

TERMS AND CONDITIONS – SUPPLY OF SERVICES

1. Definitions and interpretation

Agreement has the meaning given to the term in Clause 3(c) of these Conditions.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended from time to time.

Barrier means the assembly of components, natural or otherwise, that restricts access to the Pool.

Building Act means the *Building Act 1993* (Vic).

Building Regulations means the *Building Regulations 2018* (Vic).

Certificate of Compliance means a Form 23 issued pursuant to regulation 147Y of the Building Regulations where the Barrier has been inspected and determined to comply with the applicable Standard.

Certificate of Non-Compliance means a Form 24 issued pursuant to regulation 147ZG of the Building Regulations where the Barrier has been inspected and determined not to comply with the applicable Standard.

Conditions means these Terms and Conditions.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Consumer and **Consumer Contract** have the meaning given to those terms in the Australian Consumer Law.

Customer means the owner of the Pool acquiring the Services from the Supplier.

Fee means the amount payable to the Supplier for providing the Services.

GST means any goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Inspection means our inspection of the Barrier.

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided;
- (b) Certificates, licences, consents permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services; and
- (c) Fees and charges payable in connection with the foregoing.

Loss means any expense, cost, liability or damage of any kind and includes, without limitation, Consequential Loss and a fine or penalty imposed by a statutory or other authority.

Non-Excludable Provision has the meaning given to that term in Clause 8(c).

Order means a Customer's request for the provision of particular Services by the Supplier.

Pool means a swimming pool or spa that falls within the requirements of the Building Act.

Report means a report issued by the Supplier following inspection of the Barrier in accordance with the Standard and pursuant to Clause 6(d) of these Conditions.

Services means any services supplied by the Supplier under these Conditions.

Standard has the meaning given to that term in Clause 6(a) of these Conditions.

Supplier means Health Advisors Australia Pty Ltd trading as Pool Barrier Inspection Services being a swimming pool inspector as defined in section 3 of the Building Act.

Supplier Terms means any terms and conditions of quotation and supply (apart from these Conditions), however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), in the Supplier's standard form.

Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.

2. Acceptance of these Conditions

The Customer will be deemed to have accepted these Conditions when it places an Order with the Supplier.

3. Structure of this document

- (a) The Conditions are legally binding between the Supplier and the Customer and should be read together with the Supplier Terms. These Conditions will be imported into any Supplier Terms by reference.
- (b) To the extent of any inconsistency, the Conditions prevail over the Supplier Terms, unless the Supplier and the Customer expressly agree that the Supplier Terms are to prevail over these Conditions.
- (c) The Conditions, the Supplier Terms and each Order that is accepted by Supplier, set out the terms of the supply agreement ("**Agreement**") between the Customer and the Supplier. Any terms contained in any document supplied by the Customer will not form part of the Agreement.

4. Price of Services

- (a) The Supplier will, on request, give the Customer a quote which will specify an estimate of the Fee for the provision of the Services.
- (b) The Customer is required to pay the Fee without any deductions on receipt of a tax invoice and prior to the Supplier providing the Services.
- (c) The Customer will be required to pay any additional costs or fees incurred by the Supplier as a result of:
 - (i) a failure to provide accurate information;
 - (ii) additional work or Services (including an amended compliance report) required to be performed at the request of the Customer or recommendation of the Supplier and accepted by the Customer; or
 - (iii) cancellation of the Inspection on less than 24 hours' notice which will incur a 100% cancellation fee.

5. Customer supplied information

- (a) Prior to any Inspection, the Customer must provide the Supplier with a copy of the council registration letter relating to the Pool including the construction date/s, the applicable Standard/s for the Barrier, the Customer's name and address, the Pool address, and the due date for the Certificate of Compliance. An Inspection will not be able to proceed without the Supplier without first receiving a copy of this document in full.
- (b) The Supplier will inspect and interpret the Barrier against the Standard provided by the council registration letter. Any dispute/disagreement between the Customer and the council regarding the Standard applied to the Pool must be resolved before any Inspection. The Supplier is obligated to apply the Standard provided in writing by council.

