

New Zealand Pool Industry Association Incorporated Disputes Investigation and Resolution Agreement

1 HOW WE CAN HELP: DESCRIPTION OF OUR SERVICES

- 1.1 This is a service offered by the New Zealand Pool Industry Association Incorporated (the "NZPIA") through its Disputes Committee. Members of the NZPIA are professionals that each operate their own pool business. Members of the Disputes Committee are Builder Members that are qualified to inspect and report on the work performed by any other member or non-member engaged in the construction or installation of a pool or any structure associated with a pool. By our Code of Ethics any Builder Member engaged in the process of inspecting or reporting on an inspection must be impartial and unbiased in that process or the deliberation in forming a Final Report.
- 1.2 Upon receipt of payment of a deposit for costs for this service the NZPIA Disputes Committee Convenor will either act or appoint suitable Disputes Committee Members as Inspectors and arrange an inspection of the building site and problem(s) described in the Schedule.
- 1.3 The appointed Inspector(s) will travel to the building site and thoroughly investigate the work with particular regard to the problem(s) and compile a report of their findings whether there are reasons for the Applicant's report of a problem and what are those problems.
- 1.4 The report will be provided to the Applicant in draft for approval and the Applicant is responsible for final proof reading of the Report. Any amendments brought to the attention of the inspectors by the Applicant, if accepted by the inspectors, will be incorporated and form the approved report.
- 1.5 The approved report will be submitted to the Convenor who will assemble a Disputes Committee comprised of three Builder Member(s) including the member(s) who conducted the inspection and compiled the report. They will discuss the approved report and evaluate it against the problem(s) listed in the schedule. This Committee will record the conclusions of its discussion and if a remedy is appropriate suggest a remedy
- 1.6 The suggested remedy will be contained in the form of a written Formal Report containing the unanimous conclusions of the Disputes Committee together with an Invoice for services provided. This Report remains the property of the NZPIA and may not be reproduced, disseminated or used in any way until full payment is received.
- 1.7 The Report may or may not be advantageous to the Applicant but may - at the Applicant's discretion - be used as supporting evidence in any Legal Action against the Respondent.

2. GENERAL

- 2.1 This document forms the terms by which the Applicant contracts for the provision of Dispute Investigation and Resolution Services supplied by the NZPIA through its Member's professional services in investigating a problem reported to it by the Applicant in dealings with a second party ("the Respondent") relating to the construction of a swimming pool or other related work. Following a candid and unbiased evaluation of the alleged issues, a Formal Report based on the NZPIA Member's 'Accepted Prior Experience & Proficiency' qualifications (APEP) by the NZPIA Disputes Committee will be provided.
- 2.2 This Agreement covers only a reported Dispute on the part of the Applicant, involving the Respondent.
- 2.3 This Dispute may involve:
 - (a) suspected deficiency in the swimming pool construction or finish,
 - (b) the failure of either party to conduct himself/herself in accordance with the original Agreement,
 - (c) breach of Ethics as required by the NZPIA,
 - (d) breach of the Respondent's legal and financial obligations to the Applicant, or
 - (e) any other related cause of concern by either party.
- 2.4 At any time, the Dispute may not require a written report, it may simply be resolved by mediation or verbal agreement.
- 2.5 This Dispute will involve the Applicant and the Respondent. The Applicant or Respondent may or may not be a member of the Public or a Member of the NZPIA.
- 2.6 NZPIA Members are bound by the findings of the Disputes Committee under threat of cancellation of their Membership

3. TERM/TERMINATION

- 3.1 This Agreement shall terminate automatically on completion of the Applicant paying the NZPIA for its charges in full.

4. RELATIONSHIP OF PARTIES

- 4.1 It is understood by the parties that the NZPIA is an independent identity with respect to Applicant, and not an agent or employee of or subcontractor to Applicant.

5. OWNERSHIP OF REPORTS

- 5.1 The draft and approved as well as any Final Report provided to the Applicant is copyrighted to, and shall remain the sole property of, the NZPIA all Invoices have been paid in full.

6. CONFIDENTIALITY

6.1 The NZPIA will not at any time or in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner any information that is proprietary to the Applicant, with the exception of communications with the Respondent if the Applicant so wishes. The NZPIA will protect such information and treat it as strictly confidential, such provision to continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the NZPIA will return to Applicant all records, notes, documentation and other items that were used, created, or controlled by it during the term of this Agreement however it will retain a copy of any report written.

7. INDEMNITY

7.1 The Applicant shall indemnify the NZPIA and any of its Members or persons specifically involved by the NZPIA in support of receiving this agreement, arranging the investigation of the problem(s), the investigation itself, the draft and approved reports compiled, the Formal Report, any mediated solution or verbal agreement reached between the parties and hold the NZPIA harmless from all claims, losses, expenses, fees including legal fees, costs, and actions or judgments that may be asserted against the NZPIA or the Applicant that result from the acts or omissions of the NZPIA that are not deliberate acts or omissions of the NZPIA or its members. This indemnification does not extend to include the Respondent, who may or may not hold Current Membership status with the NZPIA.

8. ENTIRE AGREEMENT

8.1 This Agreement contains the entire agreement of the parties, and supersedes any other agreement whether oral or written. There are no other promises, conditions and all warranties are excluded to the full extent permitted by law.

9. SEVERABILITY

9.1 If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. APPLICABLE LAW

10.1 This Agreement shall be governed by the Laws of New Zealand

11. PAYMENT FOR SERVICES

11.1 The Applicant will pay a deposit for costs of \$750.00 into the NZPIA account No 06 0996 0753693 02 for the Services of the Members with the final payment due on provision of the Final Report or any refund due at that time.

11.2 Costs for the services are charged in the following manner:

- (a) Initial administration fee \$ 50.00 (non-refundable)
- (b) Initial telephone discussion 15 minutes maximum No Charge
- (c) Personal or on-site visit (One or two Members) Court Appearances etc. Member(s) \$150.00 hr pp
- (d) Travel costs reimbursement (Airline, Ferry, Taxi costs etc. or \$1.25c Km personal vehicle use) Cost \$ TBD*
- (e) Accommodation/Meal Costs where applicable. Cost \$TBD
- (f) Disputes Committee investigation/evaluation (3 Members @\$150 hr pp)
- (g) \$ 50.00 Report production, typing and communication costs
- (h) \$ 150.00 Third Party Witness costs: time, travel etc. \$ if/as required @\$150 hr pp (see 1.7 above)

*TBD = to be determined and notified as required.

Other costs may be applicable as per the NZPIA Inc Web Site: http://poolguild.org.nz/disputes_proceduresPUBLIC.html

12. AGREEMENT

12.1 In consideration of the NZPIA providing the services and Report(s) as described in this agreement, we the undersigned Applicant(s) do hereby guarantee to the NZPIA due and punctual payment thereof of all amounts owing and the NZPIA agrees to supply the services and Report in accordance with the conditions set out above.

Applicant: (Signed) _____

Applicant: (Signed) _____

Write Name _____

Write Name _____

Date: _____

