf may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (**Invoice**).
- 7.6. Lush Turf may set off any amount owing by the Customer to Lush Turf, whether or not due for payment, against any money due for payment by Lush Turf to the Customer under any agreement, understanding or arrangement between Lush Turf and the Customer.
- 7.7. Subject to clause 7.8, unless otherwise agreed in writing between the Customer and Lush Turf the due date for payment by the Customer to Lush Turf of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement (**Due Date**) is upon the delivery of the Goods to the Customer of, if Lush Turf is required to install the Goods, on completion of the installation Services (as determined by Lush Turf acting reasonably).
- 7.8. If:
- the Customer has previously failed to make any payment to Lush Turf by the due date for that payment (whether under these Terms or otherwise); or
 - the creditworthiness of the Customer is, in Lush Turf's sole opinion, unsatisfactory,
- Lush Turf may require payment of the Purchase Price in full prior to Lush Turf delivering the relevant Goods or providing the Services.
- 7.9. If the Customer fails to make any payment by the Due Date, breaches any term of an Agreement or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to Lush Turf and to the extent permitted by law, Lush Turf may, in its sole discretion, elect to do any one or more of the following:
- suspend any further deliveries or provision of Services to the Customer arising from any Agreement;
 - cancel any Agreement in respect of any Goods or Services not yet supplied or provided to the Customer in whole or in part by Lush Turf;
 - exercise any right to terminate any Agreement in accordance with clause 22.1;
 - enter the property of the Customer in order to repossess the Goods and the Customer grants Lush Turf and its agents an irrevocable licence to do so;
 - dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from those goods;
 - charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Lush Turf receives payment of all amounts (including all interest) by way of cleared funds;
 - cancel any trading limit or account facilities previously granted to the Customer by Lush Turf;
 - cancel or reverse any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement; and
 - exercise any rights which Lush Turf may have under law, including the *Personal Property Securities Act 2009* (Cth).

7.10. The Customer may not set off or combine any amount owing by Lush Turf to the Customer, whether or not due for payment, against any money due for payment by the Customer to Lush Turf under an Agreement and the Customer must pay, and not withhold, any amount due to Lush Turf under an Agreement notwithstanding the Customer may be in dispute with Lush Turf regarding the Goods or Services supplied by Lush Turf to the Customer.

8. Delivery of Goods and provision of Services

- 8.1. Lush Turf will deliver the Goods to the Customer in the manner:
- determined by Lush Turf; or
 - as otherwise agreed between Lush Turf and the Customer (including collection by the Customer).
- 8.2. If the Customer is required to collect the Goods or the parties have agreed that the Customer will collect the Goods, then the Customer must collect those Goods within three Business Days of being notified by Lush Turf that the Goods are ready to be collected.
- 8.3. The Customer will be responsible, at its own cost, for the unloading of any Goods at the delivery location and there must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no representative is present, a redelivery fee equal to the Delivery Fee may be charged by Lush Turf.
- 8.4. The Customer must, within seven days of taking possession of the Goods, inspect the Goods and notify Lush Turf in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, are less than the number meant to be delivered under the Agreement, have any defect or otherwise do not meet any Specifications and, if it notifies Lush Turf that the Goods are not fit for purpose or there is a defect, the Customer must allow Lush Turf the opportunity to inspect the relevant Goods.
- 8.5. The Customer acknowledges that, after the time the Customer makes the Offer, a Good which is subject to an Offer may be modified by Lush Turf as a result of an improvement in technology or because of a requirement imposed by law.
- 8.6. In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods), Lush Turf will be entitled to:
- payment for those Goods;
 - treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer; and
 - at the risk and cost of the Customer and without limiting any other rights Lush Turf may have, store any Goods which the Customer refuses to take delivery of or fails to collect.
- 8.7. Lush Turf will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by Lush Turf or set out in a Quote or Order, however the Customer acknowledges that:
- these dates are estimates only; and
 - if Lush Turf does not currently stock a Good, then there may be a delay in the supply of that Good until Lush Turf has restocked that Good.
- 8.8. Without limiting clause 8.7, Lush Turf may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods or Services because only a portion of the quantity ordered was delivered or provided and the Customer agrees that Lush Turf will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.
- 8.9. If there are multiple Agreements in place at any one time, then Lush Turf may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods and provision of Services under the Agreements.
- 8.10. The Customer acknowledges and agrees that:
- Lush Turf may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
 - it will not request proof of delivery or other similar documentation from Lush Turf; and
 - it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by Lush Turf.

