TERMS AND CONDITIONS OF SUPPLY OF SERVICES

Your Pool and Spa Pty Ltd (ABN 33 625 376 641)

1. DEFINITIONS

For the purpose of these Terms and Conditions the following capitalised words have the following meanings:
"Client" means any person or entity that Your Pool provides services to.
"GST" means goods and services tax imposed in Australia by the GST law;
"GST Law" means a New Tax System (Goods and Services Tax) Act 1999.
"Offer" means a letter of offer or quote for the provision of goods and services prepared by Your Pool as requested by a Client to which these Terms and Conditions are attached..
PPS Law means the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time).
"**Products**" means the pool and spa products and other goods provided by Your Pool to the Client as set out in the Offer.
"Services" means the pool and spa maintenance, cleaning and other services provided by Your Pool to the Client as set out in the Offer.
"Your Pool" means Your Pool and Spa Pty Ltd (ABN 33 625 376 641).

2. GENERAL

a. These Terms and Conditions (as amended from time to time) shall apply to all supply of goods and services by Your Pool.
b. These Terms and Conditions together with the Offer shall form the agreement between Your Pool and the Client for the provision of the Products and the Services ("Contract").
c. Your Pool reserves the right to vary these Terms and Conditions at any time by submitting to the Client a copy of the amended Terms and Conditions. Otherwise these Terms and Conditions may only be altered or waived in writing signed by Your Pool.

3. OFFER

a. Your Pool will provide an Offer to the Client upon request. Any Offer issued by Your Pool is valid for 30 days from the date of issue.
b. Unless otherwise expressly specified in the Offer, an Offer for the supply of Products does not include delivery or installation costs for the Products.
c. Upon receipt of an Offer the Client must:
    i. confirm with Your Pool that the content of the Offer is acceptable; and
    ii. pay to Your Pool the deposit as specified in the Offer, if applicable; upon which it will be deemed that the Client has also accepted the content of these Terms and Conditions.
d. Your Pool is not bound by an Offer, unless the Offer is confirmed by Your Pool by either of:
    i. notifying the Client of that confirmation; or
    ii. commencing with performing the Services or provision of the Products.
e. Once an Offer is confirmed by Your Pool, it cannot be cancelled with out prior written consent of Your Pool.
f. An indication in an Offer of the time frame for the provision of the Products or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon Your Pool.
g. Your Pool may in its absolute discretion refuse to supply the Products or Services where:
    i. Products are unavailable for any reason whatsoever;
    ii. credit limits cannot be agreed upon or have been exceeded; or
    iii. payment for Products or Services previously provided to the Client or any related corporation of the Client or to any other party who is, in the reasonable opinion of Your Pool, associated with the Client under the same or another supply contract, has not been received by Your Pool.

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4. PRODUCTS

a. This clause 4 is only applicable if Your Pool is required to supply products under this Contract.
b. Your Pool will provide the Products to the Client in consideration for the Client paying the fees to the Your Pool, subject to the provisions of this Contract.
c. If the Client fails to advise Your Pool in writing of any fault in Products or failure of Products to accord with the Offer within 14 days of delivery, the Client is deemed to have accepted the Products and to have accepted that the Products are not faulty and accord with the Offer. Nothing in this paragraph affects the Client's rights for any alleged failure of a guarantee under the Australian Consumer Law.
d. Risk in the Products passes to the Client immediately upon delivery.
e. Property and title in the Products supplied to the Client under these Terms and Conditions does not pass to the Client until all money (including money owing in respect of other transactions between Your Pool and the Client) due and payable to Your Pool by the Client have been fully paid.
f. The Client acknowledges that this Contract constitutes a security agreement which creates a Security Interest (as defined in PPS Act) in favour of Your Pool in all Products supplied by Your Pool to the Client and all after acquired goods supplied to the Client by Your Pool to secure the payment from time to time for the Products and Services.
g. If the Client defaults in the performance of any obligation owed to Your Pool under the Contract or any other agreement for Your Pool to supply goods and services to the Client, Your Pool may enforce its Security Interest in any Products by exercising all or any of its rights under the Contract or the PPS Act. To the maximum extent permitted by law, the Client and Your Pool agree that the following provisions of the PPS Act do not apply to the enforcement by Your Pool of its Security Interest in the Products: section 95, 96, 121(4), 125, 130, 132(3) (d), 132(4), 142 and 143.

