

SPA DESIGN AND BUILD LIMITED

BUSINESS TERMS & CONDITIONS FOR SALE OF GOODS AND SUPPLY OF SERVICES

Interpretation

Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: as per tender/quotation/programme agreement.

Conditions: these terms and conditions as amended from time to time at date of contract sign up / agreement / commencement.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order.

Delivery Location: the location set out in the Order or such other location as the parties may agree in writing.

Force Majeure Event: has the meaning given to it as per below.

Goods: the goods (or any part of them) set out in the order/tender/agreement.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation as the case may be.

Order Confirmation: as per set out in the tender/quotation/agreement.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Spa Design and Build Limited registered in England and Wales with company number 06487710.

Supplier Materials: has the meaning set out as per below.

Construction. In these Conditions, the following rules apply:

a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a reference to a party includes its personal representatives, successors or permitted assigns;

a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

a reference to writing or written includes faxes and e-mails; and

references to we, our and us are references to the Supplier.

Basis of contract

The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (Order Confirmation) at which point and on which date the Contract shall come into existence (Commencement Date).

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of a set time from its date of issue as per stated within the tender/quotation/offer agreement.

All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

Any information provided by our field representatives relating to options on site and prerequisites for the installation of our products shall not be binding unless it has been confirmed by us in writing or is specifically referred to in our Order Confirmation or General Terms and Conditions for the Sale of Goods.

Our sales representatives are not authorised to enter into subsidiary verbal agreements or to give verbal assurances beyond the content of the written contract. In the first instance, the description given in the current price list defines the scope of delivery. This price list renders all previous price lists null and void.

Quotations

Our quotations are provided without obligation. On being confirmed, any illustrations, dimensions or drawings accompanying quotations or Order Confirmation shall be binding only if no subsequent changes occur on site, no changes are made to official regulations or new regulations passed, or design changes made.

If, however, for these reasons, changes are required which it is reasonable to expect the Customer to accept, we reserve the right to adapt the specification to the revised circumstances.

If this gives rise to additional costs, the Customer shall be notified accordingly in advance. The external dimensions of products given in quotations may vary by up to +/-50mm, depending on their type. This does not affect the internal dimensions.

Prices

Prices are usually fixed for a period of three months following the Commencement Date. If the period between the Commencement Date and the agreed and/or actual delivery date exceeds three months, the Supplier's prices applicable at the time of the delivery or provision of Services shall apply.

On payment of at least one-third of the value of the Order, fixed prices may be agreed separately, even for a period exceeding three months. Quoted prices are ex-works.

Charges for incidentals such as packaging, insurance, delivery (transport), assembly and the connection of any additional materials required will be invoiced separately.

If the Goods are delivered by truck and assembled by the Supplier's personnel, the costs of transport and assembly may be invoiced at a flat rate, subject to assembly being possible immediately after delivery, without interruption, and provided that only one journey is required for the delivery and assembly operations. In the event that additional journeys are required for reasons not attributable to us, we will invoice the resulting additional costs separately.

Our prices do not include the costs of services to be provided by the Customer on site.

Goods and services to be supplied on site by the Customer prior to installation by the Supplier's personnel

The Customer undertakes to complete all the requisite on-site operations before the date agreed for delivery and assembly. Doors, staircases and corridors must be of sufficient width to permit saunas, steam suites, pools, spas and baths etc. to be conveyed to the Delivery Location. Unless otherwise agreed, openings and passageways at least 1000mm in width are typically required.

Commencement of manufacture and/or site install: the Supplier can only operate from its signed and approved drawings. If the Supplier has been asked in writing to commence with any element beyond or outside of the designed drawing package, this is then the responsibility of the Customer.

Pre-delivery agreements apply for different products and must be ready before goods are arranged to be transported. These differ on the below products and the Customer must ensure they are requested and followed to avoid penalties in delivery and installation:

1. Hot Tubs
2. Pools, HydroPools & SwimSpas
3. Spas
4. Saunas and all related sauna type rooms
5. Steam Rooms, Hammams, Rhassouls and all related steam type rooms
6. Showers and all related automated and non-automated showering rooms
7. Ice fountains and all related cold/cool products

Services: All services are to be supplied and installed on site in accordance with our specifications unless otherwise specified or agreed.

If the Customer defaults on any of its obligations as described within these conditions of sale, it will be required to compensate the Supplier for the resulting loss. In this event, and provided that the remaining legal requirements are met, we shall also be entitled to withdraw from the Contract or to claim compensation on grounds of breach of Contract.

Backfilled pools - filling, draining, bracing and support

Where a pool shell has been installed and backfilled, whether fully or partially, the pool must not be drained, substantially lowered or left without the required water support unless Spa Design and Build Limited has first provided written approval and the pool is braced, supported and managed strictly in accordance with Spa Design and Build Limited's written instructions and methodology.

The Customer must ensure that filling and backfilling are undertaken in the correct sequence and at appropriate corresponding levels so that excessive differential pressure is not imposed on the pool shell. Where a pool is to be drained after backfilling, suitable temporary cross-bracing and any other support specified by the Supplier must be installed before and maintained throughout the draining period.

Any draining, partial draining, reduction in water level, alteration or removal of backfill, excavation around or beneath the pool shell, removal or alteration of temporary or permanent support, or other intervention

undertaken contrary to the Supplier's written instructions or without the Supplier's prior written approval may cause shell movement, bowing, distortion, floor lift, cracking, joint movement or associated damage.

