



EVERYTHING RUBBER!



Softfallguys National P/L
ABN 83 937 575 727
GPO 2150, Kardinya WA 6163
Tel: 1800SOFTFALL
Direct: 0418 933477
admin@softfallguys.com.au
www.softfallguys.com.au and
Www.softfall.repair

TERMS & CONDITIONS & ACCEPTANCE FORM

Date: / / 2022 Quote - Ref#:

Price: AS per quotation Deposit: \$

Company Name: ACN/ABN

Client Contact Name:

Billing Address: State: Postcode:

Physical Address: State: Postcode:

Your Tel#: Mobile#: Email:

PROJECT Contact: Email: Mobile#:

I hereby agree to all Softfallguys National (SFGN) Terms & Conditions 2022 with payment terms of 50 % material & mobilisation deposit upon acceptance, full balance due no later than 30 days from completion invoice and any other conditions presented to the Client in any quotation, documentation or communication:

- (TICK) I / We agree to Softfallguys T&C's and any specific T&C's outlined on our quotation
(TICK) I / We will make payment via Electronic Funds Transfer (EFT) to the account below.

Payment Terms (stated below and as per if any varied payment terms listed on your quotation)

Unless negotiated prior to project commencement and confirmed by Softfallguys in writing:

- Terms are as per Softfallguys T&C's and in unison to/as per the agreed quotation
Project order will not commence before the standard 50 % material & mobilization bond has been received.
Balance due within 30 days of completion invoice, late payment fees will apply
Warranty or Certifications will not be issued or be valid until balances owed is received by SFG.

Payment Method:

EFT Details

Name: Softfallguys National Pty Ltd
as trustees for Hankinson Family trust
Bank: Commonwealth Bank
BSB: 066 163
Acc#: 1077 6352

EMAIL Remittance to:

Email: admin@softfallguys.com.au
Mail: GPO 2150, Kardinya WA 6163

By my signature below I state I am authorised to approve and make payment for the works detailed above, hereby request and authorise the works to proceed and I certify that the above information is true and correct. I have read and understand the Softfallguys National Terms and Condeitions 2022 (T&C's) and all and any additional quotation/project specific T&C's of which form part of, and are intended to be read in conjunction with the accepted quotation and this Work Acceptance/Approval Form, and I agree to be bound by these conditions. I authorise the use of my information as per the Privacy Act clause therein.

SIGNED (CLIENT): SIGNED (WITNESS TO CLIENT'S SIGNATURE):
Company: Name: Date:
Position: Address:
State: Postcode:

SOFTFALLGUYS NATIONAL
Terms and Conditions 2022 ~ Warranties, Installation & Repair - 1st January 2022

Sofffallguys National ~ Sofffall and Wetpour safety surfacing systems are amazing and very technical products, yet they are not perfect! They are not like mass manufactured products, they are hand mastered, installed and finished by craftsman specialised in this trade.

We don't use cheap imported sofffall granule, we use only the most credentialed, hardy and resilient sofffall granule and polyurethane binders. Even so, Sofffall and Wetpour surfacing "material" has its limitations...like installing concrete and other external finishes sofffall material is susceptible to the elements including; foot traffic, shade fade, fade, all things abrasive, colour change & variance, temporary yellowing, minor cracking, tearing, heat, UV, water and moisture (to name a few),... all of which are out of our control.

***We are a nationwide Master Distributor and Installer so to achieve an premium optimal product and finish for all our Clients we follow the #1 System of preparation and install as proven by Australia's #1 Manufacturer. We then further apply our own experience, proprietary systems and methodologies proven over 20 years.*

Like most we don't use cheap imported sofffall granule like most, we always use one of the two best Australian supplied products and colours, all chosen for their resilience and abilities to resist and battle Australia's harsh elements.

Note:

It is your responsibility to do your own due diligence and make your own choices regarding the product, colours, design and uses and to comply with Sofffallguys Terms and Conditions (T&C's) and Manufacturers Product and Limitation / Testing Sheets / Installation procedures which apply to all our products, works and services.

