

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

'BUYER' means the person persons or company to whom Goods are supplied under the Contract.

'GOODS' means the Goods (including any instalment of the Goods or any parts for them) specified on the Sellers published Price Lists, written Quotations, Order Acknowledgements and Invoices.

'SELLER' means A. G. Budget Swimming Pools

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

'CONTRACT' means the Contract for the supply of Goods by the Seller to the Buyer, comprising these Terms and Conditions.

'DELIVERY' means the supply of all component parts of the Goods to the Site

'INSTALLATION' means any Installation, assembly or construction work carried out by others on behalf of the Buyer using Goods supplied by the Seller, together with such surveys as they may make prior to such work.

'SITE' means the premises of the Buyer, or such other location as may be agreed between the Buyer and the Seller to which Delivery of the Goods is to be made, or where the Buyer has chosen to carry out the Installation.

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication

'DISTANCE SELLING' refers to purchases by the customer made while the customer is not present at the premises of the seller. This may include orders by postal or electronic mail or made verbally over the telephone.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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

2 Basis of the sale

2.1 The Buyer shall purchase the Goods and the Seller shall sell the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other Terms and Conditions subject

to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application, use or protection of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales Literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 In the case of distance selling only, the buyer is entitled to return the goods to the seller for refund in full at any time and for any reason during the first seven days following delivery to the buyer subject to the following conditions and exceptions (notwithstanding goods which are faulty as covered in section 8):

2.6.1 The buyer will be responsible for all carriage charges incurred. No refund in respect of carriage charges will be made by the seller.

2.6.2 The buyer is not entitled to return goods which have been manufactured specifically for the buyer.

2.6.3 The buyer is not entitled to return goods that are not normally stocked by the seller and have been obtained by the seller specifically for the buyer.

2.6.4 Goods will not be refunded unless returned to the seller unused and in perfect condition and in their original packaging.

2.6.4 The seller reserves the right to refuse to refund goods returned to the seller after 28 days have elapsed from the original date of delivery to the buyer.

2.7 The Seller does not offer or provide any services apart from those forming an essential part of the supply only of Goods to the Buyer. The Seller will take no direct part in any Installation, construction or maintenance work whatsoever, nor any Site survey associated with such work. The Seller will not be responsible to the Buyer for any such services however provided. Any introductions by the Seller of others who offer services not provided by the Seller, such as the introduction to the Buyer of contractors offering Installation, construction, consultation or maintenance services, and surveys prior to such work, are made in good faith and shall be without obligation or liability on the part of the Seller and without prejudice. It is the Buyers sole responsibility to satisfy himself as to the suitability of any persons so introduced by the Seller. The Seller makes no endorsement, express or implied, as to the quality of workmanship or services provided by others

employed by the Buyer to carry out Installation work, whether known to the Seller or otherwise.

3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller or by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including applicable specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim or infringement or any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.7 The Seller reserves the right at any time to demand from the Buyer Written guarantees of the Buyer's willingness and ability to make all payments due to the Seller and security in the form of any or all of the following which shall be provided at the Buyer's expense :

3.7.1 Confirmation from the Buyer in Writing of his order and of the payments the Buyer promises to pay the Seller.

3.7.2 Positive identification such as driver's licence and/or bank statements and the like.

3.7.3 References, Written or verbal, from employers, banks and the like.

3.7.4 Valid credit card numbers and details, with which the Buyer will be deemed to have given authorisation to the Seller to pay any outstanding payments due to the Seller under these Conditions. Where any part of payment due to the Seller is paid by credit card the Buyer will be deemed to have authorised the use of the same credit card or cards to settle any payments remaining outstanding at the due date, whether or not the Buyer presented

the credit card in person, and whether or not the Buyer subsequently attempts to withdraw or deny authorisation.

3.8 Dimensions and technical details given in pricelists and brochures are approximate only. Prices and specifications may change without notice. It is the responsibility of the buyer to make it known to the seller in writing if any dimensions or technical details are critical. Prices and specifications may change without notice.

