

Please read this document carefully and the attached letter of quotation ('Quotation') which together constitutes the contract between the Contractor and the Customer:

Reference to "the Contractor" is to Design by Katja Limited and reference to "the Customer" is to the person named in the Quotation and shall be deemed to include any third party which has the authority to bind the Customer under these Terms and Conditions.

1. FORMATION OF CONTRACT

- 1.1 The Quotation shall constitute an invitation to treat by the Contractor to carry out the works specified in it ("the Works") and to supply the contract materials for the Works ("the Equipment") for the Customer.
- 1.2 No acceptance by the Contractor of any order submitted by the Customer shall occur unless and until confirmed in writing by the Contractor. The Contractor reserves the right (without any liability) to enquire as to the Customer's creditworthiness by seeking references from the Customer's bank and/or any other third party (to which the Customer consents) before any order submitted by the Customer is accepted. The Works shall not be commenced until acceptance.
- 1.3 Unless the Customer's order is received within eight (8) weeks from the date on the Contractor's Quotation the Quotation shall expire unless reconfirmed by the Contractor.
- 1.4 The descriptions and illustrations contained in the Contractor's catalogues, price lists and other advertisements are for guidance purposes only and shall not form part of any contract with the Customer.
- 1.5 The Contractor's employees and agents are not authorised to advise or make any representations concerning the Works and/or the Equipment unless confirmed in writing by a director of the Contractor. In the entering into the contract the Customer acknowledges that it does not rely upon any such representations which are not confirmed.
- 1.6 The Quotation and these Terms and Conditions will apply to all contracts with the Contractor for the Works and the supply of the Equipment. No variation in the Quotation and in these Terms and Conditions will be effective unless agreed in writing by the director of the Contractor. In the event of any conflict between the Quotation and these Terms and Conditions, the Quotation shall prevail.

2. CONTRACT PRICE

- 2.1 Subject to clause 2.2 the Quotation will be for a fixed price ("the Contract Price") which shall be exclusive of Value Added Tax.
- 2.2 The Contractor reserves the right to review and revise the Contract Price between its date of acceptance of the order and the date of completion of the Works if:
 - a) Any prices quoted increase as a result of fluctuations in the market prices for the Equipment and labour;
 - b) Any information, drawing, design, plan, dimension, colour, capacity, weight or other information ("Specifications") supplied by the Customer is inaccurate;
 - c) There has been any variation to the Works and/or the Equipment as contained in clause 4 or any breach by the Customer of the terms of clause 3;
 - d) In the event that any unforeseen geological or other problems exist or arise in relation to the site ("the Site") of the Works or as a result of the Works.

3. CUSTOMER'S RESPONSIBILITIES

- 3.1. The Customer shall be responsible for ensuring the following:
 - a) that the Specifications are complete and sufficient so as to enable the Contractor to carry out the Works in accordance with these Terms and Conditions;
 - b) the accuracy of the Specifications;
 - c) any Specifications will not infringe nor contravene any applicable safety or other statutory requirements or require the Works to cause any such infringement;
 - d) necessary planning consents and approvals are obtained and paid for in advance of the Works;
 - e) appropriate consents are obtained in advance from neighbours or other third parties in the event that the Works may or will involve entering onto their land or in any interfering with their rights;
 - f) there is adequate access on Site for the Contractor and its employees and agents to perform the Works;
 - g) that the soil conditions are appropriate for the Works to be carried out;
 - h) that there is (at the Customer's own expense) a constant supply of water, gas and electrical services. Any other utilities which the Contractor may require shall be specified in the Quotation.

3.2 Without prejudice to clause 3.1 and unless otherwise stated in the Quotation, the Customer acknowledges that the Contractor shall be deemed for all purposes to be unaware of all concealed factors below ground level not visible or ascertainable from the visual surface survey whether such factors (including but without limitation) be geological, man-made or water related and the Contractor has not carried out a survey and responsibility for the suitability of the Site for the Works is that of the Customer.

