



Building Contract for Construction of Swimming Pool
Schedule 1

1 Parties

1.1 Owner/Client: _____ (“the Owner”)

1.2 Contractor: **Executive Poolshop Limited** (“the Contractor”)
118 Pakuranga Highway, Pakuranga Auckland

2 Address and Description of Land

2.1 No. _____ at _____

2.2 Area _____ m² Lot _____ DP _____ CT _____ / _____

3 Contract Price

3.1	Price of work	\$ _____
3.2	GST	\$ _____
3.3	Total Contract Price (GST inclusive)	\$ _____

Including options of: _____

4 Payment Schedule (All percentages are a maximum for that progress payment)

4.1	Contract deposit payable on signing of this contract	10%	\$ _____
4.2	Payment on excavation of Pool and creating basic concrete shell	60%	\$ _____
4.3	Payment on installation of coping tiles, interior tiles and installation of all pipework (prior to surfacing interior of Pool)	25%	\$ _____
4.4	Final payment on Commissioning of Pool	5%	\$ _____
4.5	Total payments (GST inclusive)		\$ _____

5 Payment Period from Receipt of All Invoices: Five (5) Working Days

6 Interest Rate for Late Payment: 6.1 12 % per annum calculated at a daily rate.

7 Letter of Quotation

7.1 Letter of Quotation from the Contractor dated _____ day _____ 201____
plus Ammendment (1) dated _____ day _____ 201____
plus Ammendment (2) dated _____ day _____ 201____

In consideration of the Owner paying to the Contractor the Contract Price in the manner provided for above, the Contractor agrees to construct the swimming pool described in the attached plans and specifications and letter of quotation (“the Work”) upon the terms and conditions in the clauses set out hereunder.

1 Scope of Work

1.1 The Contractor shall complete the construction of the Work in accordance with the Plans and Specifications as modified by any special reference in the Letter of Quotation. The Contractor will complete construction in a thorough workmanlike manner and in accordance with the New Zealand Building Code and the requirements of the Territorial Authority.

1.2 Upon signing of this agreement and the payment by the Owner of the deposit as set out in item 4 of Schedule 1, the Contractor shall finalise the Plans and Specifications. If the Plans and Specifications have been prepared by the Owner or the Owner's consultant then the parties shall agree as to whether the consultant or the Contractor shall lodge the application for the Building Consent. The plans and specifications shall then be lodged with the Territorial Authority for a Building Consent. Once the Building Consent issues and the Owner has paid the deposit the Contractor shall commence construction of the Work within a reasonable time or when agreed between the parties by mutual agreement in writing but in no case to be less than four weeks notice.

1.3 If the Building Consent does not issue or the Contractor is unable to commence construction of the Work due to any matter beyond the Contractor's control (including a requirement by the Territorial Authority for a resource consent for the Work) then the Contractor shall so notify the Owner and the date for commencement of construction shall be extended accordingly or the Contractor may cancel this contract.

1.4 If an extension is required pursuant to the terms of clause 1.3 the Contractor may review the Contract Price and may adjust the Contract Price to reflect any resulting increase in costs.

2 Construction Site

2.1 The Owner is responsible for fixing of the boundaries of the Land and the Contractor shall rely solely on the information supplied by the Owner. The Owner indemnifies the Contractor in respect of any expenses, losses, claims arising out of incorrect location of the boundaries or boundary pegs or mistakes as to correct boundaries of the Land.

2.2 Before commencing construction the Contractor shall mark out the location of the Pool on the Land as shown in the Plans and Specifications and the Pool Construction Zone within the Land.

2.3 The Contractor shall mark out the elevations of the Pool from the elevations shown in the Plans and Specifications or as supplied separately by the Owner or the Owner's consultant. The indemnity referred to in clause 2.1 shall apply to the Contractor in respect of any Pool siting or elevations.

