

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using SSP’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting SSP to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means all Goods or Services supplied by SSP to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Services.
- 1.6 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with construction works:
(a) the product is not, or will not be, safe; or
(b) does not, or will not, comply with the relevant regulatory provisions; or
(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between SSP and the Customer in accordance with clause 6 below.
- 1.8 **“SSP”** means Southern Spas and Pools Otago Limited T/A Southern Spas and Pools, its successors and assigns.
- 1.9 **“Worksite”** means the address nominated by the Customer to which the Services are to be supplied by SSP.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
(a) that the supply of Services on credit shall not take effect until the Customer has completed a credit application with SSP and it has been approved with a credit limit established for the account. In the event that the supply of Services requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, SSP reserves the right to refuse delivery;
(b) the provision of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not, or cease to be, available, SSP reserves the right to vary the Price with alternative Goods as per clause 6.2(d). SSP also reserves the right to halt the provision of the Services until such time as SSP and the Customer agree to such variation;
(c) when the Customer is 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;
(d) SSP does not accept liability for any Services carried out by any other third party contracted by the Customer;
(e) the Customer agrees to indemnify SSP from any damage caused by any other tradesman engaged by the Customer during and after the completion of the Services (including, but not limited to, an unsuitable excavation surface for installation). SSP reserves the right to halt the Services until such time as it is rectified and if SSP is instructed to do this, it will become a variation to the original quotation and will be charged in accordance with clause 6.2.
- 2.5 Any advice, recommendation, information, assistance, or service provided by SSP in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer’s agent and is based on SSP’s own knowledge and experience and shall be accepted without liability on the part of SSP. Where such advice or recommendations are not acted upon then SSP shall require the Customer or their agent to authorise commencement of the Services in writing. SSP shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Customer agrees that should the Customer introduce any third party (including, but not limited to, another company or consultant) to SSP as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services, and/or to request any variation thereto, on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies SSP in writing that said person is no longer the Customer’s duly authorised representative).

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- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise SSP in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to SSP for all additional costs incurred by SSP (including SSP's profit margin) in providing any Services, or variation/s thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that SSP shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by SSP in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SSP in respect of the Services.
- 4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of SSP; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by SSP arising from the error or omission.
- 5. Change in Control**
- 5.1 The Customer shall give SSP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by SSP as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At SSP's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by SSP to the Customer in respect of Services performed or Goods supplied; or
 - (b) SSP's Price at the date of delivery of the Services according to SSP's current price list; or
 - (c) SSP's quoted Price (subject to clause 6.2) which shall be binding upon SSP provided that the Customer shall accept SSP's quotation in writing within thirty (30) days.
- 6.2 SSP reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services (including labour, machine hire and Goods) are required 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 the Customer, 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
 - (d) if during the course of the Services, the Goods cease to be available from SSP's third party suppliers, then SSP reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (e) as a result of an increase in SSP's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services and/or fluctuations in currency exchange rates, which are outside the control of SSP; or
 - (f) in the event the completion of the Services takes longer than six (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 SSP to cover the value of the pool shell being held in stock.
- 6.3 Variations will be charged for on the basis of SSP's quotation, and will be detailed in writing, and shown as variations on SSP's invoice. The Customer shall be required to respond to any variation submitted by SSP within ten (10) working days. Failure to do so will entitle SSP to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At SSP's sole discretion, a reasonable non-refundable deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by SSP, which may be:
- (a) on or before delivery of the Goods; or
 - (b) by way of instalments/progress payments in accordance with SSP's payment schedule. Such payment claims may include the value of the Services so performed and shall include the reasonable value of authorised variations, whether or not the value of such variations has finally been agreed between the parties, and the value of materials delivered to the Worksite, or held in storage on the Customer's behalf but not yet installed; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by SSP.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with Subpart 2A of the Construction Contracts Act 2002 and as such no Retention Money shall be used other than to remedy defects in the performance of SSP's obligations under the Contract.
- 6.7 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and SSP.

