

## TERMS AND CONDITIONS OF TRADE FOR AUCKLAND INGROUND POOLS LIMITED

### 1. DEFINITIONS

- 1.1 "AIPL" shall mean Auckland Inground Pools Limited, its successors and assigns or any person acting on behalf of and with the authority of Auckland Inground Pools Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described in any quotation, work authorisation or other form as provided by AIPL to the Client, and
- (a) should there be more than one Client, any reference to Client is a reference to each Client jointly and severally;
- (b) if the Client is a partnership, it shall bind each partner jointly and severally;
- (c) if the Client is a Company, the directors shall also provide a personal guarantee;
- (d) if the Client is a Trustee of a Trust, it shall be bound in their capacity as a Trustee of a Trust and warrants it has the authority to bind each Trustee jointly and severally; and
- (e) shall include the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Guarantor" shall mean that person (or persons), or entity who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by AIPL to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described in any invoices, quotation, work authorization or any other forms as provided by AIPL to the Client.
- 1.5 "Services" shall mean all works and/or services supplied by AIPL to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above.
- 1.6 "Price" shall mean the price payable for the Goods as agreed between AIPL and the Client in accordance with clause 3 of this contract.
- 1.7 "Property" shall mean any property owned by the Client, whether in owned in the Client's personal capacity or on Trust.
- 1.8 "Terms" shall mean these Terms and Conditions of Trade, together with any quotation, or other document or contract which is included with these Terms.
- 1.9 "Work" shall mean any work undertaken by AIPL for a Client and includes supplying Goods or Services.

### 2. GENERAL

- 2.1 Payment claims are made under the Construction Contracts Act 2002. Any Goods, Services, or Work supplied by AIPL to the Client will be supplied on these Terms. If the Client orders Work, the Client will be deemed to have accepted these Terms. The only circumstance where any variation to these Terms will apply is where AIPL has expressly agreed in writing to that variation.

### 3. ACCEPTANCE

- 3.1 Any offer made by AIPL remains open for 30 days from the date the agreement is signed. The offer will lapse after 30 days, unless earlier withdrawn by AIPL in writing to you. Upon acceptance by the Client, the specific terms contained within the quotation and these Terms will apply.

### 4. PRICE

- 4.1 The Price is GST inclusive unless otherwise specified.
- 4.2 AIPL reserves the right to adjust the Price:
- (a) If a variation to the Goods or Services which are to be provided or scheduled is requested.
- (b) Where additional Services (including machine hireage, expert reports such as geotechnical reports, or otherwise)

are required due to unforeseen circumstances (including but not limited to, non-disclosure of defects in the Property by the Client, defects in the worksite, ground conditions, where remedial work to the Property is required, or any other issues) which are only discovered on the commencement or during the provisions of Services.

- (c) If any Goods or Services cease to be available from AIPL's suppliers, AIPL reserves the right to provide alternative Goods, subject to agreement from the Client.
- (d) Where there is an increase to AIPL's costs due to any legislative changes, changes in the economy, matters completed by clause 12 of these Terms, or any circumstances outside of AIPL's control, which result in AIPL's costs in providing the Goods or Services exceeding 5% of AIPL's original cost price (meaning the actual cost for AIPL to purchase the Goods or provide Services).

### 5. PAYMENT

- 5.1 The deposit and progress payments shall be paid in the manner as described on AIPL invoice. Payment shall be due 7 days following the date of the invoice, unless otherwise specified on the invoice. Overdue payments may incur a monthly penalty interest fee of 2.5% on the overdue balance, and a withdrawal of services until payment is brought up to date.
- 5.2 AIPL may submit a detailed payment claim for Work performed up to the date of the invoice. The value of Work performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site, or held in storage on the Client's behalf, but not yet installed.
- 5.3 If, despite the contract being binding, AIPL agrees to terminate a project prior to completion, the Client will pay for all Work completed by AIPL along with all disbursements incurred, including ordered product, up to the date of agreed termination.

