

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 “Contractor” means The Pool Man Limited, its successors and assigns or any person acting on behalf of and with the authority of The Pool Man Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (a) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 “Works” means all Works or Materials provided by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.3 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: 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) and pricing details.
- 1.4 “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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.5 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.
- 1.6 “Site” means the address nominated by the Client at which the Works are to be provided by the Contractor.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts provision of, any Works.
- 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 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.
- 2.5 The Client acknowledges and accepts that:
 - (a) the provision of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not, or cease to be, available, the Contractor reserves the right to vary the Price with alternative Materials as per clause 6.2. the Contractor also reserves the right to halt the provision of the Works until such time as the Contractor and the Client agree to such variation;
 - (b) when the Client 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;
 - (c) the Contractor does not accept liability for any Works carried out by any other third party contracted by the Client;
 - (d) the Client agrees to indemnify the Contractor from any damage caused by any other tradesman engaged by the Client during and after the completion of the Works (including but not limited to, an unsuitable excavation surface for installation). The Contractor reserves the right to halt the Works until such time as it is rectified and if the Contractor is instructed to do this, it will become a variation to the original quotation and will be charged in accordance with clause 6.2.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith, is based on the Contractor’s own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Contractor 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 the Contractor 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 the Contractor in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client’s failure to comply with this clause.

5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2, the Client agrees that should the Client introduce any third party (including but not limited to, another company or consultant) to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1 At the Contractor's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Contractor to the Client in respect of Works provided; or
 - (b) the Contractor's quoted Price (subject to clauses 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works (including labour, machine hire and Materials) are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured Site defects, items or ground conditions that delay the Works, where remedial or extra work is required due to unstable ground, rock, shale and high ground water levels, etc.) which are only discovered on commencement of the Works; or
 - (d) as a result of an increase in the Contractor's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works and/or fluctuations in currency exchange rates, which are outside the control of the Contractor;
 - (e) in the event the completion of the Works take 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 the Contractor to cover the value of the pool shell being held in stock.
- 6.3 At the Contractor's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
 - (a) on provision/completion of the Works;
 - (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Site 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 furnished to the Client by the Contractor.
- 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and the Contractor.
- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works 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 section 18 of the Construction Contracts Act 2002.
- 6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated, the Price **includes** GST, which is an amount equal to any GST the Contractor must pay for any provision of Works by the Contractor under this, or any other, agreement. The GST component must be paid by the Client, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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 Works

- 7.1 Subject to clause 7.2, it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to, any failure by the Client to:
 - (a) make a selection; or
 - (b) have the Site ready for the Works; or
 - (c) notify the Contractor that the Site is ready.
- 7.3 The Contractor may provide the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Contractor for provision of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties.
- 7.5 The Contractor reserves the right to postpone the Works where (in the reasonable opinion of the Contractor) the Site poses a safety risk for all parties (including, but not limited to, poor weather conditions, or the discovery of asbestos).

