



## TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS:** Limited Warranties - Pearl Pool Plastering, henceforth referred to as "Pearl", warrants its work to be free from defects in material and workmanship for a period of one year from the date the project is completed. Any and all warranties beyond the first year are provided by the product manufacturer. Warranties are not transferable. Warranties are not valid until the job has been paid in full.

In the event Pearl contracts to install decking, decking is not warranted against cracking, chipping, raising, settling, or discoloration. Pool interior finish is not warranted against discoloration, staining, chipping, or cracking since such visible defects generally result from local water conditions, improper use of chemicals, or improper cleaning of the pool. Staining and/or hydration is not a manufacturer defect, therefore it is not covered under this warranty. Marble, quartz and stone application techniques as well as pigment loss from UV radiation can result in variations of color, shade and appearance. Such variations are not considered product defects.

All pool equipment and accessories installed as provided for herein, carry a warranty as provided by the manufacturer of the same. When Buyer has work performed by others, Pearl does not warrant such work and Pearl shall not be held liable for such work or loss or damages, which may result therefrom. Incidental and consequential costs, including but not limited to, water replacement, chemicals and loss of use of the pool are not covered. Buyer shall notify Pearl of any alleged defects or breach of the above warranty within a reasonable time after discovery, in no event later than 15 days after discovery: such notice shall be sent to Pearl Pool Plastering at 8628 Barefoot Industrial Road, Raleigh, NC 27617. The above warranties are effective only if Buyer has complied with all terms and conditions, payment and other provisions of the contract.

**WARRANTY:** Pearl warrants that all materials used in completing the installation contracted for herein, will be made of high quality, that all work will be done in a competent and workmanlike manner, that any substantial defect appearing in the workmanship or materials within twelve (12) months of the completion thereof, will be repaired, without notice thereof, within thirty days of discovery thereof. Machinery, and/or assembly units, fittings, accessories and other manufactured items purchased by Pearl for use in this installation, are subject only to the manufacturers guarantees, and the Buyer agrees and understands that they shall rely only upon the warranty of such manufacturer. The interior pool finish warranties become void if: the pool is not kept full except for a 5 day maintenance period each year. All other warranties become void if the pool structure is damaged by reason of ground water rising above the lowest point of the pool when the pool is not kept full (i.e. hydrostatic pressure), or by reason of any earth or fill ground movement, acts of God, war, riots, or other civil disturbances, acts of others; or if there was a transfer or change of ownership of the real property on which the pool is located.

Defects or failures resulting from, mistreatment or neglect by Buyer will be repaired or serviced at Buyer's expense. If Buyer has work performed by others that is not provided for in this contract such as but not limited to, electrical panel changes, landscaping, erection of fences and retaining walls, Pearl does not warrant such work, and Pearl shall not be held liable for such work or loss or damages which may result thereof.

The sole and exclusive remedy of the Buyer and the obligation of Pearl for the matter set forth herein whether on warranty, contract, negligence or strict liability, is the repair of the defect. Pearl shall in no event be liable for special or consequential damages. It is specifically agreed that no claims may be made and no actions commenced upon Pearl and any warranty arising, therefore, until Pearl has had a reasonable opportunity to substantially complete the work and until the contract price, including any extras or change orders, have been paid in full.

2. **CONTRACTS AND SPECIFICATION:** This contract constitutes the entire contract and the parties are not bound by any oral expression or representation by any agent of either party purporting to act for or on behalf of either party or by a commitment or arrangement not specified in the contract. No additional work shall be done without prior written authorization by Buyer. Any such authorization shall be on a change order form showing the agreement terms and the reason for such change and

approved by both parties. For such additional work so added to the contract, it is agreed that payment in advance at the agreed upon price of such additional work is due prior to commencement of said additional work; and that all terms and conditions of this contract shall apply to such additional work. Both parties agree that the contract completion dates shall be extended 15 working days for each additional working day necessitated by the change order. If any provision (or portion thereof) of the contract shall be deemed invalid it is agreed that such invalidity shall only affect such provision (or portion thereof) and the remainder of this contract shall remain in force and effect.