4 Price of the Goods.

4.1 Subject to the terms of this Contract and except as agreed by the Seller in Writing, the price of the Goods shall be as stated in the Seller's current price lists. The Seller reserves the right to alter prices at any time up to the day of Delivery and without notice to the Buyer even if the Buyer has paid a deposit or made part payment for the Goods, except in the case where the Seller has provided the Buyer with a quotation in which case the prices excluding errors omissions and special conditions therein will be held for no more than 30 days from the date of the quotation.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before Delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufactured), any change in Delivery dates, Installation dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Unless stated otherwise the price is inclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

4.4 It is the policy of the Seller to discount the prices of Goods offered for sale, below the Manufacturers, Importers, Wholesalers or Agents Suggested Retail Prices in The United Kingdom where published, referred to herein as 'MSRP'. Such 'Discount Prices' apply strictly and exclusively to Goods for which the Buyer pays in full at the time of ordering. Where Goods are for any reason not paid for in full prior to Delivery, the Seller shall be entitled to payment by the Buyer of the 'Full Prices' of the Goods, which is defined as follows. 'Full Prices' means the MSRP if published and available, or otherwise 133% of the Price of the Goods as defined in clause 4.1, plus the full cost to the Seller of post, carriage, packing and any other additional charges incurred whether previously included in the Price of the Goods as defined in clause 4.1 or not, plus interest as defined in clause 5.3.2. All prices shall be those current at the time of final payment by the Buyer or those current at the time the Buyer first placed the order, whichever is the greater.

5 Terms of payment.

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to payment in full by the Buyer of the total price of all Goods prior to Delivery.

5.2 The Buyer shall pay the price of the Goods immediately upon receipt of the Seller's invoice in accordance with clause 5.1 and time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.3 If the Buyer fails to make any payments within 3 days of the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the Contract, or suspend Delivery of any further components to the Buyer :
and

5.3.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above (Lloyds) Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest): and

5.3.3 charge the Buyer on the basis of the 'Full Prices' of the Goods as defined in clause 4.4: and

5.3.4 charge the Buyer for the full cost of legal services, professional advice provided by the Seller or by any other party at the request of the Seller, debt collection services, Court fees and the like as deemed necessary by the Seller.

5.4 Where the Buyer has requested and the Seller has agreed to export the Goods either directly or indirectly free of United Kingdom VAT, the Buyer must furnish the Seller with formal proof of export acceptable to H.M.Customs & Excise, within 2 weeks of export taking place, otherwise the Customer will be obliged to pay to the Seller the VAT due.

5.5 Any deposits paid to the Seller by the Buyer will be non-refundable except at the sole discretion of the Seller.

6. Delivery

6.1 Delivery of the Goods shall take place when the Seller or the Sellers agents deliver the Goods to the area adjacent to the public highway of sufficient accessibility closest to the Site. The Buyer or the Buyers agents shall be on Site to supervise Delivery. The Buyer or the Buyers agents shall help to off-load the Goods where the Goods are too bulky or heavy for the delivery driver to handle alone. If unloading is not possible as a result of failure by the Buyer to comply with this clause, or as a result of any other action or lack of action by the Buyer or by the Buyers agents, any consequential additional costs incurred by the Seller shall be charged back to the Buyer.

6.2 Any dates quoted for Delivery are approximate estimates only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence. While the Seller will always endeavour to meet dates or times given or specified by either party, no such dates or times shall be binding on the Seller or form part of the Contract. We might, for example, agree to send Goods on a "24 hour Service" or the like offered by a Carrier, but the ultimate responsibility for delivering the Goods on time rests with the Carrier and not with the Seller. The Goods (or any component parts thereof) may be delivered by the Seller in advance of the quoted Delivery date upon giving reasonable notice to the Buyer.