3.3 If the Contractor is unable to carry out the Works or any part owing to any matter referred to in this clause 3 or clauses 5 or 6 below, the Contractor reserves the right to charge any resulting additional costs and expenses as are necessarily incurred by the Contractor or if appropriate not to continue with the Works under clause 10.6 or to cancel the contract under clause 11.1

4. VARIATIONS

4.1 Any variations to the scope of the Works and/or the Equipment ordered by the customer whether by addition, omission or substitution shall only be carried out of the value has been agreed between the Contractor and the Customer and the director of the Contractor has accepted in writing.

4.2 Any such variations as agreed in accordance with clause 4.1 shall be treated as a separate contract. These Terms and Conditions shall apply to that contract except for clauses 1.3 and 7.1 and payment for any variations to the scope of the Works and/or the Equipment shall become payable (unless otherwise agreed in writing between the Contractor and the Customer) within 7 days of the date that. The Contractor renders an invoice. Time for payment shall be of essence.

4.3 The Contractor shall be entitled to make and shall have no liability in respect of minor variations to the Works and/or the Equipment which in the Contractor's reasonable opinion shall have no material effect upon the Specifications, the floor and walls as specified in the Quotation ("Main Structure") as well as the laid wall floor coping, floor and finishes as referred to in the Quotation ("Pool Finishes").

5. SITE CONDITION ACCESS AND STORAGE

5.1 Unless otherwise stated in the Quotation the Customer shall provide free of charge a storage area ("the Storage Area") on or immediately adjacent to the Site together with adequate and safe access to the Site and the Storage Area for heavy machinery including mobile cranes and delivery vehicles. The Site and the Storage Area are to be suitable for the working of mobile cranes and delivery vehicles and shall be clean and clear of obstacles.

5.2 Unless otherwise stated in the Quotation the Customer shall provide free of charge all necessary washing facilities (whether at the Site or at the Storage Area) for the Contractor, its employees and agents and shall be responsible for ensuring that all relevant safety, health and welfare regulations are observed.

5.3 Unless otherwise specified in the Quotation the Customer shall be responsible for safe and secure storage of all the Contractor's goods, the Equipment and plant delivered to the Site and/or the Storage Area on the Contractor's behalf.

5.4 Unless otherwise specified in the Quotation the Customer grants full licence to the Contractor, its employees and agents with or without vehicles to enter the Site and the Storage Area and do everything necessary there on to perform the Works and/or supply the Equipment.

6. HEALTH AND SAFETY

6.1 The Customer shall ensure that the Site is secure, clear and safe. The Contractor reserves the right to withdraw its employees and agents if the Site and/or the Storage Area does not accord with current health and safety regulations or if weather conditions are adverse.

7. TERMES OF PAYMENT

7.1 Payment shall be made pursuant to the terms of this clause 7. The payments terms are as follows:

- a) if stage payments are set out in the Quotation then they will apply;
- b) all other invoices rendered by the Contractor (except for those relating to variations made to the scope of the Works and/or supply of the Equipment under clause 4) are payable upon completion of the works or receipt of invoice (if earlier).

7.2 Time shall be of the essence for all payments due to the Contractor under the contract.

7.3 if the Customer fails to make any payment on the due date, then without prejudice to any right or remedy available to the Contractor shall be entitled to charge the Customer interest (both before and after judgment on the amount unpaid)

at the rate of 4% per annum above the base rate of the HSBC Bank Plc from time to time, or the statutory rate applicable under the Late Payment of Commercial Debts (interest) Act 1998 (whichever is greater) in either case such interest to accrue on a daily basis until the date of the actual payment.

- 7.4 In the event that the Customer (except for sub clauses (b) and (c) where the Customer is a residential occupier under the Housing Grants Construction and Regeneration Act 1996 (“the Act”)):
- a) Fails to pay an invoice within the period specified in clause 7.1, and;
 - b) Has failed to notify each reason for non-payment (whether in whole or in part) of any invoice within 5 days of deemed receipt of any invoice; and
 - c) The Contractor having given at least 7 days’ clear notice (stating the ground or grounds) of its intention so to do

the Contractor reserves the right (without prejudice to any other rights that the Contractor has) to suspend any unperformed part of the Works and/or orders for the Equipment until payment is made.

