



CONTRACTUAL TERMS AND CONDITIONS

BETWEEN THE PARTIES

1. PARTIES

- 1.1. THE CONTRACTOR - BLUPOOL Services (Pty) Ltd.**
- 1.2. THE EMPLOYER**, whose details are set out on the front page hereof.

2. WORK :

- 2.1.** The contractor hereby contracts with the Employer (Client) to construct a swimming pool on the said property.
- 2.2.** The work shall be carried out in terms of the attached approved council PLANS and SPECIFICATIONS that have been approved by the relevant LOCAL AUTHORITY and comply with such Local Authority's bylaws.
- 2.3.** In the event of the Employer requiring any changes to be made to the work, such request shall be made by the Employer to the Contractor in writing and the plans and specifications shall thereafter be amended and approved by the Local Authority; alternatively, if the Employer requires the work to be done subject to alterations that have not been approved by the Local Authority, the Contractor shall not be responsible for any loss or damage the Employer may suffer consequent upon his instructing the Contractor to proceed with the work and not have the Plans and Specifications amended and approved.
- 2.4.** In the event of there being a conflict between the Plans and Specifications, the provisions of the Specifications shall apply
- 2.5.** After the work has commenced, should the Local Authority's inspector require alterations and amendments to be made to the Plans and/or Specifications, the Employer shall consent thereto in writing and thereafter the work shall continue subject to such amendments and alterations.

2.6. After the commencement of the original scope of work, should the Employer require any extra work (Variations) to be done, this shall be recorded in writing and accepted by the parties.

2.7. . The cost of such extras, where rates are not available on the agreed quotation/ BOQ, will be calculated as follows:

- Direct -Cost of Labour ,Material & Hired equipment plus overhead of 30% plus Profit and Attendance of 20%
- Sub-Contractor – Cost of Invoice plus attendance of 15%

Variations will be added to the contract price and additional time shall be agreed upon for the completion of the contract work and the extras where applicable.

2.8. Should the Contractor discover any latent physical conditions at the site differing materially from the position set out in the Plans and Specifications or any physical conditions that differ materially from those ordinarily encountered in work of this nature, requiring additional work to be done, the cost thereof shall be treated as the cost of extra work and shall be added to the contract as variations.

2.9. Works Risk insurance shall be affected by the Employer, in the joint names of both Parties to the contract sum plus 10% (ten percent) thereof.

2.10. Where the execution of the works involves the risk of weakening or interference with the support of adjoining land or structures the Employer shall affect support insurance in the joint names of both Parties and shall engage a professional engineer to design and supervise the provisions of any necessary support work.

3. TIME FOR COMMENCEMENT,INDEMNITIES,WORKS RISK AND COMPLETION OF WORK

3.1. The Contractor shall commence work on the date set out above and, subject to what follows, shall complete the work to the reasonable satisfaction of the Employer by the date agreed (Practical Completion).

3.2. The contractor agrees to start and diligently carry out the work to completion but shall not be responsible for any delays caused by the

following:–

- 3.2.1. Stormy or inclement weather or Act of God;
- 3.2.2. Failure by the Employer to obtain the necessary work permits timeously;
- 3.2.3. Failure by the Employer to obtain the necessary funds timeously;
- 3.2.4. Any acts or omissions by the Owner that may cause delays;
- 3.2.5. Labour problems or activities beyond the Contractor's control, such as strikes or lock-outs, or boycotts and the like;
- 3.2.6. Extra work agreed upon where extra time shall specifically be allowed;
- 3.2.7. Unrest in the country;
- 3.2.8. Delays or inability to secure materials timeously through recognised channels;
- 3.2.9. Failure by the Employer to make payments when due;
- 3.2.10. Delays caused by the Municipal Inspector or changes to the Plans and Specifications caused by Municipal requirements;
- 3.2.11. Delays caused by sub-contractors that are beyond the Contractor's control.
- 3.2.12. A latent defect in materials specified in trade name where the Contractor has no right to substitution. The Contractor cedes to the Employer any claim that may exist against the supplier/manufacturer of such material
- 3.2.13. Whilst every reasonable care will be taken, the Contractor accepts no liability for any damage to external areas, plants, shrubs, trees or to any area through or over which access is necessary for the completion of the works.
- 3.2.14. Material's delivered to site shall unless agreed otherwise, rest with the Employer for loss or damage howsoever caused, including any consequential loss or damage to the contents thereof.