### 6. RISK & TITLE

- 6.1 All risk in the Work supplied by AIPL shall pass to the Client on delivery to site.
- 6.2 Title in the Goods passes to the Client on payment in full of the Price as set out in the contract.
- 6.3 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, AIPL is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by AIPL is sufficient evidence of AIPL's rights to receive the insurance proceeds without the need for any person dealing with AIPL to make further enquiries. AIPL holds a General Liability insurance for a level of \$10,000,000.00 which covers any third-party loss or damage arising directly from the contract.

- 6.4 Following installation the care, maintenance and cleanliness of a pool shall be responsibility of the Client.

- 6.5 The Client acknowledges and agrees to the matters set out in Schedule One of these Terms.

### 7. DAMAGES AND DEFECTS

- 7.1 AIPL will take all due care to preserve the natural surroundings of the Client's property however AIPL shall not be liable for any loss or damage (including, but not limited) to gardens, trees, lawns, shrubs, fences, paths or driveways which may be caused by the ordinary operation of trucks, machinery vehicles or equipment.

### 8. WARRANTIES

- 8.1 AIPL warrants that the Work will be performed in a good and skilful manner and in accordance with all manufacturer's warranties. Full warranty will not apply until payment has been received in full.
- 8.2 AIPL warrant the Work in respect of defects for a period of 12 months from the date of completion of all Work, but such warranty shall not apply:
- (a) to damage to the pool plaster & shell caused by failure to maintain proper water levels, underground water tables rising