8. TITLE TO THE EQUIPMENT

- 8.1 Legal title and property in any of the Equipment supplied by the Contractor in connection with the Works shall not pass to the Customer until the Contractor has received in cash or cleared funds payment in full in respect of all amount due under the contract for the Works.
- 8.2 The Customer shall keep the Equipment delivered on Site or if delivered at the Storage Area on a fiduciary basis as bailee only and shall store the Equipment separately from all other goods and other items in his possession (if any) always ensuring in any event that the Equipment is clearly marked as the property of the Contractor and is capable of separate identification.
- 8.3 Until such time as legal title and property passes in the Equipment to the Customer, the Contractor shall be entitled at any time to require the Customer to deliver up the Equipment to the Contractor which may enter upon the Site and remove the Equipment as the Contractor sees fit.
- 8.4 In the event of the Customer failing to comply with the terms of payment or on the presentation of a petition for the winding up, administration or bankruptcy of the Customer or the Customer having a receiver appointed in respect of the Customer’s assets or any other insolvency proceedings being commenced by or against it, the Contractor, its employees and agents may at any time enter upon the Site and/or the Storage Area for the purpose of taking possession of any of the Equipment the property in which belongs to the Contractor. The Customer shall afford the Contractor inspection of any documents of such of the Equipment for the purpose of tracing them.

9. TIMING

Any dates given by the Contractor to the Customer for the commencement or completion of the Works are approximate only and time is not of the essence in this regard.

10. LIABILITY

- 10.1 Subject to the conditions of this clause the Contractor warrants that:
- a) the Main Structure, stainless steel shell, as specified in the Quotation will be free from defects for a period of 10 years
 - b) the Equipment will be free from defects for a period of 1 year each from the date of Completion of the Works.
- 10.2 The above Warranty is given by the Contractor subject to the following conditions:
- a) The Contractor shall be under no liability in respect of any defect arising from wilful damage, negligence, adverse weather conditions, failure to follow the Contractors’ instructions, misuse, alteration or repair to the Works and/or the Equipment by the Customer or its agents without the Contractor’s prior approval;
 - b) It does not extend to the Equipment not manufactured by the Contractor, in respect of which the Customer shall only be entitled to the benefit of these warranties or guarantees (if any) given by the relevant manufacturers to the Contractor;
 - c) The Contractor shall be under no liability if full payment for the Works and/or the Equipment has not been made by the due dates;
 - d) The Contractor shall be under no liability in respect of any defects in the Works and/or the Equipment arising from any inaccuracy in the Specifications supplied by the Customer;

e) Any failure by the Customer to carry out any of its obligations under the contract.

10.3 Subject as expressly provided in these Terms and Conditions and except where the Works and the Equipment are provided to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties and conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Where the Works and the Equipment are provided under a consumer transaction the statutory rights of the Customer are not affected by these Terms and Conditions.

10.4 Subject to clause 10.2 any claim made by the Customer (within the respective warranty periods referred to in clause 10.1) which is based upon any defects in any of

- a) The Main Structure of the Works;
- b) The Pool finishes
- c) The Equipment

Shall be notified to the Contractor in writing within 14 days of the defect first becoming apparent. Where a valid claim is notified to the Contractor (within the relevant warranty period referred to in clause 10.1) in accordance with these Terms and Conditions, the Contractor shall be given the opportunity of remedying the defect and to supply (where necessary) replacement parts and satisfactory completion of such remedial works shall constitute fulfilment of the Contractor's obligations under the contract. Such remedial work will be done free of charge.

