

RAINBIRD (AUSTRALIA) PTY LTD

TERMS AND CONDITIONS OF TRADING

1. "RBA" means Rainbird (Australia) Pty Ltd A.B.N. 35 004 644 446 and "the Customer" means the party placing an order for the purchase of goods or services from RBA or requesting that RBA perform work and labour for the Customer. "Order" or a "request" refers to an order for goods or services and/or a request for RBA to perform services or supply materials for the Customer, "The State" means the state of Australia in which the Customer is or was located.
2. The Customer has no authority to pledge the credit of RBA to any other party or represent to any other party that RBA has an interest in the Customer's business. The Customer is warned any indication to the contrary by the Customer to others by statements, advertising, letterheads or otherwise is without the authority of RBA and such terms as "RBA Agent", "RBA Dealer" or "RBA Shop" might cause the public to infer incorrectly that RBA has an interest in or is responsible for the conduct of the business of the Customer.
3. The Customer acknowledges being informed by RBA prior to any trading that:
 - a) Some goods require specific storage, handling, installation and display conditions to maintain quality.
 - b) RBA trademarks and trade dress or get-up are protected by law from misuse, eg Infringement, forgery, or passing off.
4. In relation to each order for the sale of goods by RBA to the Customer, the goods sold are to be used by the Customer wholly or mainly for business purposes and shall represent an expense necessarily incurred in carrying on that business and, further, the goods purchased shall be intended either for resupply in the ordinary course of the Customer's business or to repair or be incorporated in other goods for the purposes of transforming or incorporating them in other goods to be used in the ordinary course of the business.
5. Each order and/or request for goods and services is subject to acceptance by RBA at:

Rain Bird (Australia) Pty Ltd
P.O. Box 1430
Tullamarine, Victoria, 3043
Australia
6. All contracts between RBA and the Customer for the sale of goods or for services to be performed shall be continued according to the laws of the State of Victoria. The jurisdiction of the hearing of any dispute arising out of any contract between RBA and the Customer for the sales of goods or for services to be performed shall be the State of Victoria.
7. No order for the sales of goods or request for RBA to perform services shall be cancelled without the written consent of RBA. In the event the Customer purports to cancel any order or request, such attempt may at RBA's election be treated as a repudiation of the contract between the parties and the Customer shall pay to RBA all losses, damages, costs, interest fees, charges including handling charges payable to both RBA and its suppliers (if any) and the expenses incurred or suffered by RBA as a result of the repudiation of the contract.
8. Orders for sale of goods and requests for RBA to perform services shall not be varied unless the variation is in writing and accepted by RBA in writing. Any request for a variation shall be posted by prepaid post to Customer Service at:

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RBA's acceptance of the variation shall be posted by prepaid postage to the address of the Customer to which RBA renders accounts or sent by facsimile.
9. Any credit account approved by RBA for the Customer relating to trading between RBA and the Customer is granted by RBA on the basis of information supplied by and representations made on behalf of the Customer and, in particular, on the information disclosed by the Customer in relation to the ownership of the Customer as set out in the application for that account. For that reason, the Customer shall inform RBA of any changes in the ownership of the Customer - whether total or partial by forwarding to RBA notice in writing of that change by prepaid security post or its equivalent, direct to Customer Service at:

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Australia

Until such notice is received by RBA the Customer and if it is a company or trustee, each of the Directors thereof shall hold RBA indemnified, against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses of whatsoever nature incurred or suffered by RBA in trading with any person, company (including the same company but with a different shareholder or shareholders) or other entity (including a trust) which may have purchased the Customer's business or any interest therein or any of the shares in the Customer and used the Customer's previously approved credit account for trading.
10. Unless otherwise agreed, the Customer shall pay all monies to RBA by cash. In the event RBA approves a credit account for the Customer, the Customer shall unless otherwise agreed in writing pay RBA by the end of the calendar month following the month in which the Customer is invoiced. In the event payment is not made in accordance with these terms, RBA shall be at liberty to charge the Customer and be paid interest on the outstanding balance from the date of invoice until the date of payment at the rate charged by the National Australia Bank in respect of standard overdraft facility of the sum of \$100,000. Payments received by RBA may at its election be credited first against accrued interest, second against any costs or expenses payable by the Customer to RBA and thereafter the debt. In the event of any default in payment by the Customer all monies owing by the Customer to RBA on any account whatsoever shall at RBA's option become immediately due and payable in full by the Customer.
11. Should RBA be prevented from delivering goods or commencing or completing services by reason of delay by the suppliers to RBA, lockouts, strikes, riots, fire, inclement weather, delays, loss or damage in transit, war, civil commotion, government action, failure of utilities to supply gas, water or electricity or unexpected or exceptional circumstances beyond RBA's control, the time for delivery of goods or completion of the services shall be extended until the operation of the cause or causes preventing delivery or completion of the services has ceased or the order or request may at RBA's option be annulled without any penalty or expenses to or claims against RBA.
12. Should RBA be prevented from delivering part of an order for goods or from completing services requested by the Customer by reason of any of the causes referred to in clause 11 hereof RBA shall be entitled to deliver such part of the goods or services as RBA is able to delivery and the Customer shall accept those goods and the services and RBA shall be entitled to charge the Customer for those goods or for the services performed pursuant to the request of the Customer.
13. The means of delivery of goods shall be at RBA's discretion as to whether such delivery is effected by road, air, rail or post. RBA shall be permitted to deliver any of the goods in an order by part deliveries and shall be entitled to invoice each part delivery and be paid for same in accordance with these terms of trading. Delivery of goods shall be at the Customer's expense. RBA shall not be required by the Customer at any time to deliver goods to any party other than the Customer and in particular not direct to any consumer or client of the Customer.
14. Any liability of RBA for loss or damage during carriage handling and/or storage to any goods or equipment or part thereof (either owned by the Customer or not) or to any goods purchased by the Customer is limited at the sole discretion of RBA either to the replacement or repair of such goods or equipment or part thereof damaged or to credit the Customer's account with the value of such goods or equipment or part thereof damaged. Any claim against RBA does not extend to consequential loss or damage, including that caused by the negligence or default by RBA.
15. The Customer shall inspect all goods delivered by RBA to the Customer immediately upon delivery. Subject to clause 17, any claim by the Customer relating to any defect in manufacture of goods, or defect in services performed by RBA for the Customer, or any shortage or other nonconformity to an order for goods or a request for services to be performed shall be made in writing and delivery by security mail or its equivalent addressed to the Customer Relation Manager at RBA at its address in the State of Victoria within 7 days of delivery of the goods or of collection of the goods or equipment on which services have been performed. Unless such written claim is received by RBA within the specified period, the Customer shall be deemed to have accepted the condition of the goods, conformity of the goods to the order and/or the completion of the services according to the Customer's request. Any claim in relation to a defect in goods must be accompanied by both:
 - (a) a specimen of the article showing the alleged defect; and
 - (b) a sample taken from the consignment in its original packaging showing the references used for identification purposes.Every other claim shall specify such documentation as is necessary to properly identify the matter complained of and such documentation shall include at least the relevant invoice and delivery docket. Notwithstanding that a claim has been made by the Customer, the Customer shall pay for the goods and/or services pending determination of the claim by RBA.
16. Subject to clause 17, no goods corresponding with order shall be returned to RBA by the Customer without the written consent of RBA. If RBA consents to the return of goods, RBA shall not be required to accept such goods by way of return unless:
 - (a) The delivery charge for the return to RBA of the goods is first paid by the Customer;
 - (b) The goods are unused and undamaged and in their original packaging; and
 - (c) The goods and the packaging are as new and in a saleable condition with only their original marks, numbers unaltered and prices not marked thereon.A Restocking Charge of 20% of the cost of the goods will be assessed for goods returned for credit.
17. The Extended Warranty Policy of RBA applies to the goods set out in Schedule 1 and is subject to change without notice. The Extended Warranty Policy extends and is not intended to vary or exclude any warranties that are implied by law and cannot be excluded or varied.
18. Subject to clause 19, the Extended Warranty Policy does not apply unless the Customer:
 - (a) has contacted RBA for an inspection and approval of the defective goods; &
 - (b) has been given a Return Goods Authorisation Number with