3 Site Suitability

3.1 The Owner warrants to the Contractor that the Land is suitable for the siting and construction of a Pool and that the Owner is entitled to construct the Pool on the Land. The Owner indemnifies the Contractor against all claims, actions, proceedings, demands, costs and expenses which may be made or brought by any person for any reason whatsoever. This shall include any person claiming to be the rightful owner of the property and/or which may be brought by any person in respect of any alleged encroachment of the Pool or Pool accessories upon any adjoining property.

3.2 The Contractor shall not be liable for:

3.2.1 any damage to the Work caused by subsidence of the site or mishap or subsidence on adjoining Land.

3.2.2 any damage to the Land, to the Work or to any improvements on the Land caused by the construction of the Work by the Contractor unless such damage has been caused by a negligent act or omission on the part of the Contractor or its subcontractors or agents.

3.2.3 any damage or any additional costs of the Work resulting from the absence of information which results in foundation defects or difficulties in the construction of the Work which were not discoverable by the Contractor on a reasonable inspection of the site.

3.2.4 any damage or deterioration to the Work or any part of the Work or the Land caused by or resulting from inadequacy of earth fill or negligent earth fill unless such damage or deterioration is due to a negligent act or omission to carry out specific work by the Contractor or its subcontractors or agents.

3.2.5 any additional costs or delays occasioned as a result of any underground conditions, rock or other hazards discovered during the course of construction and not discoverable by the Contractor on a reasonable inspection of the site prior to determination of the Contract Price and commencement of the Work. The Owner shall be liable for the costs of any engineering reports, additional excavation, rock blasting or other work required and any alteration to the Plans and Specifications caused as a result of the discovery of any such hazard. Such additional costs will be an extra and variation to the Contract Price and shall be dealt under clause 6.

3.3 The Owner indemnifies the Contractor against all additional costs and expenses incurred for engineering reports, other professional services or claims against the Contractor by any person whatsoever for damage or expenses incurred by reason of any of the hazards referred to clause 3.2.

3.4 In the event of any of the hazards referred to in clause 3.2 above being encountered during construction of the Work the Contractor will cease work and provide the Owner with an estimate of the resulting extra costs and expenses. The Owner may either accept liability by notice in writing to the Contractor, for that extra cost and proceed with the Work or terminate this contract.

4 Cancellations and Consequences Thereof

4.1 If this contract is cancelled pursuant to clause 1.3 or clause 3.4, the Owner shall pay the Contractor all costs and expenses including consultants fees that the Contractor has incurred pursuant to this contract up to the date of cancellation of the contract. The Contractor may deduct the same from funds held and paid by the Owner pursuant to the contract. Following deduction if there is a surplus of funds held by the Contractor then the surplus shall be refunded in full to the Owner. If there is a shortfall then the Owner shall immediately make payment to the Contractor of the shortfall.

4.2 Upon receipt of any payment due under clause 4 the Contractor shall at the Owner's cost restore the Land as near as possible to its original condition prior to the commencement of the Work.

5 Payments

5.1 The Owner shall pay the Total Contract Price to the Contractor in the manner set out in item 4 of Schedule 1 (time being of the essence).

5.2 Each Payment is due within five (5) working days from the date the Owner receives the Contractor's invoice for the progress Payments. The Owner shall pay interest for late payment at a daily rate at the interest rate stated in item 6 of Schedule 1 until the Contractor receives payment. The Contractor may suspend the Work until the progress payment and interest thereon and any extra costs and expenses incurred in such suspension of Work (including the increased costs of labour and materials) has been paid. Whether the Work has been suspended or not the Contractor may sue for recovery of payment of such moneys and interest thereon. Notwithstanding any act of suspension by the Contractor the Contractor shall not be liable for any liquidated damages or other costs by reason of the suspension of the contract as a result of this clause.

5.3 Where the Total Contract Price and the Letter of Quotation include provisional sums for certain aspects of the Work then at the time the actual cost of that item of the Work is determined the Contract Price shall be adjusted accordingly.

5.4 If upon Commissioning of the Pool there are any unpaid residual amounts relating to the total Contract Price, interest costs adjustment and damages due by the Owner to the Contractor then all those sums shall fall due for payment in the final payment pursuant to item 4.4 of Schedule 1.