Once approval to proceed or supply is received from you in any form the following T&C's apply to every product and service we quote and supply as of 1st January 2022.

1. **Definitions**
 - 1.1. "SFGN" means Sofffallguys National Pty Ltd, its successors, assigns or any person or directly related business or Alliance Partner acting with, in partnership, on behalf of and with the authority of Sofffallguys.
 - 1.2. "Client" means the person/s/entity buying the Goods as specified in any invoice, quotation, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 - 1.3. "Goods" means all Goods or Services supplied by SFGN to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.4. "Price" means the Price payable for the Goods as agreed between SFGN and the Client in accordance with clause 4 below.
2. **Acceptance**
 - 2.1. The Client is taken to have exclusively accepted our offer via verbal, a formal communication or our Acceptance Form whereby they are immediately bound, jointly and severally, by these and if any further specified terms and conditions SFGN or the Client places an order for, work is commenced or accepts delivery of the Goods.
 - 2.2. These terms and conditions may only be amended with SFGN's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SFGN.
3. **Change in Control**
 - 3.1. The Client shall give SFGN not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SFGN as a result of the Client's failure to comply with this clause.
4. **Price, Deposit and Payment**
 - 4.1. At SFGN's sole discretion the Price shall be either:
 - (a) as indicated on any quotation or invoice provided by SFGN to the Client; or
 - (b) the Price is accepted and payable in full, without deduction at any time SFGN enters the quoted work site and commences work and or delivery of the Goods as quoted according to SFGN's current price list; or
 - (c) SFGN's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 4.2. SFGN reserves the right to change the Price at anytime if, manufacturers increase their prices to SFGN at any time, or a variation to SFGN's quotation is requested or SFGN incurs further costs due to unknowns that become present or have not been disclosed to us, known or not by the Client or if further costs are incurred due to Clients failure to disclose pertinent detail that incur further project costs. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works or unknowns required due to hidden or unidentifiable difficulties or as a result of increases to SFGN in the cost of materials and labour) will be charged for on the basis of SFGN's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 4.3. At SFGN's sole discretion a non-refundable mobilization deposit will be required and shall be a) as quoted or b) no less than 35% of the total quotation sum plus GST.
 - 4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SFGN, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with SFGN's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SFGN.
 - 4.5. Payment may be made by cash, electronic/on-line banking, credit card (plus a processing fee and a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and SFGN.
 - 4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SFGN an amount equal to any GST SFGN must pay for any supply by SFGN under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Delivery of Goods and or Services**
 - 5.1. Delivery ("**Delivery**") of the Goods is taken to occur at the time that SFGN (or SFGN's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
 - 5.2. Client must allow 30 days minimum from any acceptance date of any SFGN quotation and or if any additional SFGN supplier terms
 - 5.3. At SFGN's sole discretion the cost of delivery may or may not be included in the Price.
 - 5.4. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then SFGN shall be entitled to 1) leave or arrange to leave the Goods at the site previously arranged and or charge a reasonable fee for redelivery and/or storage.
 - 5.5. SFGN may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 5.6. Any time or date given by SFGN to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and SFGN will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
 - 5.7. Client upon delivery shall ensure safe, secure and dry storage of their Goods.
 - 5.8. SFGN is not responsible for any damage to Goods during transport and Client accepts all responsibility for the Goods and for insuring goods purchased if goods are to be transported in or out of metro area or Australia.
 - 5.9. SFGN is not responsible for any suppliers, subcontractors, freight providers or of any delays outside its control.
 - 5.10. No goods or service shall be prepared or delivered without the payment of deposits, balance payments or as per if any special terms applied to any order.
6. **Risk**
 - 6.1. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client will insure the Goods on or before Delivery.
 - 6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SFGN is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SFGN is sufficient evidence of SFGN's rights to receive the insurance proceeds without the need for any person dealing with SFGN to make further enquiries.
 - 6.3. If the Client requests SFGN to leave Goods outside SFGN's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
 - 6.4. The Client shall provide SFGN with a suitable free power source, security of onsite and stored product and surfaces whilst being installed, whilst SFGN is offsite and after completion for a minimum of 24 hours from time of completion.
 - 6.5. The Client acknowledges that the curing time for the Goods can be affected by elements such as temperature or the weather as such SFGN offers no guarantee as to the length of time the curing process will take or what may occur to a sofffall surface during curing (human, animal or insect damage, cracking or foaming etc). SFGN does provide temporary security in the form of barrier warning tape to secure the site until such time as the installation process has completed. However, in the interest of the general public, SFGN does have available the following additional forms of security upon request but as such these will be subject to additional costs which will be invoice in accordance with clause:
 - (a) safety tape;
 - (b) safety cones;
 - (c) plastic barrier mesh;
 - (d) temporary steel security fencing at cost;
 - (e) plastic traffic barriers; or
 - (f) Onsite Security guards.

