

**1. Definitions**

- 1.1 **Company** means Pandoe Pty Ltd (ACN: 053788 499 ABN: 37 053 788 499)T/A Surefoot, its successors and assigns or any person acting on behalf of and with the authority of Pandoe Pty Ltd T/A Surefoot.
- 1.2 **Client** means the person/s buying the Goods as specified in any invoice, 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 the Company 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 the Company and the Client in accordance with clause 3 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms will override any terms provided by the Client and no amendment will be valid and enforceable unless the Company has approved the amendment in writing.

**3. Price and Payment**

- 3.1 The Price shall be as indicated on any invoice provided by the Company to the Client;
- 3.2 The Company reserves the right to change the Price if a variation to the Company's quotation is requested.
- 3.3 A quote will be valid for a period of 30 days.
- 3.4 The Company requires payment upon acceptance of the quote.
- 3.5 Unless otherwise stated the Price does not include GST.

**4. Delivery of Goods**

- 4.1 Delivery of the Goods is deemed to have occurred:
  - (a) if delivered by the Company, at the time that the Goods leave the company's premises;
  - (b) if collected by the Client, at the time that the Goods are handed to the client;
  - and (c) if sent by freight, at the time that the Goods leave the company's premises.
- 4.2 The Company may at its sole discretion charge delivery costs in addition to the Price.
- 4.3 If the Company delivers the Goods to the Client's premises and there is no one to accept delivery, the Company may charge a reasonable redelivery and/or storage fee.
- 4.4 Any time or date given by the Company to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

**5. Risk**

- 5.1 Risk of damage to or loss of the Goods passes to the Client when the Goods have been delivered in accordance with clause 4.1.
- 5.2 If the Client requests the Company to leave Goods outside the Company'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. Access**

- 6.1 The Client shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake any work associated with the Goods. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

**7. Underground Locations**

- 7.1 Prior to the Company commencing any work the Client must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst the Company will take all care to avoid damage to any underground services the Client agrees to indemnify the Company 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 7.1. The Company may require the Client to take out insurance for any damage caused to any underground installations or services and to note the Company's interest on the insurance. The Client will produce a copy of the certificate of currency of insurance upon request by the Company and the Company may refuse to commence any work until such time that it has been provided with satisfactory proof of insurance.

**8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 8.1 The Client must inspect the Goods on delivery and must within 7 days of delivery notify the Company in writing of any evident defect, 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. Upon such notification the Client must allow the Company to inspect the Goods.
- 8.2 Except as expressly set out in these terms and conditions the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 8.3 If the Client is a consumer within the meaning of the CCA:
- (a) our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;
  - (b) the Company's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 8.4 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Client has paid for the Goods.
- 8.5 If the Client is not a consumer within the meaning of the CCA, the Company'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 the Company at the Company's sole discretion;
  - (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods; (c) otherwise negated absolutely.
- 8.6 Subject to this clause 8, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
  - (b) the Company has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.7 Notwithstanding clauses 8.1 to 8.6 but subject to the CCA, the Company 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 the Company; (e) fair wear and tear, any accident, or act of God.
- 8.8 The Company may in its absolute discretion accept non-defective Goods for return in which case the Company may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 8.9 Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

**Design Life Statement**

- 8.10 Surefoot footings are designed and engineered to comply with the requirements of AS/NZ 1170.0 Structural Design actions - General principles. The "design life" for normal structures is 50 years, unless otherwise notified. In some circumstances we can design for a greater or lesser period depending upon the importance level and design events. When design and certification is undertaken by Surefoot, factors taken into consideration include applied structural loading to the footing, geotechnical data, capacity of the soil, corrosion factor, wind and terrain rating categories etc. Foundation design and certification is provided by a registered engineering practitioner. A condition of certification is that a pile log is provided to the certifying engineer by the installer / consumer for each footing installed. Duration of the period which the Surefoot footing is designed, is assumed to perform for its intended purpose with expected maintenance. Please refer to CSIRO document Foundation Maintenance and Footing Performance consumer guide BTF18.

**Coating**

- 8.11 Refer to coating certification by Elite Surface Technologies Pty Ltd "Compliance Report"

**9. Intellectual Property**

- 9.1 Where the Company has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Company.
- 9.2 The Client warrants that all designs, specifications or instructions given to the Company will not cause the

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## Surefoot – Terms & Conditions of Trade

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Company to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

- 9.3 The Client agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Client.

### 10. Cancellation

- 10.1 The Company 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 the Company shall repay to the Client any money paid by the Client for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2 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 the Company as a result of the cancellation (including, but not limited to, any loss of profits).
- 10.3 The Company may at its sole discretion retain all payments that the Client made for orders for Goods once an order has been placed.

### 11. Compliance with Laws

- 11.1 The Client and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 11.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building or construction sites and any other relevant safety standards or legislation.

### 12. General

- 12.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision.
- 12.2 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.
- 12.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Company has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 12.4 Subject to clause 8 the Company's liability for any losses or damages to the Client shall not exceed the Price of the Goods.
- 12.5 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 12.6 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.

### 13. Foundation design and certification

- 13.1 The Client must employ a Registered Professional Engineer to carry out the foundation design and certification when using the Company's Goods.
- 13.2 The Company does not accept any liability and the client indemnifies the company against any liability for any application of the Goods without an Engineer's certification.