

cascade **Swimming pools**



DISTRIBUTOR'S AGREEMENT

between

Trading as

and

cascade swimming pools

A Division of **CASCADE INDUSTRIES LIMITED**

PO Box 17-069 Greenlane AUCKLAND

Tel: (09) 524-0578 Fax: (09) 524-2431

www.cascade.co.nz

DISTRIBUTOR'S AGREEMENT

AUTHORISED DISTRIBUTORS AGREEMENT

BETWEEN:

CASCADE INDUSTRIES LIMITED of PO Box 17069, of AUCKLAND, a duly incorporated Company ("The Company") trading as **cascade swimming pools** of the first part,

AND:

(Your Name) _____, Trading as _____ and/or **CASCADE POOLS** _____

("The Authorised Distributor") of the second part,

WHEREAS The Company wishes to promote the sales of its products of CASCADE swimming pools and allied and associated products & equipment, and to achieve this **HEREBY APPOINTS**, and the Authorised Distributor **HEREBY ACCEPTS** the appointment of Distributor for a period of Five (5) years from the above date, on the following covenants and conditions:

1. (a) The Authorised Distributor shall use his best endeavours to promote, advertise, and sell the Company's products in the territory known as _____, and
 - (b) providing that the Authorised Distributor will sell a minimum of _____ CASCADE swimming pools in each year for the term of this agreement he shall preserve the right to retain an Authorised Cascade Dealership, and further that,
 - (c) The Authorised Distributor will represent no other manufacturer or act as agent of any other swimming or spa pool type or design either in person or by proxy without the prior knowledge and permission of The Company, which shall not be unreasonably withheld.

(Other Agencies Held at the time of signing)

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2. (a) The Authorised Distributor will purchase Cascade products at the A B C level giving the best discounts, and will benefit from any Regional Dealer's purchases in his territory.
 - (b) The Company will allow the Authorised Distributor the use of its trademarks and Logos in the normal operations of his company's sales promotions and advertising **PROVIDED THAT** such use shall not in any way be deemed to be an appointment of The Distributor as agent with the ability to incur debt, trade in the name of, act on behalf of, or purport in any way to be anything other than an agent or distributor of the products of The Company during the term of this agreement.
 - (c) The Company will allow the Authorised Distributor to sell and install swimming pools described in N.Z. Patent No 165757 and in the Company's literature as "Champion", "Classic" and "Ultimate" pools which have been designed, manufactured & will be supplied to the Distributor, and the Distributor undertakes to refrain from any independent activity which duplicates the descriptions and methods described in the above Patent and subsequent design upgrades and amendments.
 - (d) The Authorised Distributor agrees to use the Brochures and Operating Systems supplied by the Company including but not restricted to: The Quotation Forms, The Sale & Purchase Agreements, the Variation to Contract agreements, the Warranty/Guarantee forms, the Pool Owner's Manual, and agrees to be bound by the offers and inducements by the Company in its brochures and web pages.
 - (e) The Authorised Distributor agrees to keep the Company informed of its sales and installations, and to furnish a list of all customers to whom a Cascade pool has been sold, by way of a faxed copy of the Sale & Purchase Agreement, and to participate in sales promotions and incentive rewards.

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3. The Distributor shall honour all Warranties issued under the terms therein and in accordance with his obligations under the Consumer Guarantees Act (1993), and The Company will entertain such claims for recourse to The Distributor providing such claims fall within the terms of any such Warranties issued. In support of the Warranties issued, the Distributor undertakes to supply only those components specified and/or supplied by the Company with no substitutions of components without the written consent of the Company first had and obtained. In the event of a substitution or where the Authorised Distributor requests that the Company not supply any item normally included in the pool kitset, the Company will, at its discretion deduct the current Distributor's price for the component from the account for the pool kitset.
4. (a) The Company undertakes to train such members of the Authorised Distributor's staff that it deems suitable for such training, on a course of instruction in installation and Maintenance of its swimming pools, to be conducted in and around the city of Auckland at such a time as is convenient to the Company.
- (b) Should on-going instruction be required and the Company must send an Instructor to the place of business of The Distributor, a charge of \$500 + GST per day or part thereof plus all relevant accommodation and travelling expenses by road or air travel whichever is the more convenient to the Company at the time.
- (c) No warranty or responsibility is implied or stated in respect of the ability of the Authorised Distributor's staff to adequately learn the concepts and skills of installation of its swimming pools, and no responsibility is assumed by The Company for the installation of any pool conducted outside its direct surveillance during or subsequent to any such training sessions.
5. (a) The Authorised Distributor agrees, providing he/she qualifies, to join, and during the course of this agreement maintain membership of, the NZ Master Pool Builder's Guild, and to participate in any pool constructor's Diploma or Licencing scheme either currently in existence or to be subsequently introduced.
- (b) The Company agrees to sponsor the Authorised Distributor in his application for membership, and to indemnify the Distributor's installations of the Company's products for the initial period until such time as full Builder/ Membership status is achieved by the Distributor.
6. In the event of any dispute between either The Distributor and his customer, or The Company and The Distributor, the Company reserves the right to call on a single indifferent arbitrator to be appointed by the Company's solicitors under the terms of the Arbitration Act 1908 or any statutory modification thereof, any such ruling or judgement given to be abided with by either party.
7. The Distributor and/or its Principals or Agents shall not assign their rights under the terms of this agreement without the specific written consent of The Company first had and obtained.
8. This agreement will not preclude The Distributor selling or installing any product of the Company in any other Distributor's territory, nor conversely will it preclude any other Distributor OR The Company from selling any product of the Company's or appointment of supplementary agents in the Distributor's territory providing that such an installation, sale or appointment resulted from independent advertising, canvassing or perceived need.
9. (a) Pool Kits & Components supplied to the Authorised Distributor shall be paid for on collection or delivery by way of a POST DATED CHEQUE dated FIVE DAYS from such date, made payable to CASCADE INDUSTRIES LIMITED and crossed for a/c payee only.
- (b) Until payment is received by The Company the risk in the materials or property in any such product shall pass to the Distributor, but ownership of the materials or property shall not pass to The Distributor or his Customer until final payment has been made and all indebtedness to the Company has been discharged.
- (c) If such payments are not forthcoming or are delayed, The Company reserves the right to charge and add interest on the outstanding amount at the prevailing Bank Overdraft Interest Rate or 12 % pa (whichever being the lower) - calculated on a Per Month basis.
10. (a) The agreement may be terminated by either party for failure to comply with the terms herein stated, or by The Company for any reason stated or otherwise, by giving 90 days notice in writing, in which event all signage, display pools and Logos must be removed from public view no later than the date of termination of the agreement.

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IN CONSIDERATION of The Company supplying to the Distributor such goods and products as the Distributor from time to time shall require during the course of this agreement, we the undersigned do hereby guarantee to the Company the due and punctual payment thereof by the Distributor of all amounts owing to the Company and any further charges resulting therefrom:

Read and Agreed to in complete form by:

_____ Limited
(for The Authorised Distributor - 1)

_____ Limited
(for The Authorised Distributor - 2)

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written:

_____ Michael V Coghlan - Dip Pool Tech (NZMPBG)
(for The Company) Executive Manager
Cascade Industries Limited

_____ Laurence E (Larry) Ogden - Dip Pool Tech (NZMPBG)
(for The Company) Managing Director
Cascade Industries Limited

Dated this _____ day of _____ 200_____



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