

TERMS OF TRADE

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PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Products and Services that we supply to you.

At Southern Spas and Pools Otago Limited T/A Southern Spas and Pools ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- have included summaries / outlines for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

- These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- We may update these Terms on notice to you in writing. Our updated Terms will apply to all Services you order after we have notified you that we have updated our Terms.

PART B: PRODUCTS AND SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the Order in writing.
- We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- You may request variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, in accordance with our process for variations that we advise to you.
- We may require variations to the Order as a result of unforeseen circumstances discovered before or during the provision of the Services which are beyond our control. These variations will be submitted to you for approval, and you shall be required to respond to any variation submitted by us within 10 Business Days. Failure to do so will entitle us to add the cost of the variation to the Order. Payment for all variations must be made in full at the time of their completion.

3. Delivery of Products and Supply of Services

- We will use reasonable efforts to deliver Products and provide Services on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
- We will deliver the Products and provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- If you request that we leave the Products outside our premises for collection or to deliver the Products to an unattended location, then the Products shall be left at your sole risk. In the event that the Products are lost, damaged or destroyed then replacement of the Products shall be at your expense.
- Subject to clause 15, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Products and perform the Services.

4. Supply of Products

- Clauses 4 and 5 applies if your Order relates to Products.
- We may deliver Orders in instalments (unless agreed otherwise).
- If you delay, fail or refuse to accept delivery of Products, the Products will be treated as delivered when we were willing and able to deliver the Products. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- Risk in the Products passes to you on delivery.
- You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Products and any cautions and/or warnings are observed.

5. Defects

- You must inspect the Products on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (Defects). Upon request, you must allow us to inspect, or return to us, any defective or damaged Products. You should notify us of any alleged Defects as soon as possible if any to enable us to confirm that any Defects occurred before delivery to you.

- If there are any Defects in an order, the remedies set out in clause 23.1 will apply.

6. Cancellation

- Either party may cancel an Order by written notice if the other party:
 - commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - suffers an Insolvency Event.
- If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.
- You may cancel delivery of the Products and/or Services by written notice served within 48 hours of placement of the Order.
- Further to clause 6.3, in the event that you cancel the provision of Services by us, you:
 - shall provide us with written notice of such; and
 - shall reimburse us all expenses to date (including, but not limited to, labour, travel, Products and equipment purchased), holding costs of any pool shell at above overdue payments interest rate (as per clause 12.1(c)) until the pool shell is resold, and any work done on the worksite. If the worksite requires reinstatement to its original condition, all costs involved in carrying out that work are payable by you.
- In accordance with clause 10, should you fail to collect or take delivery of the Products ordered within 30 days of written notification, then we may cancel this contract and thereupon any monies paid by way of deposit but not exceeding 15% of the total purchase Price could be forfeited to us as liquidated damages.
- We will not accept cancellation of any Order for Products made to your specifications, or for non-stocklist items after the Order has been accepted by us.

PART C: PRICE

Part C sets out terms relating to the Price for the Products and Services.

7. Price

- The Price for Products and Services will be:
 - calculated in accordance with our current price list as at the date you submit the relevant Order; or
 - calculated based on our standard hourly rate as at the date of the Services are provided; or
 - the Price that we have quoted for the Products and Services (subject to clause 7.5).
- We may update our price list and standard hourly rates at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.
- Unless otherwise stated, the Price does not include GST.
- We may charge you for freight, insurance, installation, disbursements and any changes in statutory, government, or local body charges, applicable taxes, duties and levies, and/or fluctuations in currency exchange rates, in addition to the Price.
- Where we provide a quotation, proposal or estimate:
 - unless otherwise specified, the quotation, proposal or estimate is valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
 - we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
 - the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 7.4.

