



Pukka Pools Terms of Trade

1. DEFINITIONS

1.1 “Terms of Trade” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Terms of Trade.

1.2 “Pukka Pools” means Pukka Pools Limited, its successors and assigns or any person acting on behalf of and with the authority of Pukka Pools Limited.

1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Pukka Pools 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

(b) if the Client is a partnership, it shall bind each partner jointly and severally; and

(c) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and

(d) includes the Client’s executors, administrators, successors and permitted assigns.

1.4 “Works” means all Works provided by Pukka Pools to the Client at the Client’s request.

1.5 “Materials” means materials supplied by Pukka Pools to the Client.

1.6 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Works as agreed between Pukka Pools and the Client in accordance with clause 4 below.

1.7 “Site” means the address nominated by the Client at which the Works are to be provided by Pukka Pools.

1.8 “Season” means the period of the year, when weather patterns and daylight hours change, resulting in different pool maintenance requirements.

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 Pukka Pools reserves the right to refuse, terminate or suspend a service to anyone for any reason at any time.

2.3 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, Pukka Pools reserves the right to vary the Price with alternative Materials as per clause 4.3. Pukka Pools also reserves the right to halt the provision of the Works until such time as Pukka Pools and the Client agree to such variation;

(b) Pukka Pools does not accept liability for any Works carried out by any other third party contracted by the Client;

(c) the Client agrees to indemnify Pukka Pools 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). Pukka Pools reserves the right to halt the Works until such time as it is rectified and if Pukka Pools is instructed to do this, it will become a variation to the original quotation and will be charged in accordance with clause 4.3.

3. CLIENT'S RESPONSIBILITIES

3.1 The Client warrants that:

- (a) the Client is the owner of the property stated on the cover page of this agreement ("Site") or is authorised by the owner of the Site to carry out the agreed works on the Site; and
- (b) Pukka Pools shall have free and unimpeded access to the Site for the purpose of carrying out the agreed works, and that (except where agreed otherwise) the Site will be cleared of all debris prior to commencement of the agreed works.

3.2 Following equipment installation, the care, maintenance and cleanliness of a pool shall be the responsibility of the Client. **Our services do not include the responsibility of the water level in the pool.**

The Client is responsible to keep pool water at the proper level.

4. PRICE AND PAYMENT

4.1 At Pukka Pools sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Pukka Pools to the Client in respect of Works provided or Materials supplied; or
- (b) Pukka Pools quoted Price (subject to clauses 4.3) which shall be binding upon Pukka Pools provided that the Client shall accept Pukka Pools quotation in writing within fourteen (14) working days.

4.2 On acceptance of the quote a non-refundable deposit is required and following conditions are applied:

- (a) a payment of fifty percent (50%) of the Price is required prior to the commencement of the Works;
- (b) a final payment of the remaining fifty percent (50%) of the Price, including payment of any variations, within seven (7) calendar days of completion.

4.3 Pukka Pools 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.

4.4 Variations will be charged on the basis of Pukka Pools quotation, and will be detailed in writing, and shown as variations on Pukka Pools invoice. The Client shall be required to respond to any variation submitted by Pukka Pools within seven (7) working days. Failure to do so will entitle Pukka Pools to add the cost of the variation to the Price. Payment for all variations must be made in full within seven (7) calendar days of its completion.

4.5 The Client shall pay Pukka Pools the agreed price in the manner at the rate and at the times provided in this Terms of Trade.

4.6 The Client shall pay Pukka Pools the amounts due under clause 4.1 within seven (7) calendar days of receiving an invoice from Pukka Pools.

4.7 If the Client fails to pay by the 10th calendar day after receiving an invoice the Client shall pay a late payment fee of twenty (20 NZD) New Zealand dollars on the 11th calendar day after receiving an invoice. This should be paid together with all debt collection costs incurred by Pukka Pools as per clause 4.8.

4.8 If Pukka Pools needs to engage the services of a mercantile agent, debt collector or solicitor for collecting of outstanding sums, the Client will be liable for the costs of debt collection.

4.9 Pukka Pools reserves the right, without prejudice, to halt the Works until the overdue amounts paid in full including clauses 4.7 and 4.8.

4.10 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 Pukka Pools nor to withhold payment of any invoice because part of that invoice is in dispute.

4.11 Unless otherwise stated, the Price **does not include** GST. In addition to the Price, 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.

4.12 All materials supplied by Pukka Pools, including materials incorporated into the agreed works, shall remain the property of Pukka Pools until payment has been made in full. Pukka Pools shall be entitled to unrestricted access to the Site to dismantle and remove all agreed works and materials if payment is not made in accordance with this Terms of Trade.

