

# Terms and Conditions

## 1. Interpretation

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- 1.1 In these terms and conditions and in any Contract to which these terms and conditions apply unless the context otherwise requires:
- 1.1.1 Company means Parklife Limited;
- 1.1.2 Conditions mean these terms and conditions to be read and construed with each Quotation provided by the Company;
- 1.1.3 Customer means the purchaser of Products from the Company;
- 1.1.4 Contract means an agreement between the Customer and the Company comprising the Quotation and the Conditions;
- 1.1.5 Intellectual Property Rights means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to: all copyright and similar rights that may subsist in works or other subject matter; rights in relation to inventions (including all patents and patent applications); trade secrets and know-how; rights in relation to designs (whether registrable); rights in relation to registered and unregistered trade marks; business names; and rights in relation to domain names;
- 1.1.6 Products mean the products sold by the Company to the Customer under a Contract;
- 1.1.7 Product Documents include any or all of the following:
- Technical Data Sheet;
  - Installation Notes, Details, Drawings;
  - Maintenance Guide;
  - Other documents issued by the Company for the products collectively, which are applicable at the time the products were purchased and installed at the project site and;
  - Governmental regulations, building standards, codes, and normal industry practices.
- 1.1.8 Services mean the services provided by the Company to the Customer under a Contract; and
- 1.1.9 Quotation means the quotation provided by the Company to the Customer for the purposes of supplying Products which shall form part of and be read and construed with these Conditions.

## 2. Formation of Contract

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- 2.1 On request of the Client the Company will issue a Quotation for the provision of Products and/or Services which shall be deemed an invitation to treat and not a binding offer of the Company.

- 2.2 The Customer may place an order which shall constitute a binding offer by either:
- 2.2.1 The Customer signing and returning the Quotation to the Company; or
- 2.2.2 Paying the deposit (if any) referred to in the Quotation; or
- 2.2.3 Issuing a purchase order number for the quoted amount; or
- 2.2.4 Confirming acceptance of the Quotation in writing.
- 2.3 No contract shall come into existence until the Client's order has been accepted by the Company.
- 2.4 The Customer cannot cancel a Contract after an order has been accepted by the Company and is bound to pay the quoted price in full.

## 3. Prices

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- 3.1 In addition to the quoted price, the Customer shall pay for all shipping, handling and insurance charges, and all taxes (including goods and services tax), duties, excise, imports and any other levies upon demand unless otherwise stated in the Quotation.
- 3.2 The Company reserves the right to correct any typographical or clerical errors contained in the prices or specifications in the Contract.
- 3.3 The Company reserves the right to alter its prices where additional Products or Services are required or if the Customer alters the specifications or the design brief after the date of the Quotation.
- 3.4 The Company reserves the right to alter its prices where the Customer fails to provide an appropriate installation site in accordance with the project specifications.
- 3.5 The Company reserves the right to alter its prices where the Customer fails to provide appropriate access to the installation site.
- 3.6 The Company will not alter its prices without notifying the Client in advance and receiving the Client's agreement to the additional costs, provided that the Client will not unreasonably withhold its agreement and the Company will not be required to provide the associated Products or Services if the Client does not agree to such price alteration.

## 4. Payment

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- 4.1 Payment for the Products and/or Services shall be made prior to or at the time of delivery if no account is held by the Customer or if an account is held by the Customer then 7 days following the date of invoice or as otherwise agreed in writing or stated in the Quotation.
- 4.2 Time for payment is of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due:
- 4.2.1 The Company may treat the Contract as repudiated by the Customer or may until payment in full is made, suspend delivery of Products and/or Services;

4.2.2 The Customer shall (if so required by the Company) pay interest to the Company at the default interest rate of three per cent (3%) per annum above the current base lending rate set from time to time by the Company's bankers in Christchurch. Interest shall be payable daily until the date when payment is received; and

4.2.3 The Customer shall be liable for all expenses and costs (including legal costs) in relation to the Company enforcing or attempting to enforce a Contract or these Conditions.

4.3 The Customer shall not be entitled to make any deduction from the price of the Products and/or Services in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of the Company.

4.4 No retention monies are allowable.

## 5. Delivery and Risk

5.1 All risk in the Products and/or Services shall pass to the Customer upon delivery in accordance with clauses 5.5 and 5.6.

5.2 If the Customer indicates to the Company that it will refuse to accept delivery, then the Products and/or Services shall be deemed to have been delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery or Products.