PART D: PAYMENT TERMS

Under these Terms, we may supply Products and Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

8. Payment

- You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- Payment shall be:
 - before delivery of the Products; or
 - on delivery of the Products; or
 - by way of instalments/progress payments in accordance with the Order; or
 - as indicated on our invoice; or
 - no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 - in full without deduction, withholding, set-off or counterclaim.
- If you have any dispute relating to an invoice issued by us, you:
 - must notify us of that dispute in writing within 7 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
 - will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

9. Credit terms and repayment obligations

- The supply of Products and Services to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 16.2).
- You must notify us immediately:
 - if you suffer an Insolvency Event. Any Amount Owing will, whether or not due

for payment, immediately become due and payable if an Insolvency Event occurs; or

- (b) if you are a company and there is a material change in your effective management or ownership.

10. Deposit and guarantee

- 10.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee, before we supply Products or Services, as security for any Amount Owing.
- 10.2 If we cancel an Order (for reasons other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.

11. Rights to recover Products

- 11.1 We retain ownership of all Products that we supply you until we have received payment in full of the Amount Owing.
- 11.2 You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owing.
- 11.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Products to us on request, or permit us to enter any premises where Products may be stored to repossess those Products.

12. Late payments

- 12.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:
- (a) suspend, or cancel (in accordance with clause 6.1(a)), the provision of any or all Products and Services to you;
- (b) cancel any rebates or discounts (whether or not previously credited); and
- (c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.

13. Costs of recovering Amounts Owing

- 13.1 You must reimburse us for any costs and expenses we incur to recover any Amount Owing, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.

14. Security interests

- 14.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 11) (**Security Interest**), to secure the payment by you to us of the Amount Owing.
- 14.2 You undertake to promptly sign any further documents which you may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement).
- 14.3 The parties agree to contract out of the provisions of the PPSA as set out in section 107 of the PPSA to the extent permitted by law and you waive your rights to receive a verification statement relating to any Security Interest. Where you have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 14.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality and intellectual property rights. Unless we agree otherwise, we own all intellectual property rights in the Products and Services.

15. Health and safety

- 15.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 15.2 You must notify us of any known hazards arising from your premises to which a work or any person may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.
- 15.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Products and/or Services (including in connection with the delivery of the Products and/or Services).

16. Privacy

- 16.1 We may collect, use and share Personal Information:
- (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
- (b) in accordance with the Privacy Act 2020.
- This may include sharing Personal Information with our Related Companies.
- 16.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 16.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 16. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 16.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

17. Confidentiality

- 17.1 Each party must keep confidential all Confidential Information.
- 17.2 Nothing in clause 17.1 prevents a party from disclosing Confidential Information if disclosure is:
- (a) required by law, or Regulator (but only to the extent required);
- (b) is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
- (c) to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.
- 17.3 We may also use any information that we collect in connection with the Products and Services, in accordance with applicable law, to improve our Products and Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights. You grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information for this purpose. Any information that we disclose or publish will be in a fully aggregated and de-identified form (to ensure that it does not identify any individuals and your information remains confidential).

18. Intellectual property

- 18.1 We own all rights, title and interest in the intellectual property rights in the Products and Services at all times.
- 18.2 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Products and Services, will be owned by us, unless otherwise agreed in writing.

- 18.3 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 18.1 and 18.2, and agree to do all things reasonably required by us to give effect to such assignment.

- 18.4 You warrant that the use by us of any designs, instructions or specifications supplied to us by you will not infringe the intellectual property rights of any other person and indemnify us against any losses, damages, liabilities or costs (including full legal costs) that we may suffer or incur in the event of any such infringement.

PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the maximum liability and exclusions set out in this Part F.

19. Dispute Resolution

- 19.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
- 19.2 Following receipt of a Dispute Notice:
- (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
- (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
- (c) if the dispute is not resolved by our respective Representatives in accordance with clause 19.2(b), then either party may commence court proceedings.
- 19.3 This clause 19 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 19.
- 19.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.