The Supplier shall have no liability to the extent that any loss, movement, distortion, cracking, uplift, settlement, joint movement or other damage is caused or contributed to by a failure to follow those instructions. Any investigation, attendance, excavation, reinstatement or remedial works required as a result may be chargeable unless expressly agreed otherwise in writing.

Customer's obligations

The Customer shall:

ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

co-operate with the Supplier in all matters relating to the Services;

provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

prepare the Customer's premises for the supply of the Services;

obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out within these conditions of sale; and

the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

Delivery period

When Goods are called within the scope of a framework order, the desired delivery date must be specified in writing 30 Business Days in advance, unless a longer call period has been agreed within the tender/quotation and/or programme. The Supplier will respect delivery dates to the best of its ability. In the event of a delay in delivery for which we are responsible, the period of grace which the Customer must allow is set at eight weeks.

If we are not responsible for the delay in delivery, the delivery period shall be extended or the agreed delivery date postponed by the length of time for which the said delivery difficulties beyond our control prevail. In such cases, however, the Customer shall be entitled to withdraw from the Contract on the expiry of three months after the original delivery date.

Any dates quoted for the delivery of Goods are approximate only and the time of delivery is not of the essence.

Terms of payment

Payment terms are strictly as per set out within the agreed and/or undertaken tender/quotation/order/agreement. Vesting certificates are available upon request for each of the products.

Unless otherwise stated invoice amounts are for goods and materials. Labour costs, for the purposes of CIS and other schemes, will be shown separately.

Interest may be charged on late payments at the maximum rate allowed under the Late Payment of Commercial Debts (Interest) Act 1998.

Title and risk

The risk in the Goods shall pass to the Customer on completion of delivery.

Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified as above.

Until title to the Goods has passed to the Customer, the Customer shall:

store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

notify the Supplier immediately if it becomes subject to any of the events listed in these conditions of sale;

give the Supplier such information relating to the Goods as the Supplier may require from time to time.

Subject to that set out in these conditions of sale, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

it does so as principal and not as the Supplier's agent; and

title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in these conditions of sale then, without limiting any other right or remedy the Supplier may have:

the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

the Supplier may at any time require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

Damages

In the event of wrongful repudiation of the Contract or any part thereof by the Customer, the Supplier shall be entitled, without prejudice to any other legal measures, to claim compensation in the amount of 15% of

the value of the Order, unless the Customer is able to prove that we have incurred no loss or a substantially lesser loss. The Supplier reserves the right to enforce a higher actual loss.

Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

Nothing in these Conditions shall limit or exclude the Supplier's liability for:

death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

fraud or fraudulent misrepresentation;

breach of the terms implied of the Supply of Goods and Services Act 1982 (title and quiet possession);

breach of the terms implied of the Sale of Goods Act 1979 (title and quiet possession); or

defective products under the Consumer Protection Act 1987.

Subject to these conditions of sale:

the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a pre-agreed mutual amount or as per insurance undertaken. If this is not pre-agreed, this is null and void.

The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

Guarantee

We guarantee that the Goods comply with the recognised technical standards at the time of delivery and are not affected by any faults which would nullify or reduce their value or suitability for normal use or use as specified in the Contract. The Customer must promptly notify the Supplier in writing of any defects which may occur.

All equipment is provided and installed with guarantees as per stated in the signed and/or agreed/undertaken tender/quotation only. This does not necessarily always include labour, travel and carriage charges.

The guarantee does not cover normal wear and tear for wearing parts, such as steam cylinders or electrodes, UV lamps, washers, gaskets, replacement light bulbs, contactors, relays and any electrical components damaged externally. The entitlement of the Customer in respect of faults occurring during the guarantee period, for which we are responsible, is limited to repairs.

For backfilled pools, the contractual guarantee does not cover shell movement, bowing, distortion, floor lift, cracking, joint movement or associated damage caused or contributed to by draining, substantially lowering the water level, unequal filling/backfilling, inadequate bracing or support, excavation around or beneath the shell, alteration/removal of backfill or failure to follow the Supplier's written filling, draining, bracing, backfilling or maintenance instructions. This exclusion applies only to the extent that the relevant damage is caused or contributed to by such act or omission.

The guarantee is only provided once all final accounts have been agreed and settled in full.

Documents

Any documents or other material transferred to the Customer, such as drawings, models, drafts and calculations shall remain our property until the placement of a legally valid Order. In the event that no Order

is placed, we shall be entitled to request the return of all the said items. The Customer shall not be entitled to publish our drawings, models, drafts or calculations or to reproduce them or use them for any purpose other than as agreed, without our express permission.

Intellectual property rights

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

All Supplier Materials are the exclusive property of the Supplier.

Confidentiality

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.

The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.

The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.

Termination

Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

the other party (being an individual) is the subject of a bankruptcy petition or order;

a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in these conditions of sale;

the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed above, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

On termination of the Contract for any reason:

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

clauses which expressly or by implication have effect after termination shall continue in full force and effect.

Force majeure

For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, local, national or worldwide illness or default of suppliers or subcontractors.

The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

General

Assignment and other dealings.

The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

Notices.

Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict further exercise of that or any other right or remedy.

No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).