6 Variations and Extras

6.1 The Contractor shall be under no obligation to accept any variations or extras to the Work. The Contractor may at its sole discretion if requested by the Owner provide a written quotation for any extras, variations or deletions requested by the Owner. The costs of the variations and extras shall be due within five (5) working days from the date the Owner receives the Contractor's invoice for those extras and variations. Failure by the Owner to pay the payment within the timeframe shall cause the Contractor to invoke the terms of clause 5.2 above.

6.2 Any credit due as a result of any deletion from the Work shall be adjusted at the time by the Contractor and credited against the next progress payment due under the Payment Schedule.

7 Additional Works

7.1 If due to the inadequacy of the Plans and Specifications supplied by the Owner, workmanship carried by the Owner or the Owner's subcontractor or materials supplied by the Owner or the Owner's subcontractor, the Contractor has to carry out additional work to that specified in the Plans and Specifications such additional work shall be carried out by the Contractor at the Owner's cost. Any additional costs as a result of such additional work shall be paid by the Owner to the Contractor in the manner set out in clause 6 above.

7.2 Should the Territorial Authority or the Owner's mortgagee require any additional Work to the Plans and Specifications as a condition of granting or retaining of the building consent or granting or retaining the mortgage finance then:

7.2.1 The Contractor shall advise the Owner of the costs of such additions and alterations required.

7.2.2 The Owner shall advise the Contractor whether it wishes the additions and alterations to be carried out or if the Owner wishes alternative work to be carried out which will avoid the necessity for the requested additions and alterations.

7.2.3 The costs of the additions and alterations or the Owner's chosen alternative shall be borne by the Owner and paid in the manner set out in clause 6.

8 Insurance

8.1 The Owner shall arrange insurance:

8.1.1 For the Work against loss or damage for full replacement value as either an extension to the existing comprehensive Work insurance policy if the Work has been carried out as part of a building contract; or as an extension to the existing homeowners insurance policy where the Work is being carried out as part of an extension of an existing structure; and

8.1.2 For full replacement value against loss and damage to the Owner's existing structure and Owner's contents; and

8.1.3 Against consequential loss arising from loss or damage to the Owner's existing structure.

8.2 Any material plant or equipment delivered on site shall be insured by the Contractor against all normal risks other than fire which shall be the responsibility of the Owner.

8.3 The Contractor shall maintain a public liability policy for cover of not less than \$1,000,000.00 until the Work is taken over by the Owner upon the Commissioning of the Pool, at which point risk passes to the Owner.

9 Plant and Equipment

9.1 All plant and equipment delivered onto the Land and incorporated within the Work shall remain the property of the Contractor until the Owner pays the Contractor for it.

9.2 On Commissioning of the Pool the Contractor shall instruct the Owner on the maintenance of the Pool and its related plant and equipment. The Contractor shall provide the Owner with all manufacturers' warranties and guarantees, and maintenance instruction manuals.

9.3 Following the Commissioning of the Pool the Owner shall be solely responsible for the care and maintenance of the Pool, the plant and equipment.

10 Owner's Work

10.1 All items of work required for the preparation of the site for construction of the Work or otherwise not included in the scope of Work as defined in the Plans and Specifications and Letter of Quotation shall be carried out by the Owner or the Owner's subcontractor. This shall include but not be limited to such work as the excavation of the Pool site, provision of electrical supply to the filtration unit and any additional equipment and the provision of landscaping of the Pool once the Work is completed.

10.2 Any work undertaken by the Owner or the Owner's subcontractor shall be carried out in accordance with the timetable provided to the Owner by the Contractor. Such work shall be carried out to a standard as set out in clause 1

above and strictly in accordance with any directions given by the Contractor. Occupation of the site whilst carrying out such Work by the Owner or the Owner's Subcontractor shall be only temporary.

10.3 In the event that the Owner fails to undertake such work in accordance with the Contractor's timetable or in accordance with the standard specified herein then the Contractor shall be entitled to rectify such failure, make good any defect, and charge the Owner any extra costs incurred as a result.