9. Access to Site

- 9.1. The Customer hereby expressly authorises and grants to Lush Turf and Lush Turf's employees, contractors and representatives an express, irrevocable licence to enter the Site for the purpose of:
- delivering the Goods and providing any Services; and
 - for the purposes of Lush Turf exercising its rights under clauses 11.6(d) and 11.6(e).
- 9.2. The Customer must provide Lush Turf with unobstructed access to the Site to the extent necessary for Lush Turf to deliver the Goods and provide any Services.
- 9.3. If:
- the Customer notifies Lush Turf that Lush Turf will be able to; or
 - prior to the Customer making an Offer, Lush Turf notifies the Customer that it will or may,
- access the Site and deliver the Goods or perform the Services during a specified period of time (**Nominated Hours**), then the Customer must:
- obtain any licence, permit, consent, permission or approval necessary for Lush Turf to deliver the Goods or provide the Services during the Nominated Hours;
 - ensure that Lush Turf is provided unobstructed access to the Site during the Nominated Hours; and
 - ensure that Lush Turf is not prohibited or otherwise restricted from delivering the Goods or providing the Services at the Site during the Nominated Hours.
- 9.4. The Customer:
- must ensure that the Site and the Site Conditions are suitable for the provision of any Services by Lush Turf;
 - must notify Lush Turf in writing of any Site Conditions which may be relevant to the provision of Goods or Services; and
 - is responsible for all Site Conditions and any Loss which may be incurred by any person as a result of the Site Conditions, including any Loss caused by the rupturing of water, sewerage pipes, gas pipes or any ground subsidence.
- 9.5. Except as expressly agreed by Lush Turf and the Customer in writing, the Customer assumes all risks associated with the Site including, without limitation, Site Conditions, suitability of the Site for the installation of any Goods, requirements of any government authority (including requirement for any licence, permit, permission or approval), contamination, hazardous materials, environmental liabilities, access, planning and heritage requirements and changes in law.
- 9.6. The Customer will have full control and responsibility for the safety and security of the Site.
- 9.7. Without limiting its obligations under clause 9.6 the Customer must:
- ensure that the Site is at all times adequately fenced and secured; and
 - ensure that entry to and egress from the Site is properly managed and controlled.
- 9.8. The Customer is responsible for conducting health and safety risk assessments of the Site and for all aspects of health and safety at the Site and must:
- comply with all H&S Laws including ensuring appropriate consultation with other duty holders under H&S Laws in relation to any work occurring at the Site;
 - do all things necessary to ensure that its agents, officers, employees and contractors comply with all H&S Laws and reasonable directions provided by the Customer about managing risks to health and safety; and
 - provide Lush Turf with access to such documentation as may be necessary to establish Lush Turf's compliance with H&S Laws.
- 9.9. Without limiting clause 9.8, the Customer must eliminate risks to health and safety at the Site so far as is reasonably practicable and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as is reasonably practicable.
- 9.10. The Customer will verbally notify Lush Turf immediately in the event of:
- any incident or injury that occurs involving any of Lush Turf's employees, contractors or representatives and provide Lush Turf with copies of any documentation that is created or

produced as a result of or relating to such incident or injury, including but not limited to incident reports; and

- (b) any notices issued by a regulatory authority about the systems of work and/or plant at the Site relevant to the attendance of any of Lush Turf's employees, contractors or representatives at the Site.

9.11. The Customer indemnifies Lush Turf:

- (a) for any claim, including in relation to any injury, illness or death, arising out of or in connection with a breach by the Customer of the H&S Laws or this clause 9; and
- (b) against any Loss that may be incurred or sustained by Lush Turf, its employees or agents, as a result of the entry on the Site.

10. Use of Goods

10.1. The Customer must ensure that the Goods are used in accordance with any directions for use and maintenance provided by Lush Turf or the manufacturer of the Goods.

10.2. The Customer acknowledges and agrees that:

- (a) secondary heat radiation from reflective surfaces (including glass, colourbond fencing, metal and plastics) may scorch, or otherwise damage, artificial turf;
- (b) there are many factors that may cause such scorching or damage to occur, such as:
 - (i) the temperature of the reflected heat radiation;
 - (ii) the angle and refraction of the sun off a reflective surface;
 - (iii) the positioning of the reflective surface; and
 - (iv) the thickness and quality of the surface; and
- (c) it is the Customer's responsibility to take any measures which may be required to protect the Goods from secondary heat radiation and Lush Turf provides no representation or warranty as to whether any Goods may be impacted by any secondary heat radiation.

11. Title and risk of Goods

11.1. Title to, and property in any Goods supplied under an Agreement remain with Lush Turf and will only pass to the Customer once all moneys owing by the Customer to Lush Turf in respect of the Agreement or any other agreement or arrangement between the Customer and Lush Turf have been paid in full.