6. Services

- (a) The Supplier will carry out an Inspection upon request by the Customer in accordance with the applicable standard nominated by the Customer's local council in which the Pool is located pursuant to the Building Regulations ("Standard").
- (b) Where a Barrier meets the relevant Standard, a Certificate of Compliance will be issued by the Supplier.
- (c) If a Barrier does not meet the applicable Standard, the Supplier will either:
 - (i) give the Customer a Report in accordance with Clause 6(d) of these Terms if the Supplier determines that the non-compliance does not require the immediate issue of a Certificate of Non-Compliance pursuant to Clause 6(c)(ii); or
 - (ii) issue a Certificate of Non-Compliance to the Council (with a copy sent to the Customer), which the Supplier will do immediately if the Barrier:
 - (A) poses a significant or immediately risk to life or safety; or
 - (B) cannot be made compliant within 60 days or the Customer is unlikely to bring the Barrier into compliance; or
 - (C) the Barrier does not comply with the applicable Standard in that:
 - (1) the door or gate, when in the closed position, can be opened by a person who is unable to reach the opening mechanism for that door or gate; or
 - (2) the door or gate cannot be completely closed; or
 - (3) the Barrier is less than 1000mm in height, measured above the ground level on the approach side.
- (d) The Customer acknowledges that the Supplier may be required to immediately issue a Report, which will:
 - (i) state that the Barrier must be brought into compliance with the applicable Standard;
 - (ii) specify the matters in respect of which the Barrier does not comply with the applicable Standard;
 - (iii) specify the date, being not more than 60 days after the Customer receives the notice, by which the matters specified in the notice must be brought into compliance with the applicable Standard; and
 - (iv) specify the date and time the Supplier proposes to re-Inspect the Barrier.
- (e) Following the required re-Inspection of the Barrier:
 - (i) If the Supplier is satisfied that the Barrier complies with the Standard, the Supplier will issue a Certificate of Compliance to the Customer; or
 - (ii) If the Supplier is not satisfied that the Barrier complies with the applicable Standard, the Supplier will issue a Certificate of Non-Compliance. Alternatively, if the Supplier is satisfied that progress has been made in bringing the Barrier into compliance with the applicable Standard, the Supplier will give notice in writing to the Customer and give additional seven (7) days by which the relevant matters must be brought into compliance with the Standard.
- (f) Where a Certificate of Non-Compliance is issued, it will be lodged by the Supplier with the relevant council as soon as practicable with a copy being provided to the Customer.

- (g) The Report, Certificate of Compliance and Certificate of Non-Compliance are deemed to have been given and served if sent to the email address provided by the Customer.
- (h) Where a re-Inspection is required, it will be charged at the applicable fee listed on the Supplier's website or as otherwise quoted to the Customer by the Supplier.
- (i) The Report may include recommendations and / or suggested solutions for any non-compliant aspects of a Barrier. Any recommendations are not an exhaustive list of possible remedies. The Supplier takes no responsibility for the workmanship of any third party trade referral or endorse any products that may be listed in the Report.

7. Customer acknowledgements

The Customer acknowledges:

- (a) it will provide the Supplier with all information required to complete the Services and warrants the accuracy and completeness of all information provided to the Supplier;
- (b) any Inspection is provided at a point in time only and any certificate or report issued is provided based on the condition of the Pool and Barrier at the time of the Inspection. The ongoing maintenance and upkeep of any Barrier to ensured continued compliance is the responsibility of the Customer. It is the Customer's responsibility to ensure that the Barrier, gate and latch are maintained in good working order. That includes, without limitation:
 - (i) the gate shall be fitted with a self closing device that will always close the gate from any position without the application of a manual force and operate the latch;
 - (ii) the latch shall always automatically operate the gate from being re-opened without being manually released;
 - (iii) objects must not be placed close to or up against the Barrier so they can be used to climb the Barrier;
- (c) the ongoing maintenance and upkeep of any Pool or Barrier to ensured continued compliance is the responsibility of the Customer;
- (d) it will not hold the Supplier liable for any area that the Supplier could not reasonably inspect during the Inspection due to access restrictions;
- (e) the Inspection will not involve any invasive Inspection and is limited to those accessible areas and sections of the property to which safe and reasonable access is available and permitted on the date and time of the Inspection;
- (f) it is the responsibility of the Customer to register the Pool with their relevant local council within the relevant prescribed time period and pay any prescribed fees; and
- (g) any fees, fines or other charges levied by council or other authority in respect to the Pool or Barrier remain the responsibility of the Customer and the Customer releases the Supplier from any Claims in relation thereto.