10.5 The Contractor shall not be liable for any loss caused by non-performance of any of its obligations due to act of God, war, civil disturbance, government actions, strike, lock out or trade dispute, difficulties in obtaining materials, breakdown in machinery, fire or accident or any other cause whatsoever beyond the contractor's control. Should any such event occur the Contractor reserves the right to cancel or suspend the contract without incurring any liability for any loss or damage thereby occasioned.

10.6 The Contractor reserves the right to refuse to commence or continue the Works (so as to terminate the contract) under this/or any other contract with the Customer:

- a) If, and so long as, the Customer is in breach of any of its obligations under his contract; or
- b) If a petition is presented for the winding up, administration or bankruptcy of the Customer, if the Customer has a receiver appointed in respect of its assets or any other insolvency proceedings are commenced by or against it;
- c) In each case without incurring any liability for any loss or damage caused to the Customer and without prejudice to the Contractor's right to the payment under this contract;
- d) If any third party makes any claim or demand against the Contractor as a result of the failure of the customer to comply with any of its obligations under this contract, the Customer shall indemnify the Contractor against all liabilities, costs and expenses incurred by the Contractor resulting directly or indirectly from such claim or demand.

10.7 Except in respect of death or personal injury caused by the negligence of the Contractor, the Contractor shall not be liable to the Customer for any loss of profits, revenue or business or for other claims for any indirect, special or consequential loss which arise out of or in connection with the Works and/or the Equipment.

10.8 In any event the total liability of the contractor to the Customer under this contract shall not exceed the value of the Contract Price.

10.9 Whilst the Works are being carried out the Contractor shall maintain normal third-party insurance and shall indemnify the Customer against all claims in respect of damage or injury to persons not on the employment of the contractor arising out of the Works and the Equipment caused by negligence of the Contractor's employees whilst the Works are being undertaken.

10.10 The Customer shall fully and completely indemnify and keep indemnified the Contractor for all claims whatsoever for death or personal injury or to property caused by or in connection with or arising out of any set of default of the Customer, its employees' agents.

10.11 The customer shall maintain of the period during which the Works are being carried out insurance against loss or damage to the Site and the Storage Area and the contents thereof and any structures, unfixed materials, plant and the Equipment belonging to the Contractor.

11. TERMINATION

11.1 Without prejudice to clauses 10.6 (a) and (b) the Contractor may terminate the contract for the Works if:

- a) The Contractor accepts in writing a written request from the Customer to cancel the contract; or
- b) The Customer takes action to frustrate the progress of the contract;

And in either of such cases the Customer shall pay to the Contractor all costs, expenses and loss of profits suffered by the Contractor as a result of such action.

12. NO WAIVER

No waiver of any of the Contractor's rights under the contract shall be effective unless in writing signed by the director of the Contractor. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Contractor's rights in relation to different circumstances or the recurrence of similar circumstances.

13. NOTICES

Any notices under the contract shall be properly given if in writing and sent by first class post to the address of the intended recipient as stated in the Quotation or to such address as the Contractor or the Customer from time to time communicate to each other as their respective addresses for service and shall be deemed serviced, in the case of postal notice, on the expiry of 24 hours from the time of posting or, at the time of transmission provided that the sender has obtained a confirmatory receipt.

14. CONSTRUCTION AND JURISDICTION

The contract shall be governed and construed in accordance with English Law and the parties agree to the exclusive jurisdiction of the English Courts.

15. ACKNOWLEDGMENTS BY THE CUSTOMER

15.1 Without prejudice to clause 10.2 (a) and upon completion of the Works the Contractor shall explain to the Customer how to operate and use the Equipment. The Customer acknowledges that it will thereafter be responsible for the proper maintenance, use, cleanliness and operation of the swimming pool.

15.2 The Customer further acknowledges that it has read these Terms and Conditions and has consulted so far as it thinks necessary such legal or other adviser as it considers appropriate and that the Customer considers these Terms and Conditions are reasonable.

16. GENERAL

16.1 Any reference in these Terms and Conditions to any provision of statute should be construed as a reference so that provision as amended, re-enacted or extended at the relevant time.

16.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

16.3 Words denoting the singular include the plural and vice versa.