- above the lowest point of the pool, or damages caused by earth of fill ground movement, earthquake, impact damage, acts of God or acts of others;
- (b) to defects which would be apparent on delivery unless a written claim is received by AIPL within 2 days;
- (c) to Work which has been repaired by any person not authorised by AIPL to do such repairs;
- (d) to any Work which has been modified in any way;
- (e) if the recommendations as to use, installation or maintenance of the Work as advised by AIPL have not been adhered to (in accordance with the matters set out in Schedule One);
- (f) to any Work, parts or components not manufactured by AIPL;
- 8.3 Except for the warranty in clause 9.2, all warranties, descriptions, representations or conditions whether implied by the Contract and Commercial Law Act 2017 or otherwise are expressly excluded to the fullest extent permitted by law.
- 8.4 Nothing in these Terms shall limit or restrict the rights or remedies under the Consumer Guarantees Act 1993 or the Fair-Trading Act 1996 if applicable.
- 8.5 In any event, the total liability of AIPL whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any goods or any other breach of AIPL's obligations shall in any case be limited at AIPL's option, except where statute expressly requires otherwise, to either the repair or replacement of the goods complained of, or the refund of the purchase price (provided that if AIPL is no longer manufacturing the identical product at the time of the claim, it may replace the product with the closest equivalent then being manufactured).
- 8.6 While AIPL will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by AIPL in relation to the Work that is goods manufactured or supplied by AIPL or their use or application, AIPL does not accept any liability or responsibility in respect thereof.
- 8.7 AIPL will have no liability either in contract or in tort for any loss suffered by the Client or any third party claiming through the Client for which AIPL has not accepted in writing for such loss.
- 9. SEVERANCE**
- 9.1 If any clause or part of a clause of these Terms is held to be invalid or unenforceable for whatever reason to the extent not inconsistent with the aforementioned invalid clause, the remaining provisions shall remain in full force and effect.
- 10. FORCE MAJEURE AND DELAY**
- 10.1 AIPL shall not be liable for any delay in performing its obligations under this agreement to the Client caused in whole or in part by force majeure which shall include (but not limited to) an act of God, natural disasters, strikes, lockout, fire, war suit, civil commotion, inability to obtain products or supplies including the imposition of any export or import bans or any other cause beyond the reasonable control of the Company.
- 10.2 Any time or date given by AIPL for delivery or uplifting of Work is intended only as an estimate and AIPL shall not be liable for the consequences of delay however arising and the Client acknowledges that AIPL will not accept any liability for (a) any claims or losses arising from its failure to meet the delivery date (if any).
- 11. NOTICES**
- 11.1 Every notice to be given under these Terms shall be in writing, addressed to the person to whom it affects, dated, and signed by the author.
- 12. DISPUTED INVOICES**
- 12.1 If you believe there is an error on your invoice or you dispute any charges, you must notify Auckland Inground Pools in writing before the payment due date.
- 12.2 Notifications of disputed invoices should be sent to our billing department via email at [accounts@aucklandingroundpools.co.nz](mailto:accounts@aucklandingroundpools.co.nz).
- 12.3 Your written notice must include the invoice number, the specific items in dispute, and a detailed explanation of the reason for the dispute.
- 13. INTELLECTUAL PROPERTY**
- 13.1 Where AIPL (or its affiliates) has designed or drawn the Goods for the Client, then the copyright in those designs and drawings and related documents remain the property of AIPL and shall only be used by the Client at AIPL's discretion.
- 14. AGENCY**
- 14.1 The Client authorises AIPL to contract either as principal or agent for the provision of goods or services that are the subject matter of these Terms.
- 14.2 Where AIPL enters into a contract of the type referred to in clause 23.1 it shall be read with, and form part of this agreement and the Client agrees to pay any amounts due under that contract.
- 15. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 15.1 Upon accepting these Terms either in writing, or by conduct as noted under clause 21.6, the Client acknowledges and agrees that:
- (a) These Terms constitute a security agreement for the purposes of the PPSA.
- (b) A security interest is taken in all Goods previously supplied by AIPL to the Client (if any) and all Goods that will be supplied in the future by AIPL to the Client.
- 15.2 The Client undertakes and agrees to:
- (a) Sign any further documents and/or provide any further information which AIPL may reasonably require to register a financing statement on the Personal Property Securities Register;
- (b) Indemnify and on demand reimburse AIPL for all expenses incurred in registering a financing statement or releasing any Goods charged; and
- (c) Not register a financing change statement or a change demand without the prior written consent of AIPL.
- 16. SECURITY**
- 16.1 Notwithstanding AIPL's rights under clause 17, the Client agrees as follows:
- (a) If the Client fails to make payment for any Goods or Services when the same is due, then without prejudice to any other remedy available at law, the Client hereby confirms these terms of trade shall constitute an agreement to mortgage to secure any payment owing to AIPL, and the Client shall (where required by AIPL) sign all authorities required to enable AIPL to take a registrable mortgage over the Client's Property, to the intent that in the sole discretion of AIPL, AIPL may register and sustain a caveat over such Property owned by the Client.
- 16.2 Should a client sign these terms of trade in their personal capacity, but owns or holds property as Trustee of a Trust, the Client hereby warrants:
- (a) They enter into these Terms of Trade as Trustee of the Trust;
- (b) They have authority to bind the Trustees of the Trust.
- (c) The Client will not without the consent in writing of AIPL (which AIPL shall not unreasonably withhold), cause, permit, or suffer to happen, any of the following:
- (i) The removal, replacement, retirement of the Client as Trustee of the Trust;
- (ii) The alteration or variation of the Trust Deed;
- (iii) The advancement or distribution of the capital of the Trust; or