5. SERVICES

a. This clause 5 is only applicable if Your Pool is required to supply services under this Contract.
b. Your Pool will provide the Services to the Client in consideration for the Client paying the fees to the Your Pool, subject to the provisions of this Contract.
c. Your Pool is permitted to use other persons to provide some or all of the Services.
d. If the Offer specifies that Your Pool will provide the Services for a fixed term ("Initial Term"), the term of this Contract shall be automatically extended by the same period after the expiry of the Initial Term, unless the Client gives not less than 7 days' notice in writing before the expiry of the term that it does not wish to extend the term.

6. FEES AND TERMS OF PAYMENT

a. Fees appearing in the Offer are based on present rates and costs of providing the Products and the Services including, labour, fuel charges, insurance, government tariffs, duties and taxes and shall be subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring during the term of the Contract and before provision of the Products or Services.
b. In the event that the Client's requirements in relation to the Products or Services changes or additional services are required outside the scope of the Offer, the Client will be liable for any increased costs, including but not limited to increases in Your Pool' fees, associated with accommodating for such change at such rates as set out in the Offer.
c. Unless stated otherwise, all fees contained in the Offer are inclusive of GST.
d. Your Pool will provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this Contract.
e. Unless stated otherwise in the Offer, payment will be made by the Client to Your Pool within 14 days after receiving Your Pool' invoice.
f. In the event that the supply of the Products or Services is postponed or cancelled by the Client:
    i. any deposit paid by the Client to Your Pool in accordance with the Offer is non-refundable in all circumstances;
    ii. any payments made to Your Pool in relation to the Products or Services that have been carried out or rendered are non-refundable in all circumstances; and
    iii. any prepayments in addition to the deposit made to Your Pool in relation to supply of the Products or Services in accordance with the Offer that have not been carried out or rendered will be refunded in the absolute discretion of Your Pool.

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7. CLIENT'S OBLIGATIONS

a. During the supply of the Products or Services the Client will:
   i. co-operate with Your Pool as Your Pool reasonably requires;
   ii. provide the information and documentation that Your Pool reasonably requires, and disclose to Your Pool all information of which it becomes aware, relevant to the provision of the Services or Products; and
   iii. ensure that the Client and the occupier of the relevant property cooperate with and assist Your Pool.

b. If the Client does not provide the facilities that Your Pool reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by Your Pool will be paid by the Client.

c. The Client shall have not acquired any right, title or interest in or to the plant and equipment provided by Your Pool for the provision of the Services.

8. WORK HEALTH AND SAFETY

a. The parties acknowledge they have mutual obligations in ensuring the work health and safety of Your Pool' personnel.

b. The Client must provide Your Pool' personnel with a suitable and safe workplace that complies with the relevant work health and safety legislation. The Client acknowledges that Your Pool does not have control of the workplace and that Your Pool is relying on the Client to inform Your Pool of potential risks to the safety and welfare of Your Pool' personnel.

c. The Client acknowledges that Your Pool will rely on any information provided by the Client with respect to occupational health and safety procedures, information and training, in conducting a risk assessment of the workplace.

9. WARRANTY AND LIABILITY OF YOUR POOL

Australian Consumer Law Notice

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service

a. Your Pool warrants that it will use reasonable care and skill in performing the Services.

b. All conditions, warranties or liabilities with respect to the supply of the Products or Services imposed or implied whether by law or by statute are expressly excluded and negated, PROVIDED that nothing in these terms and conditions shall exclude, restrict or modify any condition, warranty, right or liability which may at any time be implied in these terms and conditions (including any condition, warranty, right or liability implied by the Australian Consumer Law or any similar applicable State or Territory legislation) where to do so is illegal and would render any provision of these terms and conditions void.