11.2. Risk in the Goods passes to the Customer upon the earlier of:

- (a) the Goods being removed from Lush Turf's premises (or that of Lush Turf's supplier or agent) for delivery to the Customer or collection by the Customer from those premises; and
- (b) if the Goods are to be collected by the Customer, on the date which is three Business Days after the date on which Lush Turf notified the Customer that the Goods are ready to be collected,

notwithstanding that Lush Turf may still be required to provide installation or other Services in respect of the Goods at the Site.

11.3. The Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause.

11.4. The Customer indemnifies Lush Turf against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left Lush Turf's premises (or the premises of Lush Turf's supplier or agent).

11.5. In the event that the Customer is required to return any Goods to Lush Turf, risk in the Goods passes to Lush Turf on confirmation of receipt of the Goods by Lush Turf.

11.6. Until full title, property and ownership of the Goods passes to the Customer in accordance with clause 11.1, and while the Goods remain in the Customer's full control and possession:

- (a) subject to clause 11.7, the Customer must hold the Goods as Lush Turf's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without Lush Turf's prior written consent;
- (b) the Customer must keep and maintain the Goods in good and substantial repair;
- (c) the Customer must insure the Goods for their full replacement value (which must not be less than the Purchase Price) and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as Lush Turf's and referable to a particular Invoice;

- (d) Lush Turf may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00 am to 5.00 pm to inspect the Goods.
- (e) Lush Turf may at any time after payment is overdue require the Customer to deliver up the Goods to Lush Turf and, if the Customer fails to deliver up the Goods immediately, Lush Turf may enter the premises of the Customer or any third party where the Goods are stored and repossess them;
- (f) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods and if the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to Lush Turf will (without prejudice to any other right or remedy of Lush Turf) immediately become due and payable to Lush Turf; and
- (g) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.

11.7. Notwithstanding that title to the Goods has not passed to the Customer under clause 11.1, the Customer may, subject to obtaining Lush Turf's prior written approval, resell the Goods or any part of them in the name of the Customer but only as agent for Lush Turf and may deliver any Goods so sold to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice Lush Turf's ability to obtain any amount paid or due to be paid by the buyer of Goods (**Sale Proceeds**) and:

- (a) any Sale Proceeds must be held by the Customer on trust for Lush Turf and any amounts received by the Customer must be banked in a separate bank account relating only to the sale proceeds of any Goods and must be forwarded as soon as possible to Lush Turf in satisfaction of any amount owed by the Customer in respect of the Goods;
- (b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide those records to Lush Turf immediately upon request by Lush Turf; and
- (c) if and when the full amount due to Lush Turf in respect of the Goods has been received by Lush Turf, any further Sale Proceeds may be retained by the Customer.

11.8. The Customer must immediately cease the resale of any Goods under clause 11.7 if:

- (a) Lush Turf revokes any consent it has given to the Customer to resell the Goods under clause 11.7; or
- (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.

11.9. In the event that the Goods (or any portion of them) are processed, incorporated, transformed or installed into any other goods, buildings or land then the Customer must:

- (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods, buildings or land in which the Goods have been processed, incorporated, transformed or installed; and
- (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for those goods, buildings or land on trust for Lush Turf and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.

11.10. If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by Lush Turf, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in those circumstances will, to the extent of any money owing by the Customer to Lush Turf, be held on trust for Lush Turf by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