5. PROVISION OF THE WORKS

5.1 Subject to clause 5.2, it is Pukka Pools responsibility to ensure that the Works start as soon as it is reasonably possible.

5.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Pukka Pools claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Pukka Pools 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 Pukka Pools that the Site is ready.

5.3 Pukka Pools may provide the Works by separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.4 Any time specified by Pukka Pools for provision of the Works is an estimate only and Pukka Pools 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 endeavor to enable the Works to be provided at the time and place as was arranged between both parties.

5.5 Pukka Pools reserves the right to postpone the Works where (in the reasonable opinion of Pukka Pools) the Site poses a safety risk for all parties (including, but not limited to, poor weather conditions, the discovery of asbestos or unsafe access to pool and equipment).

5.6 In the event that Pukka Pools is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Pukka Pools shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

5.7 Summer is defined as the months from October to April inclusive. Winter is defined as the months from May to September inclusive. Pukka Pools will use its expertise and experience to judge the Seasons and the weather to make a reasonable choice when switching between seasons. Should you wish to determine it yourself please advise by emailing info@pukkapools.co.nz four (4) weeks prior to required change.

6. DEFECTS AND RETURNS

6.1 The Client shall inspect all works on completion (or the Materials on delivery) and shall within seven (7) calendar days of delivery (time being of the essence) notify Pukka Pools in writing of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote.

6.2 The Client shall afford Pukka Pools an opportunity to inspect the Works (or the Materials) within a reasonable time following delivery if the Client believes the Works (or the Materials) are defective in any way. If the Client shall fail to comply with these provisions the Works (or the Materials) shall be presumed to be free from any defect or damage.

6.3 For defective Works (or Materials), which Pukka Pools has agreed in writing that the Client is entitled to reject, Pukka Pools liability is limited to either (at Pukka Pools discretion) replacing the Materials or repairing the Materials.

6.4 Returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 6.1; and

(b) Pukka Pools has agreed in writing to accept the return of the Materials; and

(c) Pukka Pools will not be liable for Materials which have not been stored or used in a proper manner; and

(d) the Materials 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.

7. WARRANTIES

7.1 For Materials the warranty shall be the current warranty provided by the manufacturer of the Materials. Pukka Pools 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.

7.2 Although all services will be provided in a professional workman-like manner, we cannot guarantee that your pool will not contract an algae bloom. Due to the nature of this type of service, we can only guarantee that your pool is safe to swim when the service is completed.

8. SUSPENSION OF WORKS

8.1 Due to any act or omission by the Client, the Client effectively precludes Pukka Pools from continuing the Works or performing or complying with Pukka Pools obligations under this Terms of Trade, then without prejudice to Pukka Pools other rights and remedies Pukka Pools reserves the right to suspend or terminate 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 or termination of the Works is based. All costs and expenses incurred by Pukka Pools as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

8.2 if Pukka Pools suspends or terminates the Work, it:

(a) is not in breach of Terms of Trade; and

(b) 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

(c) is not liable for algae blooms during this period; and your regular set price valet cost will not cover its remediation.

8.3 if Pukka Pools exercises the right to suspend or terminate Work, the exercise of that right does not:

(a) affect any rights that would otherwise have been available to Pukka Pools under the Contract and Commercial Law Act 2017; or

(b) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Pukka Pools suspending work under this provision.

9. SEVERE INCLEMENT WEATHER

9.1 Severe inclement weather, other acts of nature, or vandalism that cause an excessive accumulation of dirt and require extra labor and materials are not considered normal circumstances. Additional client billings may result in the course of performing this additional work.

10. GENERAL

10.1 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 arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

10.2 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 Pukka Pools to the Client.

10.3 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.

10.4 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.

10.5 Pukka Pools 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 Pukka Pools of these terms and conditions (alternatively Pukka Pools liability shall be limited to damages which under no circumstances shall exceed the Price). Unless otherwise agreed to in writing, Pukka Pools shall not be liable to pay to the Client pre-ascertained, or liquidated, damages.

10.6 Pukka Pools may license and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

10.7 The Client cannot license or assign without the written approval of Pukka Pools.

10.8 Pukka Pools may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by doing so. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Pukka Pools subcontractors without the authority of Pukka Pools.

10.9 Pukka Pools may take photos and videos of the Client's pool and equipment for website, training and promotional purposes only. Images may be cropped, altered, transformed or reproduced in any way and may be combined with other works and text. No Client's consent required as there are no individuals or property details will be captured. Pukka Pools is released from any claims and demands in connection to photos and videos.

10.10 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.

10.11 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.