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- 6.8 SSP may in its discretion allocate any payment received from the Customer towards any invoice that SSP determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer SSP may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SSP, payment will be deemed to be allocated in such manner as preserves the maximum value of SSP's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SSP nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by SSP is a claim made under the Construction Contracts Act 2002. Nothing in this clause 6.9 prevents the Customer from the ability to dispute any invoice.
- 6.10 Unless otherwise stated, the Price **includes** GST, which is an amount equal to any GST SSP must pay for any provision of Works by SSP under this, or any other, agreement. The GST component must be paid by the Customer, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

7. Provision of the Services

- 7.1 The cost of delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 7.2 Subject to clause 7.3 it is SSP's responsibility to ensure that the Services start as soon as it is reasonably possible, and the Customer's responsibility is to be ready for the work to commence.
- 7.3 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that SSP claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond SSP's control, including, but not limited to, any failure by the Customer to:
- make a selection; or
 - be ready for the work to commence; or
 - have the Worksite ready for the Services; or
 - notify SSP that the Worksite is ready.
- 7.4 SSP may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by SSP for delivery of the Services is an estimate only and SSP will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that SSP is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then SSP shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.

8. Worksite Access and Condition

- 8.1 SSP is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by SSP will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
- 8.2 It is the intention of SSP and agreed by the Customer that:
- the Customer shall ensure that SSP has clear and free access to the Worksite at all times to enable them to undertake the Services (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). SSP shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SSP;
 - it is the Customer's responsibility to provide SSP, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - the Customer shall contact adjoining neighbours and gain their permission to remove any walls or fences on boundaries and unless otherwise agreed, it shall be the Customer's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Services by SSP and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 8.2(c) in the event that the Worksite is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Customer.
- 8.3 The Customer agrees to be present at the Worksite when and as reasonably requested by SSP and its employees, contractors and/or agents.
- 8.4 *Worksite Inductions*
- in the event the Customer requires an employee or sub-contractor of SSP to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay SSP's standard (and/or overtime, if applicable) hourly labour rate; or
 - where SSP is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out SSP's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by SSP.

9. Risk

- 9.1 If SSP retains ownership of the Goods under clause 13 then:
- where SSP is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. If any of the Goods are damaged or destroyed following delivery, but prior to ownership passing to the Customer, SSP is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SSP is sufficient evidence of SSP's rights to receive the insurance proceeds without the need for any person dealing with SSP to make further enquiries; and