12. PPSA

12.1. Words and expressions used in this clause 12 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.

- 12.2. Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:
- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants Lush Turf a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (Account) to secure all monies owing by the Customer to Lush Turf from time to time;
 - (b) where Lush Turf has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (c) Lush Turf is not obliged to act in any way to dispose of or to retain any Goods which have been seized by Lush Turf or any person nominated by Lush Turf under its rights under the PPSA.
- 12.3. Without limiting anything else in these Terms, the Customer consents to Lush Turf effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by an Agreement or these Terms, including in relation to the Goods and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, Lush Turf's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 12.4. The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Lush Turf for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:
- (a) register a security interest in relation to the Goods where the Customer on sells the Goods to a third party or incorporates the Goods into another good or product;
 - (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available; and
 - (c) not register a financing change statement in relation to any registration made under paragraphs (a) or (b) without Lush Turf's prior written consent.
- 12.5. The Customer must indemnify, and on demand reimburse, Lush Turf for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of Lush Turf's security interests.
- 12.6. The Customer must not change its name, address or contact details without providing prior written notice to Lush Turf.
- 12.7. To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 12.8. The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Lush Turf has given prior written consent.
- 13. Liability**
- 13.1. If the Customer is a Consumer and Lush Turf supplies PDH Goods or Services to the Customer, Lush Turf acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by Lush Turf and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 13.2. If the Customer is a Consumer and any goods or services supplied by Lush Turf to the Customer are non PDH Goods or Services, Lush Turf's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Lush Turf's discretion) to:
- (a) in the case of Goods:
 - (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; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) in the case of Services:
 - (i) the supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 13.3. If the Customer makes a claim against Lush Turf which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Lush Turf expressly excludes all liability in respect of the Goods or Services supplied by Lush Turf to the Customer.
- 13.4. In relation to the supply of Goods which are non PDH Goods or Services, if Lush Turf is liable to indemnify the Customer under section 274 of the Australian Consumer Law, Lush Turf's liability to the Customer is limited to an amount equal to the lower of:
- (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent Goods; or
 - (c) the cost of having the Goods repaired.
- 13.5. Without limiting any other provision in this clause 13, if the Customer believes that Lush Turf may, in the course of delivering the Goods or providing the Services, have damaged the property of the Customer or any third party (including any Goods), the Customer must:
- (a) notify Lush Turf of the damage; and
 - (b) not engage any person to rectify the damage until such time as the Customer has given Lush Turf a reasonable opportunity to rectify the damage.
- 14. Notification of claims**
- 14.1. The Customer must notify Lush Turf immediately if it becomes aware of:
- (a) any claim; or
 - (b) any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 14.2. If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:
- (a) any claim; or
 - (b) any death, serious injury or serious illness,
- in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 14.3. The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:
- (a) not make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
 - (b) take all steps and do all things necessary to promptly pass on to Lush Turf any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist Lush Turf to comply with its obligations under the Australian Consumer Law;
 - (c) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Lush Turf any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
 - (d) not agree to settle any claim made by a Consumer without the prior written consent of Lush Turf.
- 15. Intellectual Property**
- 15.1. The parties acknowledge and agree that, unless otherwise agreed in writing, as between Lush Turf and the Customer all Intellectual Property Rights in the Goods and any material created as part of the Services vests in and exclusively belongs to and are irrevocably assigned to Lush Turf and the Customer agrees that it

must not infringe or use the Intellectual Property Rights of Lush Turf which exist in the Goods or materials created as part of the Services without the prior written consent of Lush Turf.

- 15.2. The Customer grants to Lush Turf a non-exclusive, royalty free licence to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable Lush Turf to supply the Goods or perform the Services.
- 15.3. The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good without the prior written consent of Lush Turf.
- 15.4. The Customer must not remove, deface, change, distort, delete or cover up:
 - (a) any name plate or mark on the Goods which indicates that Lush Turf is the owner of the Goods; or
 - (b) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Goods.
- 15.5. The Customer must only sell or promote the Goods using any trade mark, name or brand which is approved in writing by Lush Turf.
- 15.6. The Customer must not make available for purchase, sell or promote any:
 - (a) good which is a copy or imitation, in whole or in part, of any Good; or
 - (b) Good which has been modified or varied (other than the affixation of any labels or other packaging on the Goods).

16. Promotion

- 16.1. The Customer acknowledges and agrees that Lush Turf may take still images and photographs at the Site for use in accordance with clause 16.2.
- 16.2. Lush Turf may use the Customer's name and any still image taken under clause 16.1 in connection with the promotion by Lush Turf of Lush Turf and the business operated by Lush Turf, including use on Lush Turf's website.

17. Indemnity

- 17.1. The Customer indemnifies Lush Turf and holds Lush Turf harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Lush Turf incurs as a direct or indirect result of:
 - (a) recovering any amounts the Customer owes to Lush Turf (including any fees paid to a debt collector, mercantile agent or similar);
 - (b) any breach of an Agreement by the Customer (including any failure to provide Lush Turf with any instructions, material or information required to be provided under clause 5.2 or a breach of its obligations under clause 9.4);
 - (c) the use of, or reliance on, any Customer Specifications;
 - (d) Lush Turf being prohibited or otherwise restricted from delivering the Goods or providing the Services at the Site during the Nominated Hours;
 - (e) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Customer Background Materials; and
 - (f) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.

18. Specifications

- 18.1. The Specifications are approximate only and Lush Turf makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.
- 18.2. Lush Turf may make changes to the specifications, dimensions, weights or other particulars of the Goods as may be required from time to time by law or any safety or manufacturing requirements.

19. Confidentiality

- 19.1. The Customer:
 - (a) may use Confidential Information solely for the purposes of the relevant Agreement;
 - (b) must keep confidential all Confidential Information; and
 - (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information

(and only to the extent that each has a need to know), or have been specifically approved by Lush Turf; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Lush Turf.