8. Limitation of Liability and Release

- (a) Subject to Clause 8(c) and except as expressly provided to the contrary in these Conditions or the Supplier Terms, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to these Conditions or the Supplier Terms or their subject matter are excluded to the maximum extent permitted by law.
- (b) Nothing in these Conditions or the Supplier Terms excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any

legislation which cannot lawfully be excluded or limited. This may include the consumer guarantees under the Australian Consumer Law.

- (c) Where the Supplier is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to these Conditions or the Supplier Terms ("**Non-Excludable Provision**"), and the Supplier is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then the Supplier's liability for breach of the Non-Excludable Provision is limited to (at the Supplier's election) the re-performance of the Services or the payment of the cost of having the Services re-performed.
- (d) Subject to the Supplier's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the Supplier's maximum aggregate liability for all claims under or relating to these Conditions or the Supplier Terms or their subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Services that gave rise to the claims in question.
- (e) Subject to Clauses 8(c) and 8(d), the Supplier will not be liable to the Customer for any Consequential Loss.

9. Indemnity

To the extent permitted by law, the Supplier, its employees, agents, contractors and affiliates (together the "**Indemnified Parties**") will not be liable for and the Customer will indemnify and hold harmless each of the Indemnified Parties against any claims, actions, expenses (including all reasonable legal expenses), and Losses of the Supplier, Customer or a third party resulting from or arising out of:

- (a) the Supplier performing any aspect of an Inspection including the issuing of a Certificate of Compliance or Certificate of Non-Compliance including for any damage caused to the Pool and Barrier or surrounding property during the Inspection;
- (b) negligence of the Customer or its employees, contractors, agents or affiliates;
- (c) any breach of a Legislative Requirement by the Customer or its employees, contractors, agents or affiliates;
- (d) any breach of these Conditions and/or Supplier Terms or recommendations issued by the Supplier by the Customer or its employees, contractors, agents or affiliates;
- (e) the provision of services or the use of information provided by the Customer or its employees, contractors, agents or affiliates, except to the extent that the claim, action or Loss is caused by the negligence or unlawful act of the Supplier;
- (f) reliance on the Report or any recommendations contained in the Report by the Customer or any third party;
- (g) failure by the Customer to implement the recommendations contained in the Report;
- (h) any loss, damage or injury sustained by the Customer, its invitees, any occupant or invitees as a result of the rectification works required to obtain compliance as recommended in the Report; or
- (i) any safety or structural issue that was not evident by visual assessment or was not otherwise accessible at the time of Inspection.

10. GST

- (a) If the Supplier has any liability to pay GST on the supply of any Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Services (unless the consideration for that supply is expressed specifically to be GST inclusive).
- (b) The Customer must pay GST without deduction or set off of any other amounts payable to the Supplier.

11. Dispute resolution

The Customer must notify the Supplier of any complaint or claim it has against the Supplier and must take reasonable steps to resolve these matters with the Supplier before making a complaint to a regulatory authority, or issuing proceedings in a court or tribunal.

12. Amendment

The Supplier may at any time alter these Conditions or the Supplier Terms by notice in writing to the Customer.

13. Third party disclaimer

The Report will be made solely for the use and benefit of the Customer. No liability or responsibility whatsoever, in contract or tort, is accepted to any third party who may rely on the report wholly or in part. Any third parties acting or relying on the report, in whole or in part will do so at their own risk.

14. Assignment

Unless the Supplier expressly consents, the Customer must not assign any obligation, entitlement, charge or rights under these Conditions or Supplier Terms.

15. Severability

If any provision of these Conditions or Supplier Terms offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from these Conditions or Supplier Terms (whichever is applicable), in which event the remaining provisions of the Conditions or Supplier Terms (whichever is applicable) operate as if the severed provision had not been included.

16. Privacy

- (a) The Customer acknowledges that the Supplier is required and permitted to collect Personal Information (as defined in the Privacy Act 1988 (Cth)) from the Customer in connection with the supply of the Services.
- (b) The Supplier will comply with the legal requirements of the Privacy Act 1988 (Cth), including the Australian Privacy Principles.
- (c) The Supplier will take photos or videos of the Pool and / or Barrier or surrounding site for reviewing practices and procedures and documenting the Inspection. Any photos or videos may be passed on to council or other relevant body as required by Legislative Requirements.

17. Governing law

These Conditions and any Supplier Terms are governed by and must be construed in accordance with the Laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Victoria and any other court or tribunal exercising the relevant jurisdiction.