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- (b) if the Customer requests SSP to leave Goods outside SSP's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk. At SSP's sole discretion, any delivery costs shall be in addition to, the Price. Delivery of the Goods shall be deemed to have taken place immediately at the time that:
- the Customer or the Customer's nominated carrier takes possession of the Goods at SSP's address; or
 - the Goods are delivered by SSP or SSP's nominated carrier to the Worksite (even if the Customer is not present).
- (c) where SSP is to both supply and install Goods, then SSP shall maintain a contract works insurance policy until the Services are completed. It is the Customer's responsibility to ensure that they are similarly insured.
- 9.2 Notwithstanding the provisions of clause 9.1, where SSP requires that Goods, fittings and appliances, or plant and tools required for the Services be stored at the Worksite, the Customer shall supply SSP a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 9.3 Where SSP gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the Worksite for the Services, or the use of Goods for the Customer's intended purpose, and such advice or recommendations are not acted upon, then SSP shall:
- require the Customer or their agent to authorise commencement of the Services in writing; and/or
 - not be liable in any way whatsoever for any damages or losses that occur after any subsequent provision of the Services.
- 9.4 The Customer acknowledges that:
- Goods 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 SSP will make every effort to match batches of product supplied in order to minimise such variations, or sales sample to the finished Goods, SSP accepts no liability whatsoever where such samples/batches differ to the finished Goods supplied;
 - Goods 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 SSP will accept no responsibility for gaps that may appear during prolonged dry periods;
 - SSP is only responsible for parts that are replaced by SSP and does 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, the Customer agrees to indemnify SSP against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - notwithstanding clause 9.1, Goods and/or Services the Customer, or the Customer's sub-contractors, have supplied, including for SSP to complete the Services, shall be at the sole risk of the Customer. Furthermore, the Customer accepts and agrees the responsibility for the suitability of purpose, quality and any faults inherent in those Goods and/or Services. SSP 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;
 - SSP does not accept liability for:
 - any inferior existing paintwork where SSP's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish;
 - the quality of the Services (or any other work undertaken by the Customer or third party) if the Customer does not follow SSP's recommendations as to the number of coats of paint required to obtain the final finish and the Customer chooses to accept fewer coats of paint;
 - any loss or damage to the Services (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
 - SSP gives no guarantee (expressed or implied) against crazing, cracking, chipping, or scratching that may occur that is beyond SSP's control due to the nature of the Goods at the time of installation, therefore it is recommended that the Customer allows for extra quantities for such breakages; and
 - whilst SSP will take all due care during installation, SSP will not accept any responsibility for tiles or pavers damaged during installation;
 - where fencing is installed on a retaining wall, SSP 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
 - SSP shall not be responsible for digging land out under fence lines nor removal of soil from the Worksite.
- 9.5 SSP will use reasonable endeavours to match the Goods 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 SSP.
- 9.6 SSP gives 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:
- hairline cracking of paving and grout; or
 - damage caused by contact with chemicals, solvents, oils, or any other substances; or
 - the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 9.7 The Customer acknowledges and agrees that it is their 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 the Customer.
- 9.8 SSP shall not be liable for any defect in the Services if the Customer does not follow SSP's recommendation to:
- water any concrete periodically to limit the risk of possible cracking due to weather conditions;
 - ensure that no foot traffic and/or any vehicles be allowed on concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - ensure that no heavy furniture be placed on new surfaces for a minimum of twenty-four (24) hours.

10. Customer's Responsibilities

10.1 It shall be the Customer's responsibility to:

- make the Worksite available on the agreed date/s and time/s. In the event SSP is unable to provide the Services as agreed solely due to any action or inaction of the Customer (including any request by the Customer to delay the Services less than three (3) weeks from the agreed commencement date, or if the Services are delayed or interrupted by the failure of the Customer to adhere to the work schedule agreed to between SSP and the Customer), any additional costs will be invoiced to the Customer as per clause 6.2;

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- (b) remove obstructions on the Worksite in order for the Services to be provided by SSP (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 SSP make reasonably have to break into, or disturb, in provision of the Services.
- 10.2 Unless otherwise agreed in writing between the Customer and SSP, it shall be the Customer's responsibility to, prior to SSP commencing the Services, advise SSP of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer 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 SSP will take all care to avoid damage to any underground services the Customer agrees to indemnify SSP 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 this clause 10.2.
- 10.3 Where the Customer supplies SSP with any design specifications (including, but not limited to CAD drawings), the Customer shall be responsible for providing accurate data. SSP shall not be liable whatsoever for any errors or omissions in the Services that are caused by incorrect or inaccurate data being supplied by the Customer.
- 10.4 Unless specified otherwise in this Contract, it is the Customer's 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 the Customer fails to comply with this clause, then SSP accepts no responsibility for installation decisions that need to be made by SSP in the Customer's absence;
 - (b) remove any existing fence (including existing footings), trees, vines, and shrubs to allow SSP clear access along the proposed fence line prior to commencement of the Services by SSP, unless otherwise agreed in writing between SSP and the Customer. Under no circumstances will SSP handle removal of asbestos product;
 - (c) provide SSP 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 state 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 pool isolated from outside structures;
 - (ii) any surface requiring waterproofing is suitable for the purpose. In the event that the Customer requests SSP to prepare the surface for waterproofing, then at SSP's 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. SSP shall not be liable for any costs, damages or loss however arising from the Customer's failure to comply with this clause.
- 10.5 Following installation, the care, maintenance, and cleanliness of a pool shall be the responsibility of the Customer.
- 10.6 SSP 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.
- 10.7 The Customer accepts 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.
- 10.8 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time;
 - (b) expand, contract, or distort as a result of exposure to heat, cold, weather;
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 11. Compliance with Laws**
- 11.1 The Customer and SSP shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Customer has supplied products for SSP to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in SSP's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with New Zealand regulations, then SSP shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 11.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.5 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), SSP agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may