SOFTFALLGUYS NATIONAL
Terms and Conditions 2022 ~ Warranties, Installation & Repair - 1st January 2022

- 6.6. The Client acknowledges and agrees that the installation site must be inspected to ensure that any sub base soil or other is suitable and to agreed size and specification for installation before the works can commence or SFGN arrival. SFGN will not be responsible for if any subbase excavation or if any underground utilities (retic, electric, water or other) further than 200mm under ground level (due to the possibility of underground utility presence at 300 & 600mm). If we notify Client of findings during subbase installation the Client must immediately direct SFGN to stop work while the Client conducts immediate same day underground utility rectification, remedy or other and or compaction verification testing conducted by a qualified independent contractor and if any soil testing must be conducted by an independent engineer. SFGN will have the right to proceed as per the usual schedule if no immediate action is not undertaken or same day communicated to us. SFGN will not be held responsible for consequences of the above or any later sub base settling or any sinking due to building rubble or breakdown of non removed organic material including tree roots or other whatsoever. At Client request SFGN agrees to coordinate or organise any required soil testing to ensure the soil is compliant and ready for installation.
7. **Access**
- 7.1. The Client shall ensure that SFGN has clear, free and direct immediate access to the work site at all times to enable them to undertake the works. SFGN shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways and concreted or paved or grassed areas) unless due to the negligence of SFGN.
8. **Underground Locations**
- 8.1. Prior to SFGN commencing any work the Client must advise SFGN of the precise location of all underground services and or drain/age on the site and clearly mark the same. The underground impediments, mains & services the Client must identify include, but are not limited to, roots systems, electrical services, gas services, drains, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes and sprayers, telephone cables, fiSFGNe optic cables, oil pumping mains, and any other services that may be on site.
- 8.2. Whilst SFGN will take all care to avoid damage to any underground services the Client agrees to indemnify SFGN in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.
9. **Title**
- 9.1. SFGN and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid SFGN all amounts in full owing to SFGN; and
- (b) the Client has met all of its other obligations to SFGN.
- 9.2. Receipt by SFGN of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3. It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to SFGN on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SFGN and must pay to SFGN the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SFGN and must pay or deliver the proceeds to SFGN on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SFGN and must sell, dispose of or return the resulting product to SFGN as it so directs.
- (e) the Client irrevocably authorises SFGN to enter any premises where SFGN believes the Goods are kept and recover possession of the Goods.
- (f) SFGN may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SFGN.
- (h) SFGN may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
10. **Personal Property Securities Act 2009 ("PPSA")**
- 10.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by SFGN to the Client.
- 10.3. The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SFGN may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, SFGN for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of SFGN;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of SFGN;
- (e) immediately advise SFGN of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4. SFGN and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7. Unless otherwise agreed to in writing by SFGN, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8. The Client must unconditionally ratify any actions taken by SFGN under clauses 10.3 to 10.5.