- instructions on how to handle and return the goods and those instructions are strictly complied with, or at RBA's discretion, credit will be issued upon written approval.
19. The Extended Warranty Policy does not apply to:
 - (a) goods that have been altered or modified;
 - (b) goods that have been used in a manner that is not in accordance with the manufacturer's instructions;
 - (c) goods that have been damaged by lightning or electrical surges;
 - (d) any damage or loss directly or indirectly caused by a negligent act or omission of the customer;
 - (e) defective equipment or damage caused by defective equipment that was not manufactured or supplied by RBA, even though such equipment may have been used in conjunction with RBA goods;
 - (f) loss or damage to goods that have been subjected to freezing conditions where they have not been properly prepared for winter shutdown, and the Customer acknowledges that is its responsibility to advise the person or companies to which it sells the goods of this requirement; or
 - (g) any consequential loss or damage howsoever caused, whether or not caused or contributed to by negligence of RBA.
 20. The Customer acknowledges and agrees that it does not have any authority to waive, alter, or add to the terms of the Extended Warranty Policy in Schedule 1 or these Terms and Conditions, or to make any representation or warranty not contained herein or to extend the Extended Warranty Policy in Schedule 1 to anyone other than a RBA trade customer.
 21. Any credit facility granted by RBA to the Customer shall continue until terminated by RBA at its sole discretion. Termination by RBA of any credit facility shall be by notice in writing to the Customer and shall take effect upon receipt of that notice by the Customer as referred to in these terms.
 22. The Customer shall forthwith give notice to RBA of the change of address, telephone number, facsimile numbers or address for delivery to the Customer.
 23. All prices charged by RBA are subject to change without notice. Unless otherwise agreed in writing, prices quoted by RBA will be quoted ex RBA warehouse from which the goods are shipped or, in the case of services to be performed, from the place at which RBA at its option performs the services. Recommended and suggested resale or retail prices wherever shown are recommended resale or retail prices only and there is no obligation to comply with that recommendation or suggestion. List or trade prices apply only to those who have approved accounts with RBA for the relevant goods or services. RBA price lists or price catalogues do not constitute any offer whatsoever. The price of equipment does not include installation by RBA unless specifically stated by RBA in writing.
 24. RBA or the manufacturer of the goods ("the Manufacturer") may, without notice, change the range of goods and services or redesign or modify existing goods or services resulting in some goods or spare parts becoming obsolete or unavailable and RBA or the Manufacturer shall not be liable for any loss or damage suffered by the Customer or the Customer's customers as a result. The Customer undertakes to advise any person or company to whom it sells any goods of this condition.
 25. These terms also apply to installation services performed by RBA. Any installation by RBA shall be during normal working hours and only after the site has been properly prepared by the Customer at its own expense.
 26. Subject to any express written warranty otherwise given by RBA, and subject to any statutory warranties express or implied which by law cannot be excluded all warranties conditions and representations whether express or implied are expressly negated. Where a warranty or condition is implied by law, RBA's liability to the extent that same can be so limited is limited to one of the following at the election of RBA in the case of goods:
 - (a) Replacement of goods or supply of equivalent goods;
 - (b) Repair of goods;
 - (c) Payment of costs of replacing the goods or acquiring equivalent goods; or
 - (d) Payment of the cost of having the goods repaired.
 And in the case of services:
 - (a) The supply of the service again; or
 - (b) The payment of the cost of the service.
 Any claim against RBA does not extend to consequential loss or damage.
 27. Failure by RBA to insist upon strict performance of any term of any contract between the parties or of any term hereof shall not constitute a waiver of similar or a subsequent breach and the rights of RBA to enforce these terms and those in any other contact shall remain valid and subsisting.
 28. Unless otherwise agreed, risk shall pass to the Customer upon delivery. Notwithstanding that risk may have passed to the Customer, property and title in any goods sold by RBA shall remain with RBA until receipt by RBA of the purchase price of the goods as invoiced by RBA. Until such time as property and title in the goods passes to the Customer, the Customer shall hold the goods as bailee for RBA. If the Customer sells the goods to a third party prior to paying RBA the purchase price thereof, RBA shall be entitled to and be paid so much of the price paid by that third party as is necessary to satisfy the monies owing to RBA. The Customer shall not otherwise in any way part with possession or dispose of the goods until payment has been received by RBA for those goods. The Customer shall at all times keep the goods insured and maintain the goods in a safe and marketable condition and in a manner so that the goods are readily identifiable. In the event the Customer defaults in payment of any monies owing to RBA or any term hereof or of any contract between the parties or any credit facility is terminated by RBA, RBA shall be entitled at its election to the immediate return of the goods and shall have the right to enter, and is hereby expressly authorised to enter, upon the premises of the Customer or any other premises at which the goods are stored to re-possess the goods. In the event the permission of any third party is required for access to repossess the goods the Customer shall obtain that permission at its own expense. Upon the repossession of the goods by RBA, RBA shall be entitled to re-sell the goods for the best price it can obtain and to be paid by the Customer any and all shortfall between that sale price and the debt owing to RBA together with the damages suffered by RBA as a result of the default by the Customer; such damages to include but not be limited to the legal costs and other expenses incurred in obtaining possession of the goods. The Customer shall have no claim against RBA for any damages or other monies whatsoever if RBA repossesses or attempts to repossess the goods. The rights of RBA hereunder are in addition to any other claim or rights RBA has under any other term hereof or under any other contract between the parties.
 29. The legal costs, stamp duty and other expenses incurred by RBA in respect of any Application for a credit facility, any written agreement with RBA of whatsoever nature, any guarantee, security documents or other documentation required for the trading between the parties or other costs incidental thereto shall be paid by the Customer upon invoicing RBA or on such other terms as are agreed to by the parties.
 30. These terms may be amended, replaced or deleted from time to time by RBA and those terms as so altered shall form the contract between the parties in relation to orders and requests made or placed after notice of the altered terms has been forwarded to the Customer in accordance with these terms. RBA may from time to time incorporate an Extended Warranty as amended from time to time, if annexed.
 31. Any notice given by RBA to the Customer shall be deemed to have been properly given if such notice is either posted by pre-paid postage to the last known business address of the Customer to RBA (whereupon receipt of the notice shall be deemed to have been received by the Customer two business days after posting by RBA) or by transmitting such notice by facsimile transmission to the last known facsimile number of the Customer to RBA or by personal delivery to the last known business address of the Customer to RBA (in which cases receipt of the notice shall be deemed to be the date of such transmission or delivery).
 32. Any notice given by the Customer to RBA shall be deemed to have been properly given if such notice is posted by security post or its equivalent to Customer Service at its address at