8. Risk

- 8.1 If the Contractor retains ownership of the Materials under clause 11 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. If any of the Materials are damaged or destroyed following delivery, but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries. If the Client requests the Contractor to leave Materials outside the Contractor's premises for collection, or to deliver the Materials to an unattended location, then such Materials shall be left at the Client's sole risk. At the Contractor's sole discretion, any delivery costs shall be either included in, or in addition to, the Price. Delivery of the Materials shall be deemed to have taken place immediately at the time that:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
 - (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Site (even if the Client is not present).
 - (b) where the Contractor is to both supply and install Materials, then the Contractor shall maintain a contract works insurance policy until the Works are completed. It is the Client's responsibility to ensure that they are similarly insured.
- 8.2 Notwithstanding the provisions of clause 8.1, where the Contractor requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Client shall supply the Contractor 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 Client's responsibility.
- 8.3 Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the Site for the Works, or the use of Materials for the Client's intended purpose, and such advice or recommendations are not acted upon, then the Contractor shall:
- (a) require the Client or their agent to authorise commencement of the Works in writing; and/or
 - (b) not be liable in any way whatsoever for any damages or losses that occur after any subsequent provision of the Works.
- 8.4 The Client acknowledges that:
- (a) Materials 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 the Contractor will make every effort to match batches of product supplied in order to minimise such variations, or sales sample to the finished Materials, the Contractor accepts no liability whatsoever where such samples/batches differ to the finished Materials supplied;
 - (b) Materials supplied may mark or stain if exposed to certain substances, and/or be damaged or disfigured by impact or scratching;
 - (c) timber is a hygroscopic material and may expand, contract or distort a result of exposure to heat, cold, weather, therefore the Contractor will accept no responsibility for gaps that may appear during prolonged dry periods;
 - (d) the Contractor shall not be liable for inferior existing paintwork where the Contractor's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish;
 - (e) the Contractor shall not be held liable for the quality of the Works (or any other work undertaken by the Client or third party) if the Client does not follow the Contractor's recommendations as to the number of coats of paint required to obtain the final finish and the Client chooses to accept fewer coats of paint;
 - (f) the Contractor shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, painted surfaces) that is caused by any other tradesmen;
 - (g) the Contractor gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond the Contractor's control due to the nature of the Materials at the time of installation, therefore it is recommended that the Client allows for extra quantities for such breakages;
 - (h) whilst the Contractor will take all due care during installation, the Contractor will not accept any responsibility for tiles or pavers damaged during installation;
 - (i) where fencing is installed on a retaining wall, the Contractor 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;
 - (j) the Contractor shall not be responsible for digging land out under fence lines nor removal of soil from the Site.
- 8.5 The Contractor will use reasonable endeavours to match the Materials 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 the Contractor.
- 8.6 Notwithstanding clause 8.1, Materials and/or Works the Client, or the Client's sub-contractors, have supplied, including for the Contractor to complete the Works, shall be at the sole risk of the Client. The Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those Materials and/or Works, and the Contractor shall not be responsible for any defects in those Materials and/or Works, or any loss or damage to the Works (or any part thereof), howsoever arising from the use of the Materials and/or Works.
- 8.7 the Contractor 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:
- (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.
- 8.8 The Client 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 Client.
- 8.9 the Contractor shall not be liable for any defect in the Works if the Client does not follow the Contractor's 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 forty-eight (48) hours but preferably seven (7) days;
 - (c) ensure that no heavy furniture be placed on new surfaces for a minimum of twenty-four (24) hours.

9. Client's Responsibilities

- 9.1 It shall be the Client's responsibility to:

- (a) make the Site available on the agreed date/s and time/s. In the event the Contractor is unable to provide the Works as agreed solely due to any action or inaction of the Client (including any request by the Client to delay the Works less than three (3) weeks from the agreed commencement date, or if the Works are delayed or interrupted by the failure of the Client to adhere to the work schedule agreed to between the Contractor and the Client), any additional costs will be invoiced to the Client as per clause 6.2;
 - (b) ensure that the Contractor has clear and free access to the Site at all times to enable them to undertake the Works. the Contractor shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the Contractor's negligence;
 - (c) remove obstructions on the Site in order for the Works to be provided by the Contractor (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 the Contractor make reasonably have to break into, or disturb, in provision of the Works.
- 9.2 Unless otherwise agreed in writing between the Client and the Contractor, it shall be the Client's responsibility to, prior to the Contractor commencing the Works, advise the Contractor of the precise location of all underground services on the Site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 9.2.
- 9.3 Where the Client supplies the Contractor with any design specifications (including, but not limited to CAD drawings), the Client shall be responsible for providing accurate data. The Contractor shall not be liable whatsoever for any errors or omissions in the Works that are caused by incorrect or inaccurate data being supplied by the Client.
- 9.4 Unless specified otherwise in this agreement, it is the Client's responsibility to:
- (a) be on the Site to supervise the marking out of the fence line, placement of pegs and during the installation of the fence. If the Client fails to comply with this clause then the Contractor accepts no responsibility for installation decisions that need to be made by the Contractor in the Client's absence;
 - (b) remove any existing fence (including existing footings), trees, vines and shrubs to allow the Contractor clear access along the proposed fence line prior to commencement of the Works by the Contractor, unless otherwise agreed in writing between the Contractor and the Client. Under no circumstances will the Contractor handle removal of asbestos product;
 - (c) provide the Contractor 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 Site, (shoring pumping, etc.) and/or peering and beaming, including extra steel and concrete; and
 - (e) prepare any lawns, shrubs, plants and trees which are required for re-planting; and
 - (f) supply water for the filling of the pool; and
 - (g) arrange any installation of a new storm water, sewerage or water supply pipes, electricity cable, telephone cables, or gas pipes; and
 - (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; and
 - (i) supply electricity to the filter-electrical installation for underwater light if applicable and earth wire connection; and
 - (j) advise the location of boundaries and the location, elevation and dimensions for the proposed site of the pool
 - (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 Client requests the Contractor to prepare the surface for waterproofing, then at the Contractor's sole discretion a fee shall be charged for the Works, 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. The Contractor shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 9.5 Following installation, the care, maintenance and cleanliness of a pool shall be the responsibility of the Client.
- 9.6 The Contractor 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.
- 9.7 The Client 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.
- 9.8 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.