3. RESPONSIBILITIES OF PEARL CONDITIONS AND LIMITATIONS: Pearl agrees to do all work provided in this contract in good and workmanlike manner, but shall not be responsible for delay or failure to perform work when such delay or failure is due to: Acts of God, inclement weather, wars, riot or other civil disturbance, labor disputes, government prohibition, non-Issuance of all required permits affecting the swimming pool and adjacent areas, failure of Buyer to perform any obligations to be performed by Buyer hereunder, or other reason beyond Pearl's control. The date of completion provided for herein shall be extended five (5) business days, for each calendar day of delay caused by any or all of the events referred to in this paragraph, up to and including the sixth (6th) day of delay. Thereafter, the date of completion shall be extended one (1) business day for each calendar day of delay. Pearl is not responsible for damage to improvements and appurtenances located reasonably adjacent to the access routes or the pool site, including but not limited to such items as septic systems, curbs, sidewalks, driveways, patios, lawns, shrubs and sprinkler systems. Pearl is not responsible for damages caused by ground compaction by excavation equipment. Pearl is not responsible for floatation of the pool. No pool site preparation will be done by Pearl unless explicitly specified in this contract.

4. RESPONSIBILITIES OF BUYER: Buyer will provide and designate sufficient and proper access to the pool site for the movement of trucks and other equipment and materials to and from the pool site. If Buyer authorized access to adjacent properties for Pearl's use during construction Buyer is required to obtain permission from the owner(s) of adjacent properties for such use, and Buyer agrees to be responsible and to hold Pearl harmless from any risks thereof. Buyer is required at his expense to do all construction and other acts necessary, and to meet all conditions necessary to allow Pearl to complete the work as provided in this contract. Buyer shall furnish any necessary variance and association permits or fees. Drainage beyond the pool site is to be provided by Buyer and is to meet city and or county requirements. If completion of the swimming pool is delayed by causes under Buyers control for a period of more than 30 days, Buyer agrees to pay the increased labor and material, and equipment cost resulting from Buyers delay. Pearl retains title to all pool equipment until purchase price and any extras are paid for in full. If price is not paid in accordance with this Contract, Buyer agrees, that contractor or its employees without notice to Buyer may enter the Buyer's premises and repossess any pool equipment and accessories included in this Contract and apply the values of said equipment whatsoever on account of such repossession, save and except property damage occasioned by gross carelessness or neglect. The pool is deemed complete when interior pool finish is installed.

a. HAZARDOUS MATERIAL MITIGATION: Pearl specifically reserves the right to halt excavation, demolition or any construction processes, without penalty under contract of incurring financial or legal responsibility for, the discovery or exposure of any and all hazardous materials, solid, liquid or gas, including but not limited to lead, asbestos, petroleum products, medical waste and any other hazardous material that has a natural or unnatural origin, and their disposal, abatement or remediation. The Buyer agrees to, at their expense, remedy any such discovered defect and provide a hazardous material free site prior to the reentry of Pearl.

b. EXCAVATION SITE CONDITIONS: Pearl has assumed the excavation site to be free and clear of sub-soil obstructions and groundwater, natural or unnatural, which would impede the progress of normal excavation. There is no provision in this contract to allow for expenses associated with the use of mechanical breakers, explosives, pumping stations or the removal or disposal of unsuitable soils, waste materials or other objects or the costs of repairing/replacing unmarked, mismarked or unknown underground utility lines or conduits of any nature. Further, there is no allowance for expenses associated with installation of suitable replacement materials. The Buyer, at their own expense, utilizing Pearl or any other qualified contractor, shall remedy the situation before Pearl proceeds with additional excavation. Pearl will not be liable for loss or damage of any kind attributable to delay caused by unexpected sub-surface conditions discovered during excavation, weather conditions, labor difficulties, accidents, acts of civil or military authorities, or other conditions or causes beyond Pearl's control.

5. REPRESENTATION OF BUYER: Unless otherwise specifically provided in the plans and specifications of this contract, Pearl has entered into this contract based upon the following assumptions of facts and warranties of Buyer.