5.3 The Company reserves the right to deliver the Products and/or Services in instalments.

5.4 Any dates quoted by the Company for delivery are approximate only. The Company shall use its best endeavours to deliver the Products and/or Services by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of a delay in delivery.

5.5 Products transported to the Customer's place of storage or point of installation by the Company shall be carried at the Company's risk. In this case delivery shall be deemed to have occurred at the Customer's place of storage or point of installation and the Customer shall insure the Products for their full insurable value from the time it takes delivery.

5.6 Products transported to the Customer's place of storage or point of installation by the Customer or by an agent of the Customer shall be carried at the Customer's risk. In this case delivery shall be deemed to have occurred at the Company's designated premises upon transfer of possession of the Products to the Customer or to any agent or carrier and the Customer shall insure the Products for their full insurable value from the time it takes delivery.

5.7 Products held in storage by the Customer at any place other than at the Company's designated premises are stored at the Customer's risk.

## 6. Force Majeure

6.1 The Company is not liable for failure or delay in supply or delivery occasioned by strike, industrial dispute, natural disaster, pandemic, epidemic shortage or

unavailability of products or raw materials, failure of the Customer's suppliers delay in transit, container loss, shipping delays, import restriction, legislative governmental or other prohibition or restriction, fire, flood, hostilities, commotions, bad weather or other causes whatsoever beyond the Company's reasonable control including power outage or telecommunication disruption or act of war or terrorist attack.

## 7. Inspections and Returns

7.1 The Customer agrees to inspect the Products and verify delivery within 24 hours of receipt. If no notice to the contrary has been communicated to the Company, the Customer is deemed to have accepted the Products as received and conclusively presumed to be in accordance with the Quotation. The Company will, at the Company's option issue a credit note for the Products or will repair or replace the Products where disclosed as faulty on such inspection and/or independent testing following delivery and when the Products are authorised by the Company to be returned to the Company as faulty or delivered as the case may be.

## 8. Queries/Disputes

8.1 Subject to clause 7, the Company will not consider any job or account queries that are not raised within one month from the date of invoice or where the dispute in question relates to Products and/or Services that have been altered, installed, laid, improperly stored or damaged by Customer or Customer's representative or end user.

## 9. Installation

*The Installation Notes, Details, Drawings are available either on the Parklife website or issued with the Product. The Product is installed on the following basis:*

9.1 Installation is as per the Product Installation Notes, Details, and Drawings. Installation is dependent on climatic conditions being satisfactory. It is the responsibility of the installer to ensure they have the Product Documents for the product they are installing.

9.2 Where the Quotation specifically includes the installation of the Products, the Quotation is upon the basis that the Customer will at its own expense provide suitable access to the site in all weather conditions for vehicles used by the Company. Works will only be carried out when the site is in a satisfactory condition to the Company.

9.3 The Customer is to check with the relevant Local Authorities, Regional Councils and other relevant bodies, to accurately establish the existence and position of service pipes or cables on any site. The position of these services is to be notified to the Company prior to installation of the Products. Installation prices quoted exclude any relocation, support, replacement and the like, of any services. Any damage to services will be the responsibility of the Customer.

9.4 The installation will be carried out on the basis that the work is permitted by Local Authorities, Heritage New Zealand and any other authority with interests over the site. Installation prices quoted exclude any allowance for archaeological, iwi, HNZ, Heritage or Arboricultural

investigation, assessment and reporting or authority to modify, resource, engineering and or building consent conditions.

9.5 No other service providers are to have access to work areas once the Company has taken over responsibility for the site or has commenced work unless agreed in writing.

9.6 Any services agreed to be supplied by the Client are accessible at the time of the planned commencement of works. The works will only be carried out when the site is in a satisfactory condition to the Company.

9.7 Repairing any damage resulting from ground destabilisation or earthquake to the quoted project works from the time of quote acceptance to the end of the maintenance and/or warranty period is excluded.

**9.8 Basketball Hoops, GoalKeeper, Volleyball Net, Ping Pong Table and Other**

9.8.1 Installation prices are quoted on the understanding that all foundations are in 'good ground' as per NZS3604:2011 with an ultimate bearing capacity of 300KPa with no rocks, concrete, or other obstructions, and the excavated material is free from any contaminated material such as asbestos, hydrocarbons or other.