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be the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.

12. Insurance

12.1 SSP shall have public liability insurance of at least two million dollars (\$2m). It is the Customer's responsibility to ensure that they are similarly insured in respect of the swimming pool and/or its installation.

13. Title

13.1 SSP and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid SSP all amounts owing to SSP; and
- (b) the Customer has met all of its other obligations to SSP.

13.2 Receipt by SSP 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.

13.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to SSP on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SSP and must pay to SSP the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the production of these terms and conditions by SSP shall be sufficient evidence of SSP's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with SSP to make further enquiries;
- (d) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for SSP and must pay or deliver the proceeds to SSP on demand;
- (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SSP and must sell, dispose of or return the resulting product to SSP as it so directs;
- (f) unless the Goods have become fixtures the Customer irrevocably authorises SSP to enter any premises where SSP believes the Goods are kept and recover possession of the Goods;
- (g) SSP may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Customer 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 SSP; and
- (i) SSP may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 1999 ("PPSA")

14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by SSP to the Customer and the proceeds from such Goods as listed by SSP to the Customer in invoices rendered from time to time.

14.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SSP may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, SSP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of SSP; and
- (d) immediately advise SSP of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

14.3 Unless otherwise agreed to in writing by SSP, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.4 The Customer shall unconditionally ratify any actions taken by SSP under clauses 14.1 to 14.3.

14.5 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of SSP agreeing to supply the Services, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

15.2 The Customer indemnifies SSP from and against all SSP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SSP's rights under this clause.

15.3 The Customer irrevocably appoints SSP and each director of SSP as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Defects and Return in Goods

- 16.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify SSP of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Customer shall afford SSP an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which SSP has agreed in writing that the Customer is entitled to reject, SSP's liability is limited to either (at SSP's discretion) replacing the Goods or repairing the Goods.
- 16.2 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) SSP has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within ten (10) days of the delivery date; and
 - (d) SSP will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 If SSP accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 16.2(b) SSP will reimburse the Customer's actual and reasonable costs of return delivery.
- 16.4 SSP will not accept the return of Goods for credit.
- 16.5 Subject to clause 16.1, non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

17. Warranties

- 17.1 Subject to the conditions of warranty set out in clause 17.2 SSP warrants that if any defect in any workmanship provided by SSP becomes apparent and is reported to SSP within three (3) months of the date of delivery (time being of the essence) then SSP will either (at SSP's sole discretion) replace or remedy the defect.
- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods in accordance with SSP's "Handover Manual" and the manufacturer's documentation; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by SSP; or
 - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and SSP shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without SSP's consent.
 - (c) in respect of all claims SSP shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 17.3 For Goods not manufactured by SSP, the warranty shall be the current warranty provided by the manufacturer of the Goods. SSP shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

18. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by SSP to the Customer.
- 18.2 SSP agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

19. Intellectual Property

- 19.1 Where SSP has designed, drawn, written plans or a schedule of Services, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules, and products shall remain vested in SSP, and shall only be used by the Customer at SSP's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of SSP.
- 19.2 The Customer warrants that all designs, specifications, or instructions given to SSP will not cause SSP to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SSP against any action taken by a third party against SSP in respect of any such infringement.
- 19.3 The Customer agrees that SSP may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which SSP has created for the Customer.