6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Sellers reasonable control or the Customers fault and the Seller is accordingly liable to the Buyer, the Sellers liability shall be limited to the excess (if any) of the cost to the Buyer (in

the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.4 If the Buyer fails to take Delivery of the Goods, or fails to give the Seller adequate Delivery instructions at the time stated for Delivery or fails to provide access to the Seller, its agents and employees (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.4.1 store the Goods until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.4.2 after a period of 7 days sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

6.5 If the Site is not in the ownership of the Buyer or the Goods are to be installed or used with equipment which is not the property of the Buyer, the Buyer warrants that all requisite permissions have been obtained from the owner of such Premises or equipment and that the Buyer will indemnify the Seller in respect of any claim arising from failure to obtain such consent. The Buyer further warrants that all requisite planning permissions, building or bye-law consents and waivers of covenant affecting the Site have been properly obtained to enable Installation to take place and the Seller shall have no liability in connection therewith.

6.6 WARNING!

DO NOT CASUALLY SIGN DELIVERY NOTES UNLESS YOU ARE PERFECTLY SATISFIED WITH GOODS.

The buyer will forfeit any rights to claim for damaged or missing goods from the moment they or any person on their behalf (even a child or neighbour) signs any delivery note with words like "received in good condition" or similar on it, as requested by the carrier or delivery driver. The delivery note is unfortunately a legally binding document and not to be signed casually. It is regarded by carriers as Proof of Delivery (POD) and is taken by them to override any other conditions. In our opinion this is unfair, but sadly we have not found any way we can do anything about it. We advise therefore that before you sign, you cross out words like "in good condition" and write instead "unchecked" or even (if there is even the slightest mark on a box for example) "damaged". Even then you may have as little as 24 hrs under the carriers terms, to report any damage you subsequently discover. Also see section 8.6

7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of Delivery or, if the Buyer wrongfully fails to take Delivery the time when the Seller has tendered Delivery.

7.2 Notwithstanding Delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has

received in cash or cleared funds payment in full of the total price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and where Installation has not been completed shall keep the Goods (or any component part thereof) separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods (or any component parts thereof) to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods where it is practicable to do so.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. WARRANTIES, liability AND EXCLUSIONS

8.1 Subject to the conditions set out below the Seller warrants to the Buyer :

8.1.1 that the Goods will correspond with their specification and will be free from defects in material and workmanship for a period of 1 year from the date of invoice.

8.1.2 that the Goods will be of merchantable quality and fit for any purpose made known to the Seller in Writing at the time of placing the order, will correspond to any relevant specification therefore or sample thereof and will comply with all statutory requirements and regulations relating to the sale of the Goods.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer

8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval, frost damage resulting from incorrect winterisation of pool or equipment, failure to maintain correct pH or pool chemistry, all types of corrosion damage due either to electrolysis and / or aggressive water conditions, the use of undissolved chemicals, drainage of the pool without prior consultation with the Seller, the use of Goods with gas or electricity supplies which are unsuitable or inadequate or where the Goods and/or the gas or electricity supplies have not been wholly installed by qualified persons in accordance with the appropriate regulations.

8.2.3 The Seller shall have the right to all information from the Buyer deemed by the Seller to be reasonable and relevant to the Buyers claim or claims, including the full contact details of any third party who has taken part in the Installation or maintenance of the

Goods who shall be required to furnish at the Buyers expense any technical details deemed necessary by the Seller.

8.2.4 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date or dates for payment.

8.2.5 Other than as specified in clause 8.1.1 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.2.6 It is the responsibility of the Buyer to establish the suitability or otherwise of the Goods for any other purpose, or under any other Site conditions, than those explicitly described in the information provided in Writing by the Seller.

8.2.7 The Seller shall not be liable to the Buyer for any expense or delay incurred by reason of unforeseen Site conditions such as (by way of example and not of limitation) rocks, sand, ground water, seepage, underground services and other obstructions.

8.2.8 The Seller reserves the right to refuse to take back into stock any Goods rendered inappropriate as a result of unforeseen Ground or Site conditions, inadequate power supplies to or services on or access to the Site, or Goods no longer required by the Buyer as a result of changes to the plans or circumstances of the Buyer. If the Seller does agree to take back into stock Goods no longer required by the Buyer this will be Ex Gratia only, and the Seller reserves the right to charge a restocking fee of not less than 20%.

8.2.9 The Seller shall not in any event whatsoever be under any liability to the Buyer in respect of consequential loss or damage whether direct or indirect and howsoever arising under these Conditions.