- 19.2. The Customer must notify Lush Turf immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

20. GST

- 20.1. In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.
- 20.2. Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Lush Turf under these Terms, the Customer must pay to Lush Turf, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify Lush Turf for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Lush Turf will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Lush Turf in respect of the reimbursement or payment.

21. Force Majeure

- 21.1. Lush Turf will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.
- 21.2. If a Force Majeure Event under clause 21.1 exceeds 20 Business Days, Lush Turf may immediately terminate the Agreement by written notice to the Customer.

22. Termination

- 22.1. Without limiting Lush Turf's other rights under these Terms, and to the extent permitted by law, Lush Turf may terminate any and all Agreements with immediate effect by written notice to the Customer if:
 - (a) the Customer fails to make any payment under the Agreement to Lush Turf by the due date for that payment;
 - (b) the Customer is the subject of an Insolvency Event;
 - (c) the Customer has breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days or receiving notice requiring the breach to be remedied; or
 - (d) in accordance with clause 21.2.
- 22.2. On termination of an Agreement:
 - (a) the Customer must not sell or part with possession (other than as required under clause 22.1(b)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
 - (b) the Customer must, at its cost, immediately return to Lush Turf all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional and advertising materials in relation to the Goods;
 - (c) Lush Turf may enter the premises of the Customer or any third party to repossess any Goods not returned under clause 22.1(b) and the Customer expressly authorises and grants Lush Turf and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of those Goods; and
 - (d) all money owed by the Customer to Lush Turf will become immediately due and payable.
- 22.3. Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

23. Cancellation

- 23.1. Without limiting clause 7.9(b), Lush Turf may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where Lush Turf believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that if Lush Turf cancels an Agreement under this

- clause 23.1 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any amounts will be the Customer's sole remedy against Lush Turf in respect of any cancellation under this clause 23.1.
- 23.2. Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Lush Turf and without prejudice to any other rights Lush Turf may have, the Customer indemnifies Lush Turf for any Loss incurred by Lush Turf in connection with any cancellation.
- 24. Acknowledgements and representations**
- 24.1. By making an Offer, the Customer warrants and represents to Lush Turf that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.
- 24.2. Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Lush Turf do not constitute an offer by Lush Turf to supply Goods appearing in those lists or catalogues or an offer by Lush Turf to supply Goods at the prices set out in those lists or catalogues. Lush Turf's price lists and catalogues may be changed by Lush Turf at any time without notice.
- 25. Inconsistency**
- 25.1. Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence will apply to the extent of the inconsistency:
- the prices and quantity of Goods and/or Services set out in a Quote (if any);
 - these Terms;
 - any other terms of the Quote (if applicable);
 - the Invoice; and
 - without limiting clause 25.2, any terms in the Order which are accepted by Lush Turf in writing.
- 25.2. These Terms will prevail over any Customer terms and conditions, except to the extent specifically agreed by Lush Turf in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Lush Turf if expressly agreed by Lush Turf in writing.
- 26. Miscellaneous**
- 26.1. In these Terms:
- the singular includes the plural and vice versa;
 - the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
 - a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
 - the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;
 - a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
 - headings are inserted for convenience and do not affect the interpretation of these Terms;
 - no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
 - unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.
- 26.2. The Customer must maintain and keep current and complete records of the Goods which Lush Turf has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by Lush Turf), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from Lush Turf, provide Lush Turf with access to, or copies of, those records.
- 26.3. The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without Lush Turf's prior written consent. Lush Turf may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time in circumstances where, in the opinion of Lush Turf acting reasonably, the assignment will not adversely affect the rights of the Customer.
- 26.4. For the purposes of clause 26.3, a Change in Control of the Customer will be considered an assignment of the Customer's rights or obligations under these Terms.
- 26.5. Lush Turf may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as Lush Turf provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.
- 26.6. A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.
- 26.7. If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
- 26.8. The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 9.1(b), 9.11, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 25 and 26.
- 26.9. Each party must:
- do all acts necessary or desirable to give full effect to an Agreement; and
 - refrain from doing anything which might prevent full effect being given to an Agreement.
- 26.10. The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 26.11. Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party notified by the receiving party from time to time. Notices will be deemed to have been received: by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email (unless the sender knows that email has failed to send).
- 26.12. These Terms are governed by the laws in force in Queensland, and the Customer and Lush Turf submit to the non-exclusive jurisdiction of the courts of Queensland.
- 26.13. The *United Nations Convention on Contracts for the International Sale of Goods (1980)* (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or any Agreement and are excluded.