4. CONTRACT PRICE AND TERMS OF PAYMENT

- 4.1. The contract price is as set out below;
- 4.2. **The contract price** is as per Page 1 (incl.of VAT). shall be paid as follows:–
 - 4.2.1. **Deposit :40%**
 - 4.2.2. **Progress Draw :50%**
Progress draw 2:N/A
 - 4.2.3. **Practical Completion:10%**

Any variation /extras shall be claimed as a separate line item and payable on Progress draw. Final adjustments on Completion

- 4.3. In the event of one or more payment/s not being made on or before the due date thereof, the Contractor shall be entitled to suspend work until the payment has been made and the time wasted or loss experienced, shall be added to the period of the contract. In addition, any overdue payments shall bear interest at the rate of 15,5% per annum.
- 4.4. Unless the plans have been prepared by the employer, the contract price shall include the drawing and submission of all Plans and Specifications, the Engineer's stability report and all items shown on the Plans and Specifications for the project. (refer Clause 7.12) as agreed.

5. EMPLOYERS RESPONSIBILITIES AND DUTIES

- 5.1. The Employer is required to supply water and electricity to the site.
- 5.2. The Employer shall allow the Contractor to have access to the site at all reasonable times for the purpose of having his equipment present at the site. Should a cost exist for access control this will be for the Employers account.
- 5.3. The Employer shall ensure that he either removes or protects his personal property,

- including carpets, curtains, furniture gardens and plants and should any damage be caused to such property, the Contractor shall not be responsible for any such damage, unless caused by gross negligence.
- 5.4. The Employer shall indicate to the Contractor where the beacons and boundaries of the property are.
 - 5.5. In the event of the Employer insisting that the pool be located in a position other than the one set out in the Plans and Specifications, the Contractor shall not be liable for any damage the Employer may suffer consequent upon such re-location, and the Employer shall be solely responsible for such damage including any damage that may be caused to other persons and third parties.
 - 5.6. The Employer shall ensure that a proper water supply is available to enable the pool to be filled.
 - 5.7. The Employer shall ensure that he does everything possible to ensure that the Contractor is able to complete the work free from any hindrance, interference or obstruction.
 - 5.8. The Employer confirms that once the work has been compliant and approved by the Building Inspector, it will be deemed to have been completed properly in a workmanlike manner and in terms of the contract.
 - 5.9. . Prior to excavation the Employer shall approve the depth of the pool and the amount of dirt that is to be held on the premises. In the event of the pool depth not being attainable with normal excavation equipment and/or within normal excavation time due to underground water, sand, rock or other unusual conditions beyond the Contractor control, the Employer shall either accept that the pool shall be constructed to the depth attainable or, if possible, have the pool constructed to the depth reflected in the plans and Specifications, subject to the Employer agreeing to pay the Contractor the additional costs of excavation that will be incurred by the Contractor, payment to be made Immediately the extra cost has been ascertained by the Contractor.

6. LIMITATIONS UPON CONTRACTOR'S RESPONSIBILITIES

- 6.1. The Contractor shall not be liable for any damage he may cause to the area surrounding the pool site and the area or areas that he may traverse to get vehicles and equipment to the site, such as curbs, sidewalks, driveways and access through adjoining properties to enable him to obtain access to the site.
- 6.2. Nothing set out above, shall limit the Contractor's liability for gross negligence or wilful misconduct.
- 6.3. In the event of the Owner having a legitimate claim against the Contractor in terms of the above, he shall lose his right to claim once the contract has been completed and the work approved by the Principal Agent or on Final Certificate.
- 6.4. The Employer records that he is aware of the fact that the dimensions of the pool set out in the Plan and Specifications are approximate with reasonable tolerance either way.
- 6.5. The Employer further records that the contract price is for normal excavation time using industry standard equipment for normal and typical soil in the region. If this is not so, the Owner will accept whatever required adjustments need be made.
- 6.6. In the event of any equipment set out in the specifications not being available to the Contractor, the Employer undertakes to accept other equipment of an equal quality that the Contractor may obtain.
- 6.7. The Contractor does not issue a guarantee in respect of the grouting work. If, as a result of the grouting, cracks or hairline cracks form, caused by the temperature or the nature of the cement
- 6.8. Practical Completion - The Employer shall together with the Contractor undertake a joint inspection of the works within 5 calendar days of a formal request, and prepare a single , comprehensive, written list of any items still to be completed and/or any defects to be remedied.

As soon as said work is completed and accepted by the Employer, the works shall be deemed to have reached final completion.

- 6.9. Final Completion -Immediately upon satisfactory completion of the works and any defects lists provided as above, the Employer shall pay all outstanding monies including and variations, retentions or other to the Contractor.
- 6.10. The Employer shall pay interest on any amounts due but not paid in terms of this agreement calculated at the current bank overdraft rates charged by the Contractors bank, from the due date of payment to the date payment is received by the Contractor.