10.4 Such additional costs shall be paid by the Owner to the Contractor within five (5) working days of the Owner receiving the Contractor's invoice for the progress payment. Failure by the Owner to pay the Contractor shall result in the Contractor invoking the terms of clause 5.2 above.

11 Default by Owner

11.1 If the Owner shall default in the observance or performance of any of the Owner's obligations under this contract or if the Owner becomes bankrupt or goes into liquidation or has a receiver or statutory manager appointed then the Contractor may without prejudice to its other remedies do any or all of the following:

- (a) Cancel this contract; or
- (b) Suspend the Work until default has been remedied; or
- (c) Whether the Work has been suspended or not take such action as it wishes in any Court of competent jurisdiction.

12 Default by Contractor

12.1 If the Contractor defaults in observance or performance of any of its obligations under this contract or if the Contractor shall become bankrupt or go into liquidation or has a receiver or statutory manager appointed then the Owner without prejudice to other remedies may at its option exercise all or any of the following:

- (a) Cancel this contract; or
- (b) Whether the contract is cancelled or not take such action as the Owner wishes in any Court of competent jurisdiction.

13 Health and Safety Issues

13.1 The Contractor shall be responsible for establishing the health and safety control programme for the Pool Construction Zone. The Contractor will take all practical steps to provide and maintain a safe working environment identifying significant hazards and displaying such signs and notices on the perimeter to the Pool Construction Zone in accordance with its health and safety control programme.

13.2 The Contractor shall be responsible for the safety of its subcontractors and to ensure that they comply at all times with the health and safety control programme established for the Pool Construction Zone.

13.3 The Owner agrees to comply with the Contractor's health and safety control programme and to comply with all directions of the Contractor or the Contractor's Pool Construction Zone safety supervisor.

13.4 The Owner shall be responsible for Pool Construction Zone safety of its contractors invitees and workmen at all times. The Owners and their subcontractors agree to comply with the Contractor's site safety supervisor at all times and if ordered to do so shall vacate the site immediately.

13.5 Once the Pool is excavated the Contractor shall ensure that the Pool Construction Zone perimeter is fenced with a suitable temporary construction fence.

14 Commissioning of the Pool and compliance with the Fencing of Swimming Pools Act 1987

14.1 The Owner shall be responsible to fence the swimming pool in order to comply with the Fencing of Swimming Pools Act 1987 and the requirements of the Territorial Authority. The Contractor shall not fill the Pool until fencing has been completed and until the terms of clause 14.2 have been complied with.

14.2 The Contractor shall not fill the Pool with water until:

14.2.1 The Contractor receives written notice from the Territorial Authority that the fencing complies with the Act and the rules of the Territorial Authority's district plan and/or

14.2.2 The Owner signs the Contractor's indemnity and

waiver of liability; and

14.2.3 The Owner pays to the Contractor the amount due under item 4.4 of Schedule 1 of the Agreement.

14.3 If the Owner fails to complete fencing within twenty (20) working days of the Contractor's notice that the Pool is ready for the fencing to be carried out then the sum due under item 4.4 of Schedule 1 shall immediately fall due for payment. If the Owner fails to make payment then the provisions of clause 5.2 shall apply.

14.4 From the date on which all of the conditions in clause 14.2 are satisfied the Owner shall take possession of the Work and from that date all risk in respect of the Work and the plant and equipment shall pass to the Owner.

15 Materials on Site

15.1 All materials placed on the Land by the Contractor remain the property of the Contractor at all times whether incorporated into the Work or not until such time as the Owner has paid for the materials pursuant to the terms of this agreement. The same shall apply to any excess materials supplied by the Contractor.

16 Guarantees

16.1 Any defects or omissions in the Work which come to notice of the Owner and are notified by the Owner to the Contractor in writing within a period of 12 months after the date of Commissioning of the Pool shall be rectified by the Contractor at no cost to the Owner within a reasonable time after such notification. The Contractor shall not be liable for any defects or damage caused to the Work by or arising out of wilful or negligent acts of the Owner or the Owner's agents servants or subcontractors or the failure by the Owner to promptly comply with the instructions of the Contractor or of equipment suppliers in respect of the Pool, surface cleaning of the Pool and chemical treatment of the water.