**9.9 Coloured Sports Surfaces**

Assumes any coatings are applied to a concrete substrate that is constructed as follows:

9.9.1 the slab has been cured for 28 days before coating;

9.9.2 there is no hydrostatic pressure;

9.9.3 the slab is dry or with low residual moisture which is not due to rising damp with a maximum moisture content of 4%;

9.9.4 a Damp Proof Membrane (DPM) is installed as under the slab;

9.9.5 the concrete is trowelled to a U3 finish; Class U5 Finish;

9.9.6 there are sufficient falls, a maximum 1.5% cross fall, +/- 3mm tolerance over 3.0m;

9.9.7 minimum 125mm thick 20MPa non-permeable concrete

9.9.8 the surface is without active cracks, crazing, dusting, rain damage, spalling, efflorescence, oil, grease, wax, dirt, curing compounds, dust, paint the surface is dry, sound, clean and free of loose parts and detached parts, which might affect the adhesion of coating systems or cause blistering unless repair work is stated in the Quote.

9.9.9 no curing agents, additives or contaminants are added to the concrete which can affect the integrity of the coating;

9.9.10 diamond grinding concrete substrate may leave lines or marks.

9.9.11 works will only be carried out when the site, slab, surface and climatic conditions are satisfactory to all parties.

9.9.12 minimum 5 days favourable weather conditions required, including RH moisture levels below manufacturers specifications (available on request).

9.9.13 new coating to be cured for a minimum of 7 days before being open/used.

9.9.14 no allowance has been made for repairs and/or to remediate the surface prior to coating unless stated in the Quote.

9.9.15 any remedial work due to vandalism will be treated as a variation to the contract and charged accordingly.

9.9.16 there is no allowance to remedy incorrect falls or fill/patch low areas of an existing substrate unless stated in the Quote.

**9.10 Pump Tracks, Skate Ramps**

9.10.1 The base/surface that the track or ramp is installed on is relatively even, with no pooling water and free draining.

9.10.2 No obstacles are installed within the Product safety zone.

**10. Maintenance**

10.1 Maintenance instructions are provided on the Parklife website for most products. Maintenance guidelines for Product may be provided but it is the Customer's responsibility to implement and maintain a program of routine inspection and maintenance.

**11. Ownership**

11.1 Until payment in full of all indebtedness to the Company in relation to the sale of Products and/or Services the Company and the Customer agree that:

11.1.1 The title to the Products and/or Services supplied remains with the Company;

11.1.2 The Customer hereby irrevocably gives the Company, its agents and servants, license upon giving reasonable notice to enter or access premises to remove any of the Products supplied without in any way being liable to the Customer or any person claiming through the Customer;

11.1.3 If the Company exercises its right to reclaim the Products it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:

- (a) Any shortfall incurred by it on realisation against the price at which such Products were contracted to be bought by the Customer; and
- (b) Any costs incurred by the Company in the exercise of its right to reclaim the Products, whether relating to the repossession, storage or resale of the Products (including legal costs as between solicitors and own client).

## 12. Warranty

- 12.1 Subject to clause 13 the Company will:
- 12.1.1 provide the warranties referred to as the Company Warranties in Schedule 1 (Company Warranty), on the terms set out in the relevant warranty documents; and
  - 12.1.2 pass on to the Customer the benefit of the third party warranties referred to as Third Party Warranties in Schedule 1 (Third Party Warranty), on the terms set out in the relevant warranty documents, (each a Warranty).
- 12.2 To avoid doubt, the Company Warranties relating to the installation or application of any Product only apply where the relevant Services under the Contract include installation or application services. Where the Customer applies or installs the Product themselves, or engages a third party to conduct the installation or application of the Product, no warranty is offered in respect of that installation or application.
- 12.3 Where there is a breach of a Company Warranty, the Company at its option will make good by repair or replacement any defect in Products, or make good by re-performance any defect in installation services, or refund the amounts paid by the Customer for the defective Products or installation services, so that the Company Warranties are complied with.
- 12.4 Where the Customer alleges a breach of a Third Party Warranty, the Company will assist the Customer to liaise with the third party provider of the Third Party Warranty. The Company will not itself have any liability under any Third Party Warranty.