c. To the extent permitted by law, and except in the case of death or personal injury caused by Your Pool' negligence, Your Pool expressly limits its liability for breach of any condition or warranty whether express or implied into the Contract or engagement to supply the Services by virtue of any legislation to:
   i. the supply of the Products or Services again; or
   ii. the replacement or repair of the defective Products;
   iii. the cost of having the Products or Services supplied again, whichever Your Pool may in its absolute discretion select.

d. Notwithstanding any other provisions of this Contract, Your Pool is not liable to the Client for:
   i. any loss of profits, business interruption, loss of revenue, pure economic loss, loss of goodwill, loss of opportunity or expectation loss or loss of production; or
   ii. any indirect or consequential losses, incidental special or exemplary damages, expenses, losses or liabilities, which may be suffered or incurred by any person in connection with supply of the Services or otherwise in connection with this Contract.

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10. INDEMNITIES

a. The Client agrees to indemnify Your Pool, on a full indemnity basis, and to keep Your Pool indemnified against any cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, claim, liability or damages ("Loss") suffered or incurred by Your Pool arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other Loss of any kind whatsoever caused or contributed by the Client.
b. The Client further agrees to indemnify Your Pool, on a full indemnity basis, and to keep Your Pool indemnified from any claim made against Your Pool by the Client's employees, officers, agents, tenants, visitors/guests, clients or contractors in respect of any personal injury, illness or death to any person or damage to any property arising out of provision of the Services.

11. TERMINATION

a. Either Your Pool or the Client may terminate this Contract by notice in writing to the other, if the party being notified:
    i. fails to observe any term of this Contract; and
    ii. fails to rectify this breach, to the satisfaction of the notifying party, following the expiration of 30 days' notice of the breach being given in writing by the notifying Party to the other party.
b. Your Pool may terminate this Contract upon the happening of any of the following events:
    i. if the Client fails to pay any fees under this Contract within 14 days after it is due;
    ii. if the Client enters into a deed of arrangement or an order is made for it to be wound up;
    iii. if the Client dies or becomes bankrupt.
c. Unless otherwise agreed to the contrary, termination of this Contract does not affect any accrued rights or remedies of either party.
d. Upon termination of this Contract
    i. Your Pool will forthwith stop providing the Products and Services;
    ii. any fees, expenses or reimbursements payable by the Client to Your Pool in respect of any period prior to the date of termination must be paid by the Client within 14 days after date of termination.

12. FORCE MAJEURE

Your Pool shall not be liable for failure or delay to provide the Services due in any substantial part to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, sub-contractor or client of Your Pool, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority ("Force Majeure Event"). In the event of a Force Majeure Event:

i. subject to termination under clause 11 of these Terms and Conditions, Your Pool' obligations to the Client shall be suspended without liability on the part of Your Pool while such event exists; or
ii. the Client may terminate the Contract by notice in writing at no liability to either party.

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13. MISCELLANEOUS

a. This Contract shall be governed and construed in accordance with the laws of the State of New South Wales.
b. Nothing in this Contract may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary.
c. All notices to be served upon the Client shall be deemed to be duly served if left at or sent by ordinary prepaid post to the last known address of the Client., or by email to the email address as set out in the Offer. The Client shall be deemed to have received any notice two (2) days after posting.
d. No conduct by Your Pool with respect to any default of the Client in the performance of any obligation or condition of the Contract shall be deemed to be a waiver of that or any other obligations or condition.
e. The Client shall not assign any rights or obligations under this Contract without the prior written consent of Your Pool.
f. The provisions of this Contract are to be read in the following order of precedence:
    i. these Terms and Conditions; and
    ii. the Offer, except if any part of the Offer expressly provide that they will prevail part of these Terms and Conditions to the extent of any inconsistency, in which case such part of the Offer will prevail over the relevant parts of these Terms and Conditions as so provided.
g. The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one the Client, the Clients shall be bound to Your Pool jointly and severally.
h. If a provision of the Contract or a right or remedy of a party under the Contract is invalid or unenforceable in a particular jurisdiction:
    i. it is to be read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
    ii. it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

This clause is not limited by any other provision of the Contract in relation to severability, prohibition or enforceability.