

CREDIT ACCOUNT APPLICATION



Your Water Leisure Specialists

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf.

DATE: _____ REF No. _____

CUSTOMER'S TRADE NAME: _____

CUSTOMER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ Postcode: _____ _____ Postcode: _____

Billing Preference Post Email

COMMERCIAL CUSTOMERS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ Postcode: _____ _____ Postcode: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

This is a Credit Application under the Construction Contracts Act 2002. If you are a "Residential Occupier" please read clause 21 on the reverse.

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of ELMZ Holdings Limited T/A Pools Spas and Essentials which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

SIGNED (PSE): _____ SIGNED (CUSTOMER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CUSTOMERS SIGNATURE: ID: _____ DOB: _____

Signed: _____ Name: _____ Date: _____

ELMZ Holdings Limited T/A Pools Spas and Essentials – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "PSE" shall mean ELMZ Holdings Limited T/A Pools Spas and Essentials its successors and assigns or any person acting on behalf of and with the authority of ELMZ Holdings Limited T/A Pools Spas and Essentials.
 - 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by PSE to the Customer.
 - 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by PSE to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by PSE to the Customer.
 - 1.5 "Services" shall mean all services supplied by PSE to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Equipment" shall mean all Equipment including any accessories supplied on hire by PSE to the Customer (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by PSE to the Customer.
 - 1.7 "Price" shall mean the price payable for the Goods as agreed between PSE and the Customer in accordance with clause 3 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by PSE from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by PSE shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of PSE.
 - 2.4 The Customer shall give PSE not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by PSE as a result of the Customer's failure to comply with this clause.
 - 2.5 Goods are supplied by PSE only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3. Price And Payment**
 - 3.1 At PSE's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by PSE to the Customer in respect of Goods supplied; or
 - (b) PSE's quoted Price (subject to clause 3.2) which shall be binding upon PSE provided that the Customer shall accept PSE's quotation in writing within thirty (30) days.
 - 3.2 PSE reserves the right to change the Price in the event of a variation to PSE's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties not evident at the time of quotation) will be charged for on the basis of PSE's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 3.3 At PSE's sole discretion a deposit may be required.
 - 3.4 PSE may submit payment claims in accordance with PSE's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
 - 3.5 At PSE's sole discretion:
 - (a) payment for approved Customers shall be made by instalments in accordance with PSE's payment schedule; or
 - (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
 - 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to one and one quarter percent (1.25%) of the Price on any transactions exceeding fifteen hundred dollars (\$1500)), or by direct credit, or by any other method as agreed to between the Customer and PSE.
 - 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
 - 4.1 At PSE's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at PSE's address; or
 - (b) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
 - 4.2 At PSE's sole discretion the costs of delivery are included in the Price.
 - 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are landed for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then PSE shall be entitled to charge a reasonable fee for redelivery.
 - 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 4.5 PSE may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - 4.6 The failure of PSE to deliver shall not entitle either party to treat this contract as repudiated.
 - 4.7 PSE shall not be liable for any loss or damage whatsoever due to failure by PSE to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of PSE.
- Risk**
 - 4.8 If PSE retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 4.9 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, PSE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by PSE is sufficient evidence of PSE's rights to receive the insurance proceeds without the need for any person dealing with PSE to make further enquiries.
 - 4.10 In the event that PSE encounters unforeseen difficulties after commencement of the works (subject to clause 3.2), the contractor shall immediately cease work and provide the Customer with a variation for the additional costs required to overcome such unforeseen difficulties. The Customer shall have the option at that time to either accept the variation or terminate the agreement subject to clause 17.2. In the event of termination PSE shall not be liable to restore the property to its condition prior to the commencement of the excavation.
 - 4.11 Following installation of the Goods, all care, maintenance and cleanliness (including but not limited water balance and PH maintenance as per PSE's Pool Care Guide) of the Goods shall be the responsibility of the Customer.
 - 4.12 PSE gives no guarantee and accepts no responsibility for any discolouration, staining or roughness which may occur to or upon the surfacing of the Goods cause by algae infestation, calcium scales, weed, vegetation deposit or mineral buildup.
- 5. Damages**
 - 5.1 PSE will take all due care to preserve the natural surroundings of the Customer's property however PSE shall not be liable for any loss or damage to gardens, trees, lawns, shrubs, fences, paths or driveways which may be caused by the ordinary operation of trucks, machinery, vehicles or equipment.
- 6. Underground Locations**
 - 6.1 Prior to PSE commencing any work the Customer must advise PSE the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
 - 6.2 Whilst PSE will take all care to avoid damage to any underground services the Customer agrees to indemnify PSE in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 6.1.
- 7. Compliance with laws**
 - 7.1 Unless otherwise agreed between both parties, the Customer shall obtain (at the expense of the Customer) all licences and approvals that may be required for the work.
 - 7.2 Whilst PSE will endeavour to advise the Customer of all relevant legislation relating to pool installations the Customer acknowledges that it is their responsibility to ensure that they comply with any occupational health and safety laws relating to pool installations and any other relevant safety standards or legislation.
- 8. Title**
 - 8.1 PSE and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid PSE all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to PSE in respect of all contracts between PSE and the Customer.
 - 8.2 Receipt by PSE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then PSE's ownership or rights in respect of the Goods shall continue.
 - 8.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until PSE shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from PSE to the Customer PSE may give notice in writing to the Customer to return the Goods or any of them to PSE. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Customer is only a bailee of the Goods and until such time as PSE has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to PSE for the Goods, on trust for PSE; and
 - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that PSE will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to PSE then PSE or PSE's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and PSE will not be liable for any reasonable loss or damage suffered as a result of any action by PSE under this clause.
- 9. Personal Property Securities Act 1999 ("PPSA")**
 - 9.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by PSE to the Customer (if any) and all Goods that will be supplied in the future by PSE to the Customer.
 - 9.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PSE may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, PSE for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of PSE; and
 - (d) immediately advise PSE of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 9.3 PSE and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 9.5 Unless otherwise agreed to in writing by PSE, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 9.6 The Customer shall unconditionally ratify any actions taken by PSE under clauses 9.1 to 9.5.
- 10. Defects**
 - 10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify PSE of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford PSE an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which PSE has agreed in writing that the Customer is entitled to reject, PSE's liability is limited to either (at PSE's discretion) replacing the Goods or repairing the Goods.
 - 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.
- 11. Warranty**
 - 11.1 For Goods not manufactured by PSE, the warranty shall be the current warranty provided by the manufacturer of the Goods. PSE shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12. Consumer Guarantees Act 1993**
 - 12.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by PSE to the Customer.
- 13. Intellectual Property**
 - 13.1 Where PSE has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in PSE, and shall only be used by the Customer at PSE's discretion.
 - 13.2 The Customer warrants that all designs or instructions to PSE will not cause PSE to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify PSE against any action taken by a third party against PSE in respect of any such infringement.
 - 13.3 The Customer hereby authorises PSE to utilise images of the Goods designed or drawn by PSE in advertising, marketing, or competition material by PSE.
- 14. Default & Consequences Of Default**
 - 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three percent (3%) per calendar month (and at PSE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by PSE.
 - 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify PSE from and against all costs and disbursements incurred by PSE in pursuing the debt including legal costs on a solicitor and own Customer basis and PSE's collection agency costs.
 - 14.4 Without prejudice to any other remedies PSE may have, if at any time the Customer is in breach of any obligation (including those relating to payment), PSE may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. PSE will not be liable to the Customer for any loss or damage the Customer suffers because PSE has exercised its rights under this clause.
 - 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 14.6 Without prejudice to PSE's other remedies at law PSE shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PSE shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to PSE becomes overdue, or in PSE's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Security And Charge**
 - 15.1 Despite anything to the contrary contained herein or any other rights which PSE may have however:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both to the PSE and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to PSE or PSE's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that PSE (or PSE's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should PSE elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify PSE from and against all PSE's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint PSE or PSE's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 16. Cancellation**
 - 16.1 PSE may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice PSE shall repay to the Customer any sums paid in respect of the Price. PSE shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 16.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by PSE (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17. Privacy Act 1993**
 - 17.1 The Customer and the Guarantor's (if separate to the Customer) authorises PSE to:
 - (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by PSE from the Customer and/or Guarantors directly or obtained by PSE from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
 - 17.2 Where the Customer and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 17.3 The Customer and/or Guarantors shall have the right to request PSE for a copy of the information about the Customer and/or Guarantors retained by PSE and the right to request PSE to correct any incorrect information about the Customer and/or Guarantors held by PSE.
- 18. Unpaid Seller's Rights**
 - 18.1 Where the Customer has left any item with PSE for repair, modification, exchange or for PSE to perform any other Service in relation to the item and PSE has not received or been tendered the whole of the Price, or the payment has been dishonoured, PSE shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while PSE is in possession of the item;
 - (c) a right to sell the item.
 - 18.2 The lien of PSE shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 19. Equipment Hire**
 - 19.1 The Equipment shall at all times remain the property of PSE and is returnable on demand by PSE. In the event that the Equipment is not returned to PSE in the condition in which it was delivered PSE retains the right to charge the Price of repair or replacement of the Equipment.
 - 19.2 The Customer shall:
 - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment;
 - (b) not alter or make any additions to the Equipment including but without limitation altering, making any additions to, defacing or erasing any identification mark, label or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PSE to the Customer.
 - 19.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, PSE's interest in the Equipment and agrees to indemnify PSE against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 20. Construction Contracts Act 2002**
 - 20.1 The Customer hereby expressly acknowledges that:
 - (a) PSE has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to PSE by a particular date; and
 - (iv) PSE has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if PSE suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been completed.
 - (c) if PSE exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to PSE under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of PSE suspending work under this provision.
- 21. General**
 - 21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Nelson.
 - 21.3 PSE shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by PSE of these terms and conditions.
 - 21.4 In the event of any breach of this contract by PSE the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 21.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PSE nor to withhold payment of any invoice because part or that invoice is in dispute.
 - 21.6 PSE may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 21.7 PSE reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which PSE notifies the Customer of such change.
 - 21.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
 - 21.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - 21.10 The failure by PSE to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PSE's right to subsequently enforce that provision.