- a. That Buyer will provide adequate access to Buyers own property or through adjacent property for Pearl's normal construction equipment to do the work, at no cost and with no liability to Pearl.
- b. The Buyer has adequate water and electric source for Pearl to be able to perform the work as outlined in this contract. If either of these utilities are deemed insufficient, then Buyer is responsible for the additional costs associated with temporary power and water trucks to support the contracted work.
- c. The Buyer must notify Pearl prior to signing this agreement if the pool(s), spa(s) or any other bodies of water are leaking water. Pearl is not responsible for leaking pools once work is finished. Pearl strongly recommends a leak detection prior to any renovation work to protect both Buyer and Pearl. Pearl is not responsible for leaking pools if no leak detection is performed by a 3rd party.

If any of the foregoing assumptions of fact are not true, Pearl may, at its option, terminate this contract with no further liability to either Buyer or Pearl, except that Buyer agrees to pay to Pearl the actual cost of labor, materials, equipment, and permits already furnished and required to restore the premises; it is understood, however that the parties may, by mutual agreement in writing, amend this contract to deal with such event.

6. POOL SITE; The term pool site means the area comprising the water surface area and that portion of the ground surface extending to a distance of not more than four (4) feet from the perimeter of the pool water surface.

7. GRADING, DECKING DRAINAGE, RETAINING WALLS AND FENCING: Unless specified on the face of the contract herein, none of the following is Pearl's responsibility and shall specifically be Buyer's responsibility: sodding, seeding, fine grading and drainage beyond pool site, decking, retaining walls and fencing.

8. PLUMBING AND UTILITIES: Unless specified otherwise on the face of the contract, or on the plans, plumbing, gas, waste and water lines are not to be changed, and labor, materials and equipment necessary to relocate, reroute or replace sanitation and water supply systems and utilities, including overhead and underground, are not included under the terms of the contract and shall be the responsibility of the Buyer.

9. ELECTRICAL SERVICE: Pearl does not include or provide any electrical work as part of this agreement. Pearl is not responsible for the condition and workability of any electrical equipment including by not limited to pool lights and pool pumps. Pearl is also not a licensed electrician and is not responsible for equipotential bonding for the pool or equipment unless otherwise explicitly stated in contract.

10. DAMAGE TO WORK: In the event work already performed is damaged by any cause beyond Pearl's control and Buyer elects to cancel the work or the work is ordered terminated by public authority, Pearl shall be paid for such work, the amount agreed to in writing for such work, or if not so agreed, the cost price for such labor and materials plus 20% of such cost price. If the work is not canceled or ordered terminated, all work necessary to replace work already performed shall be considered additional work to be paid for by the Buyer in accordance with the preceding sentence.

11. ASSIGNMENTS: Pearl may assign or subcontract all or any portion of the work to be done.

12. DEFAULT: In the event of default by Buyer of any provision of this contract, Buyer agrees to pay all collection cost, and interest from date of default. Reasonable attorney's fees shall be awarded to the prevailing party in any action brought under this contract. Buyer agrees that in the event of breach or cancellation by Buyer, Buyer shall be responsible for charges to date of breach plus Contract profits.

13. PAYMENT AND FINANCING: Buyer agrees to make all payments timely to ensure the project stays on schedule. For every day payment is late, Buyer should expect a minimum of 5 additional days added to the completion schedule and understands this extended scheduling will vary during different times of year. The payment schedule will consist of a deposit and progress payments and will be outlined as part of the project schedule once final selections are made. If punch list items are due after completion, Buyer may withhold 5% of the contract price until those items are complete. Buyer understands that no warranties are valid until the project has been paid for in full. Pearl does not offer financing, however our website provides options for third party financing.

14. ARBITRATION: Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled in arbitration, in accordance with the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

ACKNOWLEDGMENT PURSUANT TO MAGNUSON-MOSS FEDERAL WARRANTY ACT: BUYER ACKNOWLEDGES THAT THE SALES REPRESENTATIVE FOR PEARL HAS ORALLY INFORMED BUYER THAT HE HAS COPIES IN A BINDER OF THE WARRANTIES FOR THE WARRANTED PRODUCTS BEING OFFERED FOR SALE. BUYER ALSO ACKNOWLEDGES THAT HE HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE WARRANTIES AT ANY TIME DURING THE SALES PRESENTATION.