7. GENERAL

- 7.1. The Employer acknowledges that he has read the Plans and Specifications and this agreement and that he is happy to contract in terms hereof.
- 7.2. Any amounts due to any authority's consequent upon the performance of this contract, such as Municipal fees and the like, shall be paid for by the Employer and the undertakes to have the funds required available at all times to avoid delays.
- 7.3. The Contractor shall pay all valid charges for labour and materials used in the construction of the work required in terms of this contract. However, in the event of the Employer being in arrear of any payments due by the Employer under this contract the Employer shall become liable for any accounts received by the Contractor for the period when the Employer is in arrears.
- 7.4. The Employer shall be obliged, before the work commences, to obtain all risks insurance to cover the value of the work in terms of the contract and shall cede all claims under the contract in favour of the Contractor. In the event of the Employer failing to obtain such insurance, the Contractor shall obtain such insurance In the Employers name and by his signature to this contract, the Employer hereby authorises the contractor to obtain such insurance at the Employers' costs.

- 7.5. Should the work hereunder be destroyed by any act of God, the cost of restoring the project shall be paid for by the Owner as an extra.
- 7.6. It is recorded that the Contractor shall carry Workmen's compensation for his Employees and, in addition, will insure himself against any and all injury or injuries that may be caused to his employees on site.
- 7.7. Upon the termination of the contract, the Contractor will clean up the site and restore it to the Employer in a neat, clean and tidy condition.
- 7.8. Should the Employer require the pool to be maintained, to have the water treated with chemicals etc, this shall not form part of this contract.
- 7.9. All materials brought onto the site by the Contractor shall remain under the ownership of the Contractor until the full amount due to the Contractor has been paid.
- 7.10. The guarantees furnished by the Contractor are as set out above.
- 7.11. The Employer shall not involve himself in the construction of the pool or p[roject as a whole in any way.
- 7.12. Should the Employer require professionals such as Architects, Structural or Geotechnical Engineers, licensed electricians or plumbers to be employed, if any damage is caused by such persons the Contractor shall not be liable in any way for any such damage. Should he request the Contractor to make such appointments, where not allowed for in the Contract, the attendance fee shall be paid as set out in this contract.

8. ADDITIONAL CLAUSES (Renovation work included)

8.1. PAVING

All paving quotes are estimates only as the correct area of paving used can only be calculated once the job is complete. Sometimes extra cutting of full pavers is required because of corners or slightly skew building and/or boundary walls. In the event of the Contractor using less paving than quoted for, the Contractor will reduce the invoice

amount accordingly. Should additional paving be required, this will be charged for by the Contractor. Whilst the utmost care will be taken when uplifting the existing paving, the Contractor cannot be held responsible for paving that breaks or is damaged. Should this happen the Owner will be responsible for making replacement pavers available. Alternatively the Contractor will attempt to match the paving with pavers that are as similar as possible at a price to be agreed upon by the parties. The Owner must note that replaced pavers will never look the same as existing pavers, even if they are from the same company and made in the same batch, as these pavers will not have been weathered in the same fashion as the existing paving. The Owner undertakes not to withhold any monies due to the Contractor because of broken pavers that cannot be replaced.

8.2. PAVING GROUT

The grout between pavers usually shrinks when it dries and can form hairline cracks. When the grout is new (seven to fourteen days) or on extremely hot days, the paving should be gently hosed down once a day to keep the grout moist while it cures and the Employer undertakes to do this.

8.3. SUBSIDENCE OF PAVING

No matter how well the soil is compacted, it will always settle over a period of time. However, the Contractor will guarantee the paving against subsiding for a period of one year under normal weather conditions.

8.4. WATER PIPES AND ELECTRICAL CABLES

It is recorded that all existing underground cables and domestic / irrigation water supply piping should be 500 millimetres deep and should be demarcated with chalk lines above the ground, although this is not always the case. Cables should be armoured or run in PVC conduit. Although the Contractor will take utmost care when digging, the Contractor will not be liable to the owner for breaking any water pipes or electrical cables while

digging on the work site. Should the owner be aware of pipes or cables that run through the property, it is the Employer's obligation to notify the Contractor specifically where they are and the contractor will endeavour to dig carefully so that no damage is caused.

8.5. ACCESS

The Employer agrees to provide reasonable access to the work site to allow the Contractor to leave and return freely to the site during the course of the job.