20. Consumer Guarantees Act and Fair Trading Act

- 20.1 If the Products and Services include any Consumer goods or services, nothing in these Terms will affect any rights you may have as a consumer under the Consumers Guarantees Act 1993 (**CGA**) and the Fair Trading Act 1986 (**FTA**).
- 20.2 If you are acquiring, or hold yourself out as acquiring, the Products and Services in trade, to the extent permitted by law:
- (a) for the purposes of section 5D of the FTA, the parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA;
- (b) you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by these Terms); and
- (c) it is fair and reasonable for the parties to be bound by this clause 20.2.
- 20.3 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
- (b) procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 20.3.

21. Warranties

- 21.1 We warrant that all Products and Services are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:
- (a) failure on the part of you to properly maintain any Products in accordance with our "Handover Manual" and the manufacturer's documentation; or
- (b) failure on the part of you to follow any instructions or guidelines provided by us; or
- (c) any fault or defect in our Products or Services resulting from any of your (or your Representatives) act or omissions (outside of the ordinary use of the Products or Services); or
- (d) minor deviations in specification, measurements, colour, weight, size or strength of the Products.
- 21.2 To the fullest extent permitted by law (including as set out in clause 21.1), except as expressly set out in these Terms, we expressly exclude all warranties, representations, descriptions, statements, terms or conditions (whether express or implied) whether under statute, law, trade, custom or otherwise that would apply to the Products and Services including all warranties relating to the suitability for resale, quality, or fitness for any particular purpose, of our Products or Services. Notwithstanding the provisions of this clause 21, if it is deemed that the Products and Services supplied by us are defective, then the provisions of clause 23 would apply.

22. Third party suppliers

- 22.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.
- 22.2 **Limitation of liability**
- 22.3 To the extent permitted by law, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:
- (a) in the case of Products, any one or more of the following:
- (i) the replacement of the Products or the supply of equivalent products;
- (ii) the repair of the Products;
- (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
- (iv) the payment of the cost of having the Products repaired.
- (b) in the case of Services:
- (i) supplying the Services again; or
- (ii) the payment of the cost of having the Services supplied again.
- 22.3 If we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
- (b) we will not be liable for any:
- (i) indirect, special or consequential loss or damage whatsoever; or
- (ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 22.3 The limitations and exclusions on liability in this clause 23 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.

- 23.4 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
- for the acts or omissions of your Representatives or any third party;
 - for any act or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
 - to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

24. General

- 24.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Queenstown, New Zealand.
- 24.2 **Previous Agreements:** These Terms constitute the entire agreement of the parties about its subject matter and supersedes any previous written agreements and written representations.
- 24.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 24.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owing by you to us.
- 24.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 24.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 24.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 24.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 24.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 24.10 **Relationship:** We will provide Products and Services to you as an independent service provider. Nothing in these Terms creates any partnership, joint venture or employment relationship between the parties.
- 24.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 24.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

25. Definitions

- Amount Owing** means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 7.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owing by you.
- Business Day** means Monday to Friday, excluding public holidays in New Zealand.
- Confidential Information** means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable), and intellectual property rights, but excludes information which is:
- in the public domain, other than as a result of a breach of these Terms;
 - in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
 - is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.
- Consumer** has the meaning given to that term in the Consumers Guarantees Act 1993.
- Delivery Date** means the date for delivery of the Products and/or Services, as specified in the Order.
- Insolvency Event** means, in relation to a party, any step is taken toward any of the following steps, or any of the following steps has occurred:
- the primary, or all, of its business activities being suspended or ceasing;
 - the presentation of an application for its liquidation;
 - the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
 - the appointment of a liquidator, receiver, statutory manager, or similar official;
 - the suspension or threatened suspension of the payment of its debts;
 - the enforcement of any security against the whole or a substantial part of its assets;
 - if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
 - any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,
- in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.
- Order** means an Order for Products or Services that you submit to us, and we approve, in accordance with clause 2.
- Personal Information** has the meaning given to that term in the Privacy Act 2020.
- PPSA** means the Personal Property Securities Act 1999.
- Price** means the Price payable, in accordance with clause 7.1.
- Products** means any Products (and associated Services) supplied by us to you at any time, including the Products specified in an Order.
- Regulator** means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.
- Related Company** has the meaning given to it in the Companies Act 1993, read as if a reference to company has a reference to any body corporate of any jurisdiction.
- Representatives** means directors, officers, employees, agents and contractors of the relevant party.