- 10.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**
- 11.1. In consideration of SFGN agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2. The Client indemnifies SFGN from and against all SFGN's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SFGN's rights under this clause.
- 11.3. The Client irrevocably appoints SFGN and each director of SFGN as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
12. **Warranties, Defects and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1. ***The Client is granted a Three (3) or Five (5) Year MANUFACTURERS PRODUCT WARRANTY specific to the product the Client chose, and all warranty claims are to be made by the Client directly to and between the Manufacturer.***
- 12.2. ***SFGN provides a Twelve Month (12) WORKMANSHIP Warranty covering all facets of workmanship of the system components & finished surface.***
- 12.3. SFGN accepts no responsibility whatsoever and makes no allowance or will be made for stated Critical Fall Height system thicknesses for ongoing compliance upon leaving site on install completion and if any part of the sofffall surface or play equipment has been subjected to or exposed to pressure or impact of any kind prior to curing for min 48 hours and excessive; impact, use, forces of any kind before permitted to cure for 48 hours min, curing, natural outdoor elements including UV, heat, cold, weather elements or degradation, human, insect, animal damage of any kind, dust, silt, sand or other contamination, hardening of any displaceable substrates or significant wear of the product. Accordingly the Client is responsible for instructing SFGN of basic, to all pertinent expected or planned use and intensity detail so SFGN can be most informed and apply if required an allowance to the above factors when choosing the surface thickness.
- 12.4. SFGN will not be responsible for anything whatsoever that is not known, divulged to us or been made clear to us therefore Client is responsible for delivering all pertinent and associated project or product information, including but not limited to data, project outcomes and timeline expectations.
- 12.5. The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify SFGN in writing of any evident completion workmanship issue/s, defects/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident otherwise both 12.2 scenarios will be accepted that there are no issues whatsoever. Upon such notification the Client must allow SFGN to inspect the Goods.
- 12.6. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.7. SFGN acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.8. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SFGN makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SFGN's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.9. If the Client is a consumer within the meaning of the CCA, SFGN's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.10. If SFGN is required to replace the Goods under this clause or the CCA, but is unable to do so, SFGN may refund only up to the amount of any money the Client has paid for the Goods, minus if any processing, return freight and repacking fees.
- 12.11. If the Client is not a consumer within the meaning of the CCA, SFGN's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by SFGN at SFGN's sole discretion;
- (b) limited to any warranty to which SFGN is entitled, if SFGN did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 12.12. Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
- (b) SFGN has agreed that the Goods are defective; and
- (c) the Goods are returned within 7 days at the Client's cost; and
- (d) the Goods are returned at Client's cost in packaging as received, in the state as received and in a perfect resalable condition to that in which they were delivered.
- 12.13. Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, SFGN shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by any manufacturer or SFGN or both;
- (e) fair wear and tear, any accident, or act of God.