## 13. Exclusion of Warranties and Liability

- 13.1 The Warranty shall not apply and the Company (or the applicable third party) shall not repair or replace any defective Product nor cover damage, fault, failure or malfunction if such damage, fault, failure or malfunction is due to:
- 13.1.1 External causes, including accident, abuse, explosions, pollution, problems with electrical power, misuse, vandalism, damage from heavy equipment, vehicles impact damage, scars from sharp or pointed objects, cuts, tears, scuffs, scratches, burns, water, spiked-heel shoes, pet claws and other abrasives, acts of negligence, terrorism, the act of violence, use of motorized vehicles, wheeled activities, pesticides and herbicides, vegetation, or any similar occurrence;
  - 13.1.2 Any maintenance, repairs, servicing or work on the Products which is not authorised by the Company;

- 13.1.3 Usage, storage or installation not carried out in accordance with Company and/or manufacturer's instructions or the Company's drawings or in accordance with clause 9;
- 13.1.4 Failure to perform required preventative maintenance;
- 13.1.5 Normal wear and tear, mildew, UV degradation, fading, act of God, fire, flood, war, subsurface movement; act of violence or any similar occurrence;
- 13.1.6 Any defects which did not exist before the transfer of risk.
- 13.1.7 Use that does not comply with conditions of use or instructions provided by the Company.
- 13.1.8 Installation in corrosive environments with exposure to harmful conditions i.e. marine, volcanic.
- 13.1.9 The Company Warranty does not cover any third party components or materials that are purchased for or used in Products for the Customer. The third party manufacturer's warranty shall be the sole warranty in respect of such components or materials.

## 13.2 Surfacing

- 13.2.1 Any damage to the surfacing, concrete or asphalt resulting from ground destabilisation or earthquake that occurs to the quoted project works from the time of quote acceptance to the end of the maintenance and/or warranty period, is excluded.
- 13.2.2 Problems caused by moisture emanating from the ground/basecourse/concrete/asphalt substrate that affects the surfacing.
- 13.2.3 Problems caused by the slab not being cured for 28 days before coating, any contaminants in the slab that will affect the integrity of the coating, hydrostatic pressure, insufficient surface treatment and insufficient falls.
- 13.2.4 Coating failures due to adverse temperatures onsite.
- 13.2.5 Changes in shade or colour between samples/photographs/online images with the Client's product/project/purchase.
- 13.2.6 The warranties only apply for the use of the surfacing for intended purposes - ball sports.

## 13.3 Basketball Hoops

- 13.3.1 Misuse of Basketball Hoops including but not limited to dunking, swinging on the ring/hoop, hanging off the ring/hoop, sitting on the ring/hoop or hitting pole with a mower or similar. Failure to ensure 'No Dunking...' warning sticker is clearly visible.

- 13.4 To the full extent permitted by law, but subject to the express provisions of clause 12:

- 13.4.1 The Company gives no representation or warranty whatsoever as to the condition or quality of the Products and/or Services as to their suitability or fitness for their ordinary or special use or purpose and the description of

the Products and/or Services in any contract or other document shall not import any such condition or warranty on the part of the Company;

13.4.2 All statutory and implied conditions and warranties except as to title are excluded; and

13.4.3 It is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of the Products and/or Services for its purposes and the Customer accepts the Products and/or Services on this basis.

13.5 The Company shall be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Products and/or as a result of the performance of the Services.

13.6 If, notwithstanding clause 13.4 the Company is found to be liable to the Customer in any circumstances then the maximum combined amount the Company will be liable for to the Customer under any Contract shall be an amount equal to the cost of replacement or repair of the Products and/or the cost of the Services.

13.7 In the event that the Products and/or Services are supplied for business purposes the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 shall not apply.

#### **14. Local Laws**

14.1 It shall be entirely the responsibility of the Customer to ensure that the Products and/or Services and the use thereof and installation (where applicable) shall comply with the laws, regulations and codes of a particular country or local authority and with the requirements of the Customer.

#### **15. Health and Safety at Work Act 2015**

15.1 The parties agree that, for the purposes of the Health and Safety at Work Act 2015, the Company will not, as a consequence of its engagement, be the person who controls the place of work in terms of the Act and will not during the term of its engagement or at any time after it, assume any obligation as the Customer's agent or otherwise.

#### **16. Indemnity**

16.1 The Customer shall comply with all instructions of the Company in relation to the handling, fitting, installation and use of the Products and/or Services and, notwithstanding such compliance, the Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with:

16.1.1 the manufacture, sale, export, import or use of the Products and/or Services, unless such cost, claim, demand, expense or liability shall be directly and solely

attributable to the negligence of the Company or the negligence of a duly authorized employee or agent of the Company; and

16.1.2 any breach of or failure to comply with these Conditions or the Contract whatsoever by the Customer.