Services means any Services supplied by us to you at any time, including the Services specified in an Order.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

Terms means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

We or us means the supplier of Products and Services, Southern Spas and Pools Otago Limited T/A Southern Spas and Pools.

You or your means the customer purchasing Products and Services from us.

26. Interpretation

- 26.1 In these Terms, unless the context otherwise requires:
- headings are for convenience only and do not affect interpretation;
 - a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - a reference to "in writing" includes by email;
 - the words "include" or "including", or similar expressions, are to be construed without limitation;
 - a reference to a party to include that party's successors and permitted assigns and substitutes; and
 - a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details additional specific terms that apply to your order of the Products and Services.

27. Payment by third parties

- 27.1 Where you are the person requesting or organising us to supply the Products or Services is/ or are acting on behalf of any third parties you acknowledge and agree that:
- 1 person shall be appointed by the third parties to represent them for the purposes of this contract as so identified and notified to us in writing; and
 - if those third parties are intended to be responsible for the payment of the Price, then it shall be your responsibility to collect the contributions from each party. In the event that any third-party does not pay for the Products and Services when due, then you shall be liable for that portion of the Price as if you had contracted the Products and Services on your own behalf.

28. Additional charges

- 28.1 We reserve the right to vary the Price in the event of:
- a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - additional Services required (including labour, machine hire and Products) due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the worksite, obscured worksite defects, items or ground conditions that delay the Services, where remedial or extra work is required due to unstable ground, rock, shale and high ground water levels, incorrect measurements, plans and/or specifications provided by you, as a result of delays from third party suppliers, safety considerations, prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, etc.) which are only discovered on commencement of the Services; or
 - the Products ceasing to be available from our third party suppliers, then we reserve the right to provide alternative Products, subject to prior confirmation and agreement of both parties; or
 - the completion of the Services takes longer than 6 months from the commencement date, or from the pool shell arriving in stock (whichever is the later date). In which case the next progress payment/instalment will be required to be paid to us to cover the value of the pool shell being held in stock.
- 28.2 Any variations to the Price will be dealt with in accordance with the provisions of clause 2.5.
29. **Information we provide**
- 29.1 Any advice, recommendation, information or assistance provided by us in relation to the Products and Services supplied is given in good faith to you, or your agent and is based on our own knowledge and experience and shall be accepted without liability on our part. Where such advice or recommendations are not acted upon then we shall require you or your agent to authorise commencement of the Services in writing. We shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, we offer no warranty in regard to the aforementioned.
30. **Your acknowledgment**
- 30.1 You acknowledge and accept that:
- when you are purchasing the construction of the pool based on plans provided that in the event of any changes in regulations or decisions made by local authorities (councils etc.) after acceptance of the quote may result in additional costs to satisfy the necessary specifications in order to satisfy these requirements;
 - we do not accept liability for any Services carried out by any other third party contracted you;
 - you agree to indemnify us from any damage caused by any other tradesman engaged by you during and after the completion of the Services (including, but not limited to, an unsuitable excavation surface for installation). We reserve the right to halt the Services until such time as it is rectified and if we are instructed to do this, it will become a variation to the original quotation and will be charged in accordance with clause 2.5.;
 - Products supplied may exhibit variations in shade, colour, texture, surface and finish, grain, markings, veining, and contain natural fissures, occlusions, and indentations, and may fade or change colour over time. Whilst we will make every effort to match batches of product supplied in order to minimise such variations, or sales sample to the finished Products, we accept no liability whatsoever where such samples/batches differ to the finished Products supplied;
 - Products supplied may mark or stain if exposed to certain substances, and/or be damaged or disfigured by impact or scratching;
 - timber is a hygroscopic material and may expand, contract, or distort a result of exposure to heat, cold, weather, therefore we will accept no responsibility for gaps that may appear during prolonged dry periods;
 - we are only responsible for parts that are replaced by us and do not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, you agree to indemnify us against any loss or damage to the Products, or caused by the Products, or any part thereof howsoever arising; goods and/or services you, or your sub-contractors, have supplied for us to complete the Services, shall be at the sole risk of you. Furthermore, you accept and agree the responsibility for the suitability of purpose, quality and any faults inherent in those goods and/or services. We shall not be