8.2.10 Warranties are applicable in the United Kingdom only.

8.3 Save as provided herein and subject to the sale of Goods Act 1979 and the Unfair Contract Terms Act 1977 the Seller shall be under no liability howsoever arising and whether in contract or tort or otherwise in respect of any defects in Goods sold or defective work or for any loss damage or injury resulting therefrom including consequential loss, and all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified to the Seller within 3 days from the date of Delivery or, (where clauses 8.1.1. and 8.1.2 apply, and the defect or failure was not apparent for a longer period) within a reasonable time after or on discovery of the defect or failure. If the Buyer does not notify the Seller as provided herein, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. Neither the Goods concerned (nor their packaging in the

case of defects immediately apparent) shall be subject to any process, nor disposed of, nor uninstalled, until the Seller and the Sellers agents have had the opportunity to test and/or make an inspection of the Goods and any other apparatus or materials which are or have been used in conjunction with the Goods, for which purpose the Buyer shall allow the Seller and its agents access to the Site and shall allow the Seller and its agents to carry out such works thereon as may be necessary. If these terms are not met by the Buyer, within 7 days of the request being made by the Seller, the Goods will be deemed to have been accepted by the Buyer as free of defects and to be of merchantable quality and to be fit for their purpose. If deemed necessary by the Seller the Goods will be removed from Site and may be returned to the wholesaler, manufacturer or importer for inspection. The Seller shall not be liable to the Buyer for any delays, expenses or inconvenience so caused. If the Goods upon examination are not found to be defective, or if any defect is found to have been due to any mistreatment or lack of proper maintenance or incorrect Installation or inappropriate use of the Goods, the claim shall be rejected and the Sellers costs of inspection shall be borne by the Buyer.

8.6 Where the Goods are to be delivered by a Carrier directly or indirectly on behalf of the Seller the risks therein shall pass to the Buyer upon Delivery. The Goods shall be examined thoroughly by the Buyer on receipt. The Seller shall not be liable for any non-delivery or loss of or damage to or shortage in quantity of the Goods not reported by the Buyer both to the Seller and to the Carrier within 24 hours of when the Goods have, or should have been, delivered, and such Goods will be deemed otherwise to have been delivered in good order and condition, as will irrevocably be the case in all circumstances in which the Goods have been signed for by whomsoever as "Received in Good Condition" or the like. "Unexamined" or "Unchecked" or the like signatures for the receipt of Goods do not relieve the Buyer of his responsibility to check them on arrival and the Seller shall not be liable in respect of any claim or claims if the Buyer fails to comply with the provisions of this clause or of the complete Terms and Conditions of the Carrier as applicable to the Buyer. The Seller is not responsible for damage to or loss of Goods in transit, but we will give any help we can with claims made by the Buyer against the Carrier.

8.7 Where any valid claim in respect of any of the Goods (or any component part or parts thereof) which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled, at the Sellers sole discretion, to repair or replace the Goods (or the component part or parts in question) free of charge or refund to the Buyer the invoiced price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer or to any third party or to any other trades, and this shall be the limit of the Sellers responsibility. All Goods in respect of which any claim is made must be returned to and collected from the Sellers premises at the Buyers expense (and in the case of defects immediately apparent, in their original packaging). The Seller shall not be liable for the costs of removal, transportation or re-installation of the Goods, or any labour charges.

8.8 Except in respect of death or personal injury caused by the Sellers negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.9 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of Goods by the Seller being prevented, hindered, delayed or rendered uneconomic, wholly or mainly by reason of any Force Majeure circumstances, including by way of example and not of limitation :-

8.9.1 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party) ; or

8.9.2 blockade of ports, any civil disturbance, outbreak of hostilities (whether or not war is declared), national or local government restriction prohibition or control ; or

8.9.3 any Act of God, fire, flood, explosion or inclement weather conditions; or

8.9.4 accident, theft, breakdown of plant or machinery, difficulty or increased expense in obtaining workmen, material or transport (whether suffered by the Seller directly or by a third party) ; or

8.9.5 any other circumstances whatsoever beyond the Sellers reasonable control or caused by or resulting from the default or negligence of the Seller or any of its agents or suppliers.