#### **17. Default**

17.1 In the event that:

17.1.1 The amounts payable by the Customer to the Company are overdue or the Customer fails to meet any other obligation under this Contract; or

17.1.2 The Customer becomes insolvent or longer carries on business or threatens to cease carrying on business; then:

(a) The Company shall be entitled to cancel all or any part of any Contract with the Customer which remains unperformed, in addition to and without prejudice to its other remedies; and

(b) All amounts outstanding under this Contract or any other Contract shall, whether or not due for payment, immediately become due and payable; and

(c) The Company shall be entitled to recover and re-sell the Products on commercially reasonable terms and apply the proceeds derived in or towards payment of the Contract price and other monies owing pursuant to the Contract on the terms set out in this Contract.

#### **18. Intellectual Property**

18.1 Copyright in all Product and/or Services related drawings, specifications, designs and other technical information provided by the Company in connection with a Contract is vested in the Company and copyright in all intellectual property prepared by it. The Client may reproduce drawings, specifications and other documents in which the Company has copyright as reasonably required in connection with the project only to which the Products and/or Services relate but not otherwise. The Customer shall have no right to use any of these documents where payment of any or all of the fees and expenses payable to the Company are in arrears or the Customer is otherwise in default under this Agreement.

#### **19. Personal Property Securities Act 1999 ("PPSA")**

19.1 The Contract constitutes a security interest in the Products and/or Services for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.

19.2 The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest in any Products, or obtain the priority required by the Company or register (and

renew registration) a financing statement for a security interest in favour of the Company in the Products.

- 19.3 To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA which are for the Customers benefit, or place any obligations on the Company in the Customers favour, shall not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 19.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 19.5 The Customer hereby waives its right to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

## **20. Miscellaneous**

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- 20.1 If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.
- 20.2 Failure by the Company to insist upon strict performance by the Customer of any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.
- 20.3 These Conditions and the Contract may only be varied by the Company in writing in its absolute discretion.
- 20.4 The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.
- 20.5 Neither party shall be liable for any delay, alteration or failure to perform its obligations under a Contract where occasioned by any event beyond that party's reasonable control ("Force Majeure") and such party shall be entitled to a reasonable extension of time for the performance of any such obligations.

# Schedule 1 – Warranties

## Company Warranties

BB01	BASKETBALL GRIZZLY HOOP
	5 years (excludes net)
BB02	BASKETBALL / NETBALL ADJUSTABLE HOOP
	5 years (excludes net)
BB03	FOUR WAY HOOP
	5 years (excludes nets)
BB04	HIGH FIVE SEAT
	5 years
BB05	SOLAR PARK LIGHT
	5 years (2 years light unit)
PP01	PING PONG TABLE
	5 years
VB01	VOLLEYBALL PERMANENT NET & POSTS
	5 years.

## SURFACING

SF01	COLOUR COURTS
SF02	ART COURTS
SF03	URBAN ART
SF04	COURT REFURB

Parklife passes on to the asset owner the benefit of the **Mapei Ltd 10-year Product Warranty**, issued upon project completion.

Parklife provides a 2-year Application Warranty.

The warranties only apply to correctly maintained coatings as per the Coating Maintenance Mapecoat TNS Extreme Guide.

## Third-Party Warranties

### MODULAR PUMP TRACKS

MP01V3	RHYTHM STRAIGHT PUMP TRACK
MP02V3	SPEED RING PUMP TRACK
MP03V3	QUADRAGON PUMP TRACK
MP04V3	RAUPO PUMP TRACK
MP05V3	KAPITI PUMP TRACK
MP06V3	WORLD CUP PUMP TRACK
MP07V3	ADVANCED PUMP TRACK
MP01V4	RHYTHM STRAIGHT PUMP TRACK
MP02V4	SPEED RING PUMP TRACK
MP03V4	QUADRAGON PUMP TRACK
MP04V4	RAUPO PUMP TRACK
MP05V4	KAPITI PUMP TRACK
MP06V4	WORLD CUP PUMP TRACK
MP07V4	ADVANCED PUMP TRACK

Parklife passes on to the asset owner the benefit of the **Parkitect Ltd Product Warranty**, issued upon project completion.

Parklife provides a 2-year Installation Warranty.