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 and shall be deemed to have been received by RBA upon delivery of that notice by Australia Post to RBA.
 33. In the event the Customer provides to RBA any name, monogram, trade mark or other identification to be affixed on or to goods or equipment, the Customer warrants that the Customer is entitled to use such name, monogram, identification, trade mark or transfer and indemnifies RBA against any claim which may be made against RBA by any other party arising out of the use of that name, monogram, identification, trade mark or transfer.
 34. All equipment, artwork, tools, dyes and plates made or altered by RBA to fulfil an order or request shall remain the property of RBA.
 35. Notwithstanding that the Customer may conduct a credit facility with RBA, RBA shall not be obliged to deliver goods or perform services until all monies owing and overdue to RBA by the Customer for prior orders and/or requests are paid to RBA. In the event RBA elects as a result of the Customer's prior indebtedness to RBA to retain possession of goods or equipment the delivery or completion date referred to in any request or order shall be replaced by a date being thirty days from the date of satisfaction by the Customer of the Customer's prior indebtedness of RBA.
 36. In the event the Customer is in default of any term of condition of any order or request and the Customer has been in default thereof for a period of seven days RBA at its election at any time thereafter shall be at liberty to cancel any or all orders or requests yet to be completed or fulfilled and to recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to RBA and its suppliers) and all expenses incurred and suffered by RBA as a result of the Customer's default and the subsequent cancellation. The Customer shall have no recourse whatsoever against RBA for any loss or damaged suffered as a result of any such cancellation.
 37. These terms and conditions and any terms and conditions implied by statute constitute the contract between the parties. Any terms and conditions endorsed on any other document pertaining to any order or request and, in particular, on any order form or request form produced by the Customer are expressly negated and do not form part of the contract between the parties unless RBA has specifically adopted those terms and conditions in writing.
 38. The Customer shall in addition to any monies otherwise payable hereunder pay any applicable goods and services taxes (or its equivalent) in respect of any goods and/or services purchased.
 39. The Customer irrevocably authorises RBA, its servants and agents to make such enquiries as they deem necessary and as may be allowed by law of or incidental to the Customer's or its director's credit history.
 40. The Customer's directors, by their execution of the Credit Account Application, guarantee and indemnify RBA jointly and/or severally in respect of any failure by the Customer to pay any amount due and payable to RBA. The Customer agrees at the request of RBA to procure such of its directors to sign a further guarantee and indemnity in favour of RBA as and when required.
 41. The Customer and the directors of the Customer hereby charge their assets and the Customer and the directors of the Customer agree that RBA may at any time lodge a caveat over any real property assets of the Customer or any of the directors of the Customer.