SOFTFALLGUYS NATIONAL
Terms and Conditions 2022 ~ Warranties, Installation & Repair - 1st January 2022

- 12.14. Notwithstanding anything contained in this clause if SFGN is required by a law to accept a return then SFGN will only accept a return on the conditions imposed by that law.
13. **Intellectual Property**
- 13.1. Where SFGN has provided, designed, drawn or developed Goods for the Client, then the copyright in any idea, concept, branding, designs, drawings and documents shall remain the property of SFGN and can only be used by the Client if prior approval has been obtained from SFGN and then all publications must be watermarked or reference with the words "Softfallguys National".
- 13.2. The Client warrants that all designs, specifications or instructions given to SFGN will not cause SFGN to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SFGN against any action taken by a third party against SFGN in respect of any such infringement.
- 13.3. The Client agrees that SFGN may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SFGN has created for the Client.
14. **Default and Consequences of Default**
- 14.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SFGN's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2. If the Client owes SFGN any money the Client shall indemnify SFGN from and against all costs and disbursements incurred by SFGN in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SFGN's collection agency costs, and bank dishonour fees).
- 14.3. Without prejudice to any other remedies SFGN may have, if at any time the Client is in SFGN each of any obligation (including those relating to payment) under these terms and conditions SFGN may suspend or terminate the supply of Goods to the Client. SFGN will not be liable to the Client for any loss or damage the Client suffers because SFGN has exercised its rights under this clause.
- 14.4. Without prejudice to SFGN's other remedies at law SFGN shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SFGN shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SFGN becomes overdue, or in SFGN's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
15. **Cancellation**
- 15.1. SFGN may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SFGN shall repay to the Client any money paid by the Client for the Goods. SFGN shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by SFGN as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
16. **Compliance with Laws**
- 16.1. The Client and SFGN shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities (such as AS/NZS 4422:1996) that may be applicable to the works.
- 16.2. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 16.3. The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
17. **Privacy Act 1988**
- 17.1. The Client agrees for SFGN to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by SFGN.
- 17.2. The Client agrees that SFGN may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.3. The Client consents to SFGN being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4. The Client agrees that personal credit information provided may be used and retained by SFGN for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5. SFGN may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6. The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that SFGN is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and SFGN has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SFGN, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7. The Client shall have the right to request (by e-mail) from SFGN:
- (a) a copy of the information about the Client retained by SFGN and the right to request that SFGN correct any incorrect information; and
 - (b) that SFGN does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8. SFGN will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9. The Client can make a privacy complaint by contacting SFGN via e-mail. SFGN will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
18. **Other Applicable Legislation**
- 18.1. At SFGN's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 WA, Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building and Construction Industry Payments Act 2004 (Queensland) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) will apply.
- 18.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 each as applicable, except to the extent permitted by the Act where applicable.
19. **General**
- 19.1. The failure by SFGN to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SFGN's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2. These terms and conditions and any contract to which they apply shall be heard, disputed or other, in and governed by the laws of Western Australia, SFGN's principal place of business, and are subject to the jurisdiction of the courts in Western Australia.
- 19.3. Subject to clause 12 SFGN shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a SFGN each by SFGN of these terms and conditions (alternatively SFGN's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SFGN nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5. SFGN may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6. The Client agrees that SFGN may amend these terms and conditions at any time. If SFGN makes a change to these terms and conditions, then that change will take effect from the date on which SFGN notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SFGN to provide Goods to the Client.
- 19.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
20. **Repair Work**
- 20.1. Client understands and agrees;
- a) SFGN warrants workmanship but not of new to old material "join parting" due to human, animal or any mechanical intervention or due to material expansion and contraction factors
 - b) They are responsible for the security or damage to any repair once SFGN has left site
 - c) SFGN may use client bins if deemed required
 - d) There are additional costs and rates for all SFGN works outside the Perth or other city metro limits
 - e) Will abide by and agree to Softfallguys enforcing its Communicable Disease & Business Continuity Plan & Policy 2020 at the time

SOFTFALLGUYS NATIONAL
Terms and Conditions 2022 ~ Warranties, Installation & Repair - 1st January 2022

21. **Specific & Additional Product, Installation & Repair, Synthetic turf, Shockpad, Water or Splash park work Conditions**