20. Default and Consequences of Default

- 20.1 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 SSP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes SSP any money the Customer shall indemnify SSP from and against all costs and disbursements incurred by SSP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SSP's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies SSP may have under this Contract, if a Customer has made payment to SSP, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by

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- SSP under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 20.4 Without prejudice to SSP's other remedies at law SSP shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SSP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SSP becomes overdue, or in SSP's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by SSP;
 - (c) the Customer becomes insolvent or bankrupt, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 21. Cancellation**
- 21.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods or Services to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 21.2 If SSP, due to reasons beyond SSP's reasonable control, is unable to deliver any Goods or Services to the Customer, SSP may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or Services at any time before the Goods or Services are delivered by giving written notice to the Customer. On giving such notice SSP shall repay to the Customer any money paid by the Customer for the Goods or Services. SSP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 The Customer may cancel delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Customer to otherwise accept delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 21.4 Further to clause 21.3, in the event that the Customer cancels the provision of Services by SSP, the Customer:
- (a) shall provide SSP with written notice of such; and
 - (b) shall reimburse SSP all expenses to date (including, but not limited to, labour, travel, Goods and equipment purchased), holding costs of any pool shell at above overdue payments interest rate (as per clause 20.1) 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 the Customer.
- 21.5 In accordance with clause 6.4, should the Customer fail to collect or take delivery of the Goods ordered within thirty (30) days of written notification, then SSP may cancel this Contract and thereupon any monies paid by way of deposit but not exceeding fifteen percent (15%) of the total purchase Price could be forfeited to SSP as liquidated damages.
- 21.6 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Policy**
- 22.1 All emails, documents, images, or other recorded information held or used by SSP is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. SSP acknowledges its obligation in relation to the handling, use, disclosure, and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. SSP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by SSP that may result in serious harm to the Customer, SSP will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to SSP in respect of Cookies where the Customer utilises SSP's website to make enquiries. SSP agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to SSP when SSP sends an email to the Customer, so SSP may collect and review that information ("collectively Personal Information").
- If the Customer consents to SSP's use of Cookies on SSP's website and later wishes to withdraw that consent, the Customer may manage and control SSP's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises SSP or SSP's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by SSP from the Customer directly or obtained by SSP from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from SSP, a copy of the Personal Information about the Customer retained by SSP and the right to request that SSP correct any incorrect Personal Information.
- 22.6 SSP will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.7 The Customer can make a privacy complaint by contacting SSP via e-mail. SSP 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 twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Suspension of Services

- 23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- (a) SSP has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to SSP by a particular date; and
 - (iv) SSP has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if SSP suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its 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 SSP exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to SSP under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of SSP suspending work under this provision;
 - (d) due to any act or omission by the Customer, the Customer effectively precludes SSP from continuing the Services or performing or complying with SSP's obligations under this Contract, then without prejudice to SSP's other rights and remedies, SSP may suspend the Services immediately after serving on the Customer 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 SSP as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 23.2 If pursuant to any right conferred by this Contract, SSP suspends the Services and the default that led to that suspension continues unremedied subject to clause 21.1 for at least ten (10) working days, SSP shall be entitled to terminate the Contract, in accordance with clause 21.

24. Service of Notices

- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

- 25.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not SSP may have notice of the Trust, the Customer covenants with SSP as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not during the term of the Contract without consent in writing of SSP (SSP will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by

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- notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Queenstown, New Zealand.
- 26.4 Subject to the CGA, the liability of SSP and the Customer under this Contract shall be limited to the Price.
- 26.5 SSP may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 26.6 The Customer cannot licence or assign without the written approval of SSP.
- 26.7 SSP may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of SSP's sub-contractors without the authority of SSP.
- 26.8 The Customer agrees that SSP may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for SSP to provide Services to the Customer.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to SSP, following cessation of a Force Majeure.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.