16.2 The Contractor shall pass on to the Owner all manufacturers' warranties and guarantees in relation to all filtration and ancillary equipment for the period set out in those manufacturers' warranties and in addition shall guarantee the plumbing for that filtration and ancillary equipment for a period of 12 months from the date of Commissioning of the Pool.

16.3 The Contractor shall guarantee the structural integrity of the Work and for a period of five (5) years from the date of commissioning of the Pool and the interior finish of the work on the Pool for a period of two (2) years after the date of commissioning of the Pool.

16.4 The guarantees and warranties contained in this clause are personal to the Owner and may not be assigned or transferred by the Owner to a third party without the prior written consent of the Contractor.

16.5 The Owner accepts and acknowledges that the Contractor is not obliged to carry out any remedial work pursuant to clause 16.1 while there are any moneys due and owing to the Contractor pursuant to the terms of this contract. This provision does not apply if moneys have been set aside as a consequence of a dispute between the parties in terms of clause 17 hereunder.

17 Dispute Resolution

17.1 Good Faith Discussion: In the event that any dispute arises between the parties in any way arising out of or in connection with this agreement the parties shall enter into discussions in good faith with a view to resolving the dispute amicably as soon as practicable. Either party may terminate these discussions at any time.

17.2 Notice of Mediation: If any dispute or difference arises between the parties in any way arising out of or in connection with this agreement and such dispute has not been resolved within fifteen (15) working days of the commencement of discussions pursuant to clause 17.1, either party may give written notice of its intention to refer such dispute or difference to mediation.

17.3 Agreement to Mediate: If a request to mediate is made then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by their agreement. All discussions in the mediation shall be without prejudice and shall not be referred to in any later proceedings. The parties shall bear their own costs in the mediation and shall each pay half of the costs of the mediator.

17.4 Arbitration: If:

17.4.1 **No Resolution by Discussions:** the dispute has not been resolved by the discussions of the parties pursuant to

clause 17.1: or

17.4.2 **No Mediation Notice:** the parties have agreed upon mediation but have been unable within ten (10) working days of such agreement to agree upon a mediator; or

17.4.3 **No Agreement:** no agreement has been reached in mediation within one (1) month of the service of the notice of mediation, or within such further time as the parties may agree;

then the matter in dispute may be referred to arbitration upon the service of a notice of intention to commence arbitration which shall be governed by the Arbitration Act 1996 except to the extent modified by this agreement.

17.5 Arbitrator: The arbitration shall be by a single arbitrator. If the parties cannot agree upon an arbitrator within ten (10) working days of service of the notice of intention to commence arbitration either party may request the president of the Arbitrators Institute of New Zealand Inc. to appoint a sole arbitrator. Either party may request the appointment of an assessor to sit with the arbitrator but any such assessor shall have an advisory role only and shall not have the authority to make a binding decision. If the parties cannot agree upon an assessor in a reasonable time then the arbitrator may appoint an assessor.

Where the Owner is entering into this contract otherwise than "in trade" the Owner shall sign the separate section 11 of the Arbitration Act 1996 agreement in the form as attached in Schedule 2.

18 General

18.1 The Owner shall not empty the Pool without first notifying the Contractor and obtaining the Contractor's consent.

18.2 Unless included within the scope of the Work as set out in the Letter of Quotation the filter unit and any accessory equipment for the Pool are not supplied with a permanent housing for protection from the elements. The Owner accepts that any guarantees for the filtration unit and any accessory equipment provided for the operation of the Pool may be void by failure of the Owner to provide adequate housing at the time of installation and Commissioning of the Pool.

18.3 The Owner shall install a suitable power outlet for electrical supply to the filtration unit entirely at the Owner's cost. In addition the Owner shall provide temporary power supply to the Contractor for use during the carrying out of the Work at no cost to the Contractor. Further the Owner shall supply a water connection for use by the Contractor during the course of construction of the Work and for the purposes of filling the Pool and connecting the Pool equipment and filtration unit for the operation of the Pool.