- (iv) Any resettlement of property owned by the Trustees of the Trust.
- 17. DEFAULT**
- 17.1 Should the Client default in payment of any monies due to AIPL, then:
- (a) All monies due by the Client to AIPL shall immediately become due and payable, and where AIPL has not received payment from the Client within 7 days after the due date of an Invoice, AIPL may impose a late fee of 2.5% per month on the outstanding balance until paid in full;
- (b) AIPL may suspend further deliveries of Goods to the Client until the Client has paid all monies due to AIPL;
- (c) AIPL may suspend the provision of Services to the Client until the Client has paid all monies due by to AIPL;
- (d) If Client has not paid an invoice for more than 90 days, AIPL may refer collection of the unpaid amount to its lawyer or collections agency. If the Client's unpaid invoices are referred to a lawyer or collections agency, the Client shall pay all reasonable legal fees or collections agency fees;
- (e) The Client shall be liable to reimburse AIPL for any fees, expenses, costs or disbursements including debt collection agency fees or legal fees (on a solicitor client basis) incurred by AIPL in recovering or attempting to recover any outstanding monies and the Client shall fully indemnify AIPL in respect of such costs.
- 18. GUARANTEE**
- 18.1 Where AIPL requires a party to enter into these terms as Guarantor, that party shall be deemed as the guarantor of the Client, and that Guarantor shall be bound by these Terms.
- 18.2 In consideration of AIPL agreeing to provide the Client with an account at the Guarantor's request, the Guarantor guarantees payment in accordance with the Terms. The Guarantor covenants to AIPL that:
- (a) No release delay or other indulgence given by AIPL to the Client or to the Client's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- (b) As between the Guarantor and AIPL, the Guarantor may for all purposes be treated as the Client and AIPL shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor.
- (c) The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the payment.
- (d) Should there be more than one Guarantor, their liability under this guarantee shall be joint and several.
- 19. MISCELLANEOUS**
- 19.1 If at any time AIPL does not enforce any of these Terms or grants the Client time or other indulgence, AIPL shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- 19.2 AIPL shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AIPL of these Terms.
- 19.3 The failure by AIPL to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect AIPL's right to subsequently enforce that provision.
- 19.4 In the event of any breach of this contract by AIPL the remedies of the Client shall be limited to damages which under no circumstances shall exceed the price of the Goods.
- 19.5 AIPL may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client and any Guarantor acknowledges and accept that their acknowledgment and acceptance is confirmed when the Client and any Guarantor continues to instruct AIPL concerning any Work.



Trusted Members of NZPIA and SPASA NZ

All our Swimming Pools are constructed to meet or exceed the New Zealand 4441.2008 Swimming Pool Design Standard

## SCHEDULE ONE

The Client acknowledges and understands that:

1. The pool surface will shed a small amount of aggregate continually and is considered normal.
2. All pool plasters are completely hand applied, and can result in a variation of shade, tone, texture, and appearance of overall finish. These are a characteristic of a plastered pool finish and should not be misconstrued as a defect.
3. Pool colour is influenced by size, shape, shadowing, lighting conditions, time of day, season & will vary from pool to pool even if completed in same plaster colour.
4. At all times, all plaster finishes are to be completely submerged under water.
5. Pool chemistry must be regularly maintained as set out below.

### **Water Chemistry**

Water chemistry consists of pH, total alkalinity, hardness (calcium and magnesium) iron, copper, and total dissolved solids (TDS). Ideal pH levels should be kept between 7.2 and 7.8. Testing is required at least two weekly (fortnightly) year-round during the period of the warranty provided for at clause 9.2. The warranty is void if it is evident that testing has not been conducted in the time frames mentioned above. A written record must be kept. It is recommended to refer the service / valet works above on to a reputable service / valet company to meet these requirements.

### **Pool Plaster**

The pool plaster is composed of natural materials which have certain inherent characteristics. A certain amount of shading or colour variation is a natural occurrence which should not be construed as a defect. The warranty provided for at clause 9.2 does not apply in the event where the colour is not the exact shade anticipated.

Due to atmospheric conditions (humidity, temperature etc.) during plastering, lights, and dark streaks (a marbled look) may appear in the plaster and more pronounced on a cloudy day or at night when the pool lights are on. These conditions are beyond the contractor's control.

### **Advice**

We urge you to contact your pool or spa professionals (valet company / service company) for information specific to your pool / spa. Chemicals alone will not produce sanitary water. A filtration system in proper operational condition and weekly surface brushing is also required to attain sparkling, clear, polished sanitary pool / spa water.