- responsible for any defects in those goods and/or services, or any loss or damage to the Services (or any part thereof), howsoever arising from the use of the goods and/or services;
- (i) we do not accept liability for:
- (i) any inferior existing paintwork where our paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish;
- (ii) the quality of the Services (or any other work undertaken by you or third party) if you do not follow our recommendations as to the number of coats of paint required to obtain the final finish and you choose to accept fewer coats of paint;
- (iii) any loss or damage to the Services (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
- (j) we give no guarantee (expressed or implied) against crazing, cracking, chipping, or scratching that may occur that is beyond our control due to the nature of the Products at the time of installation, therefore it is recommended that you allow for extra quantities for such breakages; and
- (k) whilst we will take all due care during installation, we will not accept any responsibility for tiles or pavers damaged during installation;
- (l) where fencing is installed on a retaining wall, we shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall; and
- (m) we shall not be responsible for digging land out under fence lines nor removal of soil from the worksite.
- 30.2 We will use reasonable endeavours to match the Products to existing goods. However, the parties recognise that it may not be possible to provide an exact matching, and in such event there shall be no claim against us.
- 30.3 We give no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally, such as:
- (a) hairline cracking of paving and grout; or
- (b) damage caused by contact with chemicals, solvents, oils, or any other substances; or
- (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 30.4 You acknowledge and agree that it is your responsibility to organise and be liable for all costs associated with protecting concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that concrete is destroyed or damaged due to vandalism, then the cost of repair or replacement shall be borne by you.
- 30.5 We shall not be liable for any defect in the Services if you do not follow our recommendation to:
- (a) water any concrete periodically to limit the risk of possible cracking due to weather conditions;
- (b) ensure that no foot traffic and/or any vehicles be allowed on concrete for a minimum of 48 hours but preferably 7 days;
- (c) ensure that no heavy furniture be placed on new surfaces for a minimum of 24 hours.
- 31. Your responsibilities**
- 31.1 It shall be your responsibility to:
- (a) make the worksite available on the agreed date/s and time/s. In the event we are unable to provide the Services as agreed solely due to any action or inaction of you (including any request by you to delay the Services less than 3 weeks from the agreed commencement date, or if the Services are delayed or interrupted by the failure of you to adhere to the work schedule agreed to between us and you), any additional costs will be invoiced to you; and
- (b) remove obstructions on the worksite in order for the Services to be provided by us (including clotheslines, etc.) and make good such items and all finished surfaces (including, but not limited to, tiles and panels, brickwork and rendered masonry surfaces, etc.) which we may have to break into, or disturb, in provision of the Services.
- 31.2 Unless otherwise agreed in writing between you and us, it shall be your responsibility to, prior to us commencing the Services advise us of the precise location of all underground services on the worksite and clearly mark the same. The underground mains and services you 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 the worksite. Whilst we will take all care to avoid damage to any underground services you agree to indemnify us 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.
- 31.3 Where you supply us with any design specifications (including, but not limited to CAD drawings), you shall be responsible for providing accurate data. We shall not be liable whatsoever for any errors or omissions in the Services that are caused by incorrect or inaccurate data being supplied by you.
- 31.4 Unless specified otherwise in this contract, it is your responsibility to:
- (a) be on the worksite to supervise the marking out of the fence line, placement of pegs and during the installation of the fence. If you fail to comply with this clause, then we accept no responsibility for installation decisions that need to be made by us in your absence;