8.6. SCUM-LINE TILES

When the Contractor replaces scum-line tiles without re-marbling or plastering or fibre glassing the pool, there may be a visible variation in colour and height between the pool surface and the new tiles. In addition, the water may become cloudy after the job is complete, and there could also be shards and small pieces of tiles in the pool from removing the old tiles. In such cases, it may be advisable to drain the pool and refill with fresh tap water. Should the Owner choose not to drain the pool, the Contractor will endeavour to assist with clearing the water, but cannot be held responsible for ensuring that the water clarity is returned to its former state and that all shards of tiles are removed.

8.7. WEIRS, AIMFLOW JETS AND LIGHT CASINGS

When cutting out weirs and replacing them, it cannot be helped if tiles, paving, marble plaster or fibreglass gets chipped or broken. In addition there will also be some debris in the pool after working on the job and some debris may become trapped in the pool cleaner or weir basket. Whilst the Contractor will take the utmost care when removing and replacing the weirs, aim flow jets and light casings, the Contractor shall not be responsible for any debris that is missed during the clean-up and that becomes stuck in the pool cleaning equipment.

8.8. EXECUTION OF THE WORKS AND CONCERNS

The Employer is the Contractor's most important asset, and the Contractor will strive to be a company that gives the best service and has the best reputation in Durban. Should the Employer wish to discuss quality or other concerns with the Contractors he/she is requested to e-mail the Contractor on jason@blupool.co.za. In addition, please note that no verbal instructions are acceptable. A carbonated Site Instruction book or on Service M8 is available on site with the Supervisor/Charge hand should the need arise. This must be dated, timed and signed.

8.9. MARBLE PLASTER

8.10. The Contractor offers a one-year warranty against defective workmanship on marble plaster applications. It is recorded, however, that there is never any guarantee by any pool company for stains or any discolouration, patches or marks on any white or colour marble plaster. The Contractor cannot be held liable for any stains on marble plaster as the Contractor cannot control how the fill water is sourced and treated prior to it being used to fill the swimming pool, nor can the Contractor control the amount of blast furnace slag present in the gunite material.

8.11. COLOURED PLASTER

Coloured Plaster will always mottle, and the colour will vary from area to area on the surface. This is because of the pool plaster's different curing rates and temperatures. Different shades of colour can also occur due to the trowelling techniques used by the Contractor's specialist plastering sub-contractors. The Contractor does not warranty any colour patches or any streaking on any colour or white plaster whatsoever.

8.12. FIBREGLASS

The Contractor generally uses a 450g chopped strand matt (CSM) when laminating the pools. An Isophthalic resin (designed for underwater applications) is used instead of a general purpose (GP) resin unless circumstances or the Employer require otherwise. The Contractor offers a three-year warranty on the fibreglass lining and a six-month warranty on the top coat (Top surface), subject to the suppliers' performance.

8.13. **FIBREGLASS TOP-COAT**

Based on extensive testing on our range of pigments, a limited number of suitable colours have been identified for use in swimming pool applications, namely P1075 - White and P3038 - Pool Blue.

We strongly recommend that our clients use the suitable colours as NCS recommends. We have found from experience in the field that using non-standard pool top coats (especially the darker colours) has a visible discolouring once the pool is filled with water.

This is due to the wax content in the pool top coat mix; the darker colours have a greater wax content to help protect the top coat as it cures - mainly bathing traffic in and out of the pool and chemical usage.

In addition to the above, the Contractor does not guarantee against any discolouration, streaks, patches or stains. The Contractor cannot control temperatures, curing rates and/or metals present in the fill water, which can cause discolouring.

9. **SETTLEMENT OF DISPUTES**

- 9.1. Any dispute or difference between the Contractor and the Employer arising out of this agreement shall be referred to Arbitration. This shall not preclude the parties from attempting to resolve their dispute by mediation, conciliation or other similar means prior to entering the Arbitration proceedings
- 9.2. Where an Arbitrator has not been agreed beforehand mutually by both parties ,the Arbitrator shall, at the written request of either party, be nominated by the President for the time being ,of the Master Builders Association(MBSA) having jurisdiction in the area of dispute.
- 9.3. The appointment shall be made within seven(7) days of receipt of such request.
- 9.4. The Arbitration shall be conducted in accordance with the latest edition of the Restricted Representation Rules as published by the Association of Arbitrators(Southern Africa) unless otherwise agreed.
- 9.5. Cancellation of the contract shall not affect the validity of this agreement to refer all disputes to Arbitration.

10. **SIGNATURES TO CONTRACT AGREEMENT**

10.1. Signed by the Employer aton.....

.....(Signature of Employer)

.....(Full Names)

10.2. Signed by the Contractor at on.....

.....(Signature of Contractor)

.....(Full Names)