18.4 The Owner shall meet the costs of filling the Pool in terms of the requirements of clause 14.1 which shall include any additional costs of refilling due to water leakage tests or the interior finish of the Pool lining or for whatever other reason.

18.5 The Contractor shall not be liable for any damages or costs caused by delay or non performance due directly or indirectly to circumstances beyond the control of the Contractor including but in no way limited to strikes, lockouts, other industrial action, force majeure, weather, unavailability of materials, difficulties with extras and variations, default of the Owner to supply materials or labour necessary to complete the Work, the demands or requirements of any Territorial Authority insofar as the same cannot be attributed to the Owner.

18.6 Where a footpath deposit or compliance bond is required by the Territorial Authority prior to the uplifting of the building consent this shall be paid directly to the Territorial Authority by the Owner. Where damage to the footpath or crossing occurs during the construction of the Pool caused by activities of the Contractor in the course of construction of the Pool and the Territorial Authority will not refund the deposit or release the bond the Owner shall be responsible to make good any damage or make any payments or deductions to the Territorial Authority to satisfy the requirements of the bond or otherwise.

“**Commissioning of the Pool**” means the date on which the Work is complete and the requirements of Clause 14 have been met as determined by the Contractor.

“**Contractor**” means the party referred to in item 1.1 of Schedule 1.

“**Land**” means the Land described in item 2 of Schedule 1.

“**Letter of Quotation**” means the letter referred to in item 7 of Schedule 1 as supplied to the Owner by the Contractor setting out the quoted price for the Work and determining those aspects included and specifically excluded from the contract together with provisional **sums** (if **any**).

“**Owner**” means the owner of the Land upon which the Work is to be carried out together with his/her or their respective executors and administrators.

“**Plans and Specifications**” means the Plans and Specifications as attached hereto.

“**Pool Construction Zone**” means the area of the Land designated for the construction of the Pool over which the Contractor has sole control.

“**Territorial Authority**” means the local authority within which the Land is situated.

“**Work**” means all the work to be carried out on the Land by the Contractor in terms of this contract as **specified by the Plans and Specifications and**

the Contractor’s Letter of Quotation.

“**Working Day**” means any day of the week other than:

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, New Zealand’s Anniversary Day and the provincial Anniversary Day that is observed at the place where the Land is situated; and

(b) A day in the period commencing on the 24th day of December in any year and ending on the 5 day of January in the following year, both days inclusive.

A Working Day shall be deemed to commence at 9am and to terminate at 5pm.

Dated this _____ day of _____ 201__

SIGNED By the Owner _____

SIGNED by the Contractor _____

By:

Director/Authorised Signatory Print Name

Director/Authorised Signatory Print Name



**SCHEDULE 2
Acknowledgment As To Arbitration**

This Agreement made the _____ day of _____ 201__

Between _____
("The Contractor")

And _____
(together with his/her/their executors, administrators and successors) ("the Owner")

Background

The parties have entered into the Building Contract bearing the above date ("the Building Contract")

Section 11 of the Arbitration Act 1996 states that where on party is a "Consumer" for the purpose of that Act such party is required to enter into a separate written agreement if the arbitration agreement in the Building Contract is to be enforceable.

It is hereby agreed

The Owner acknowledges and agrees that he/she/they has/have read and understood the' arbitration agreement contract in clause 17.5 of the Building Contract. The Owner certifies that having read and understood the arbitration agreement he/she/they agree(s) to be bound by the arbitration agreement contained in clause 17.5 of the Building Contract. All provisions of the Second Schedule in the Arbitration Act 1996 apply to the arbitration agreement contained in clause 17.5 of the Building Contract.

Dated this _____ day of _____ 201__

SIGNED By the Owner _____

SIGNED by the Contractor _____

By:

Director/Authorised Signatory Print Name

Director/Authorised Signatory Print Name