21.1. Client understands and agrees to be responsible for;

- a) IF any limitations they placed on a repair or project and if any consequences thereof
- b) Their decisions in relation to delivering a complete clear specification of works, that install & especially Clients material choice and its characteristics like fade, hardness, colour UV resistance, tensile strength and install weather/season conditions they choose to install and that they are clear Manufacturer recommends dry weather at all times and installation temperatures of between 17 min to 32 degrees Celsius max therefore SFGN cannot be held responsible for if any surface finish issues or delays if required to install at anytime outside Manufacturers limits & conditions.
- c) Some manufacturer's products (shockpad and or softfall systems) can only be certified at the discretion of the manufacturer and Softfallguys, and only when installed by Softfallguys (or an approved Softfallguys Installer and only when installations have met Softfallguys and manufacturer's installation instructions, procedures and process reporting.
- d) Informing themselves and making their own decisions on choice of product, type, material, its limitations, install characteristics and Manufacturers recommendations
- e) Investigating and accepting all manufacturers product or service detail including terms & conditions, special conditions, test, slip, UV rating, Fade, MSDS, colour, type, brand, design and grade material or product information
- f) Making and complying with all product, manufacturers installation recommendations, season and timeline decisions based on their own and sole investigation
- g) Ensuring Platle and Aero Shockpad bases are installed by others are flat, true and to level noting that our tile and mat systems follow this surface
- h) Ensuring seasonal, weather, heat and other start and completion timelines they require comply with manufacturers installation recommendations
- i) If any event or consequences, risk or costs SFGN may suffer or incur due to having to proceed as per Client dictated timelines (inclement weather, rain, high humidity, busy people traffic periods etc.)
- j) If any event or consequences or risk relating to any delay, cracking, curing times, fading, new surface yellowing or any other due to weather or conditions outside SFGN or manufacturers recommended supply and or install limits
- k) If any event or consequences or risk relating to join parting due to expansion & contraction or human or mechanical interference of any new or existing softfall surface installation or repair
- l) If any event or consequences, risk or costs relating to natural elements including weather, humidity, water (reticulation etc) affected surfaces or product
- m) If any event or consequences or risk relating to any SFGN water or splash park surface installation that may be impinged upon; during, or at any time after installation by moisture pressure in concrete (surface lifting), foreign bodies, contaminants or pollutants, black or other mould, microorganisms of any kind, amoeba or any foreign growth, especially if related to the Clients water treatment, purification or disinfectant process and control, or lack thereof.
- n) All reasonable and additional costs that may be incurred by SFGN associated with f), g), h), i), delay, overruns, costs due to any unknowns or any other that are incurred due to unsatisfactory install or repair weather conditions including cyclone, storm, or other
- o) Compliance with Standards – Some of our Suppliers playground systems are guaranteed to be compliant with the current Australian Standards at the time of installation for the Critical Fall Heights specified subject to the surface being installed as per the installation guidelines and specifications. No allowance has been or will be made for stated Critical Fall Height system thicknesses for ongoing compliance if the surface has been subjected to excessive impact use, natural outdoor degradation, damage, contamination, hardening of any displaceable substrates or significant wear of the product. Accordingly it is recommended that an allowance be made for the above factors when choosing the surface thickness. The intensity of the end use of the surface should be determined and an allowance made in the thickness to cover any degradation of the performance of the product over the life expectancy of installation.

22. **Delay, Weather, Communicable Disease, Covid 19, Government Limitations, Lockdown or Imposed Quarantine, Freight or Weather Delay or other out of SFGN control**

22.1. Client understands and agrees that if the Clients dictates and or requires SFGN to commence and or complete works or delivery to a set period, dates or timelines they are responsible for all direct and associated costs and expenses incurred by SFGN in the event of, delays, weather and consequences of any event associated with Communicable Disease, Covid 19 Pandemic, Government orders, directions & limitations or lockdown, forced or self imposed Self Isolation-Quarantine and all other events known or not and out of SFGN control with the same extending to;

- p) SFGN or its personal or its Alliance Partners or Subcontractors reasonable costs they incur whilst working on or for a SFGN Client Project including; airline price increase, schedule or other flight changes, accommodation, health physician treatment, additional induction time, costs related to Government, airline, regional or Client prescribed C19 lockdown and or required or instructed self-isolation from being on, to or after being on a Client project and;
- q) Agree to pay the same costs incurred by SFGN project personal upon their return to their place of origin, including but not limited to health examinations, or other checks or required treatment, accommodation costs and extended accommodation and vehicle & machine hire costs and if any minimum daily charge out rate per worker to a min 7 hour day whilst off site plus minimum living allowance.
- r) Complying with all and both Government directions and Softfallguys Communicable Disease & Business Continuity Plan & Policy 2021 and to keep SFGN personnel or contractors safe from all possibility of contracting C19.