10. Compliance with Laws

- 10.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities, and New Zealand Standards that may be applicable to the Works, including any WorkSafe guidelines and health and safety laws relating to building/construction/pool installation sites and any other relevant safety standards or legislation.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 10.3 Notwithstanding clause 10.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Contractor agrees at all times 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 be the party in control of the worksite or where they may be acting as a subcontractor for the Client who has engaged a thirty party head contractor.

11. Title

- 11.1 The Contractor and the Client agree that the Client's obligations to the Contractor for the provision the Works shall not cease (and ownership of Materials shall not pass) until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 11.2 Receipt by the Contractor 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 and until then the Contractor's ownership or rights in respect of the Works, and this agreement, shall continue.
- 11.3 It is further agreed that, until ownership of the Materials passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
 - (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
 - (i) the Contractor may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Client.

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

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Materials previously supplied by the Contractor to the Client;
 - (b) all Materials will be supplied in the future by the Contractor to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Works – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 12.2 The Client 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 the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Contractor; and
 - (d) immediately advise the Contractor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of the Contractor agreeing to provide Works, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 13.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects and Warranties

- 14.1 The Client must inspect all Works on completion (or the Materials on delivery) and must within seven (7) days of such time notify the Contractor in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote.

The Client must afford the Contractor an opportunity to inspect the Works within a reasonable time following such notification if the Client believes the Works are defective in any way, and an exclusive right to offer remedy where the Works are found to be defective. If the Client shall fail to comply with these provisions, the Works shall be presumed to be free from any defect or damage. For defective Works, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) rectify or re-provide the Works.

- 14.2 Subject to the conditions of warranty set out in clause 14.3, the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within three (3) years of the date of completion/delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 14.3 The conditions applicable to the warranty given by clause 14.2 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 Client to properly maintain any Materials in accordance with the Contractor's "Handover Manual" and the manufacturer's documentation; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials 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 the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
 - (c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 14.4 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor 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 Materials.

15. Intellectual Property

- 15.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and Materials shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 15.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, digital images, drawings, plans or Materials which the Contractor has provided to the Client.

16. Default and Consequences of Default

- 16.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Suspension of Works

- 17.1 Where the contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) the Contractor 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 Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Contractor 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 Client or by any person claiming through the Client; 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 the Contractor exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Contractor under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Contractor suspending work under this provision;
- (d) due to any act or omission by the Client, the Client effectively precludes the Contractor from continuing the Works or performing or complying with the Contractor's obligations under this contract, then without prejudice to the Contractor's other rights and remedies, the Contractor may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Contractor as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 17.2 If pursuant to any right conferred by this contract, the Contractor suspends the Works and the default that led to that suspension continues un-remedied subject to clause 18.1 for at least ten (10) working days, the Contractor shall be entitled to terminate the contract, in accordance with clause 18.

18. Cancellation

- 18.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the provision of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 18.2 The Contractor may cancel any contract to which these terms and conditions apply, or cancel provision of Works, at any time before the Works have commenced (or Materials are delivered) by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels the provision of Works by the Contractor, the Client:
- (a) shall provide the Contractor with written notice of such; and
 - (b) shall reimburse the Contractor all expenses to date (including, but not limited to, labour, travel, Materials and equipment purchased), holding costs of any pool shell at above overdue payments interest rate (as per clause 16.1) until the pool shell is resold, and any work done on the Site. If the Site requires reinstatement to its original condition, all costs involved in carrying out that work are payable by the Client.
- 18.4 Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 19.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.
- 19.3 The Client authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (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 Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor 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 Client.

- 19.4 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.5 The Client shall have the right to request the Contractor for a copy of the information about the Client retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Client held by the Contractor.

20. Service of Notices

- 20.1 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.
- 20.2 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.

21. General

- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 21.2 If the Client is acquiring Works for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Works by the Contractor to the Client.
- 21.3 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.
- 21.4 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 Auckland Courts of New Zealand.
- 21.5 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profits) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price). Unless otherwise agreed to in writing, the Contractor shall not be liable to pay to the Client pre-ascertained, or liquidated, damages.
- 21.6 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.7 The Client cannot licence or assign without the written approval of the Contractor.
- 21.8 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 21.9 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Materials/Works to the Client.
- 21.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.11 Both parties warrant that:
- (a) they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so;
 - (b) they are not insolvent; and
 - (c) this agreement creates binding and valid legal obligations on them.