8.10 The Seller shall not be liable to the Buyer in respect of any promise, express or implied, regarding competitive pricing, unless supported by the buyer by means of presentation to the Seller of all the relevant original printed pricelists, published by another single bona fide pool equipment retailer ("the Competitor"), with evidence that, at the time the Buyer placed his Order with the Seller :-

8.10.1 the pricelists were those genuinely published by the Competitor and had been freely available to the general public prior to the time of the Order.

8.10.2 all the Goods in question were available for sale by the Competitor at the advertised price.

8.10.3 the pricelists of the Competitor were strictly their retail prices, and not their trade or wholesale prices.

8.10.4 the pricelists of the competitor stated the full and final price charged for each individual item in a list of Goods for sale, including the effects of any discounts allowed and taxes and the like. Pricelists which require a calculation, such as the deduction of a discount or the addition of VAT, in order to determine the actual price charged will not be deemed to satisfy the above criteria, unless they also have printed on them the actual prices charged.

8.10.5 the prices were not merely quoted to the Buyer by the Competitor on an individual basis, whether in Writing or otherwise. Additions or modifications to the Competitors pricelists, whether hand-written overprinted stamped attached or otherwise, will be deemed to be individual quotations and will not be deemed to satisfy the criteria in 8.10.1.

8.10.6 the prices had not been reduced by the Competitor solely on a conditional basis inappropriate to the specific Goods exclusively listed within the Order placed with the Seller by the Buyer. For example, if the Competitor had offered a lower price in return for

purchases of additional Goods or services at any time in the past present or future, then this would be deemed as such a conditional basis.

8.10.7 the total price offered by the Competitor, including all additional charges such as packing, carriage and taxes, for all the Goods ordered at the same time by the Buyer, was less than that charged by the Seller.

8.10.8 the prices were not merely stated verbally by the Competitor.

8.11 Special conditions apply to the supply of swimming pool liners. The Buyer is advised that a liner must not be cut or marked in any way until he is perfectly satisfied with its quality and fit. No claims for liner defects present at the time of Delivery of the liner will be accepted once the liner has been cut or marked in the course of fitting it or otherwise. Liners for Inground Pools must be installed with suction applied by means of an industrial vacuum cleaner at all times while being filled with water, otherwise no claims will be accepted at any time for incorrect fit of the liner.

9 Indemnity

9.1 If any claim is made against the Buyer that the Goods infringe or their use infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that

9.1.1 the Seller is notified of such claim as soon as reasonably practicable;

9.1.2 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

9.1.3 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.4 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

9.1.5 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.1.6 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

9.1.7 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10 Insolvency of Customer

10.1 This clause applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or installed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby,

11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods (where the sum of money concerned exceeds that covered by the Small Claims Procedure in the County Courts), shall be referred to arbitration by a single arbitrator appointed by agreement or, where no agreement is reached within 28 days, nominated on the application of either party by the President for the time being of The Chartered Institute of Arbitrators in accordance with the Arbitration Acts of 1950 to 1979 or any re-enactment or modification thereof for the time being in force.

11.5 The Contract shall be governed by the laws of England.

11.6 The legal rights of the Seller under these Conditions shall not be deemed to be waived or abrogated by reason of any forbearance or failure by the Seller to enforce any condition or conditions.

11.7 In the event of the death of the Buyer the Buyers estate and/or next of kin will thenceforth be deemed as the Buyer for the purpose of these Conditions. In the event of incapacity or absence from the United Kingdom of the Buyer rendering the Buyer unable or unwilling to fulfil any Conditions, the Buyers estate and/or anyone who might benefit from the Goods directly or indirectly (whether next of kin or not) shall be obliged at the Sellers discretion to fulfil those Conditions which the Buyer cannot or will not fulfil.

11.8 For your protection and security telephone calls may be logged and recorded.

11.9 Errors and omissions in any material published or distributed by the company are excluded. The company shall not under any circumstances be bound to honour any apparent offers resulting from such errors or omissions.