- (b) remove any existing fence (including existing footings), trees, vines, and shrubs to allow us clear access along the proposed fence line prior to commencement of the Services by us, unless otherwise agreed in writing between us and you. Under no circumstances will we handle removal of asbestos product;
- (c) provide us with a suitable free power source;
- (d) arrange the following:
- (i) diversion of any storm water, sewer or water supply pipe, electricity cable, telephone cable or gas pipes; and
- (ii) thyme ripping or de-watering of the worksite, (shoring pumping, etc.) and/or peering and beaming, including extra steel and concrete.
- (e) prepare any lawns, shrubs, plants, and trees which are required for re-planting;
- (f) supply water for the filling of the pool;
- (g) arrange any installation of a new storm water, sewerage or water supply pipes, electricity cable, telephone cables, or gas pipes;
- (h) any fencing, water meters, vacuum breaker valves, etc. or any other requirements as may be imposed by local or government body as a requirement or condition or building consent application;
- (i) supply electricity to the filter-electrical installation for underwater light if applicable and earth wire connection;
- (j) advise the location of boundaries and the location, elevation and dimensions for the proposed site of the pool; and
- (k) ensure that:
- (i) no pathways be built around pool, over filtration lines, whilst pool under construction. Keep the pool isolated from outside structures;
- (ii) any surface requiring waterproofing is suitable for the purpose. In the event that you request us to prepare the surface for waterproofing, then at our sole discretion a fee shall be charged for the Services, and shall become immediately due and payable;
- (iii) no other tradesmen work on the membrane applied to the surface, until the membrane is fully dried and cured to manufacturer's specifications. We shall not be liable for any costs, damages or loss however arising from your failure to comply with this clause.
- 31.5 Following installation, the care, maintenance, and cleanliness of a pool shall be the responsibility of you.
- 31.6 We will not accept any liability for discolouration, staining or roughness which may occur to or upon the pool surfaced caused by algae infestation, calcium scales, weed or vegetation deposit or mineral build up.
- 31.7 You accept that some ground settling after installation of pools may occur and therefore also accepts that any settling that falls within industry and New Zealand Pool Standards shall not be considered a defect.
- 32. Suspension of Services**
- 32.1 Where the contract is subject to section 24A of the Construction Contracts Act 2002, you hereby expressly acknowledge that:
- (a) We have the right to suspend work within 5 working days of written notice of its intent to do so if a payment claim is served on you, and:
- (i) the payment is not paid in full by the due date for payment in accordance with clause 8 and/or any subsequent amendments or new legislation and no payment schedule has been given by you; or
- (ii) a scheduled amount stated in a payment schedule issued by you in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) you have not complied with an adjudicator's notice that you must pay an amount to us by a particular date; and
- (iv) we have given written notice to you of our intention to suspend the carrying out of work under the construction Contract.
- (b) if we suspend work, we:
- (i) are not in breach of contract; and
- (ii) are not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by you or by any person claiming through you; and
- (iii) are entitled to an extension of time to complete the contract; and
- (iv) keep our rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if we exercise the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to us under the Contract and Commercial Law Act 2017; or
- (ii) enable you to exercise any rights that may otherwise have been available to you under that Act as a direct consequence of us suspending work under this provision.
- (d) due to any act or omission by you, you effectively preclude us from continuing the Services or performing or complying with our obligations under this contract, then without prejudice to us other rights and remedies, we may suspend the Services immediately after serving on you a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by us as a result of such suspension and recommencement shall be payable by you as if they were a variation.
- 32.2 If pursuant to any right conferred by this contract, we suspend the Services and the default that led to that suspension continues un-remedied subject to clause 6.1 for at least 10 working days, we shall be entitled to terminate the contract, in accordance with clause 6.