

# **cascade**

## **DISTRIBUTOR'S AGREEMENT**



**for  
CASCADE SWIMMING POOLS**

A Division of **CASCADE INDUSTRIES LIMITED**  
PO Box 17-069 Greenlane AUCKLAND  
Tel: (09) 524-0578 Fax: (09) 524-2431

**DISTRIBUTORS AGREEMENT** Made this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

**BETWEEN:**

**CASCADE INDUSTRIES LIMITED** of PO Box 17069, (Master Distributor) -and- **AQUATECH LIMITED**, PO Box 12-855 (Manufacturer) both of AUCKLAND, duly incorporated Companies (hereinafter referred to jointly as "The Company") trading as **CASCADE SWIMMING POOLS** of the first part,

**AND:**

\_\_\_\_\_ **Trading as:** \_\_\_\_\_

of \_\_\_\_\_

( hereinafter referred to as "The Distributor") of the second part,

**WHEREAS** The Company wishes to promote the sales of its products of **C A S C A D E** swimming pools, and allied and associated Aquatech products & equipment, and to achieve this **HEREBY APPOINTS**, and the Distributor **HEREBY ACCEPTS**

the appointment of Distributor for a period of \_\_\_\_\_ years from the above date, on the following covenants and conditions:

1. (a) The 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 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 Distributor will represent no other manufacturer or 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)

2. (a) The Company will allow the Distributor the use of its **CASCADE** 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.

(b) The Company will allow the Distributor to sell and install swimming pools described in N.Z. Patent No 165757 (expired) which have been manufactured & supplied by the Company to the Distributor and the Distributor undertakes to refrain from any independent activity which transgresses or copies the descriptions and methods described in the above Patent.

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 Distributer 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 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 Distributor's staff as is deemed suitable by the Company, on a course of instruction in installation and Maintenance of "Cascade" swimming and/or spa pool products, to be conducted in and around the city of Auckland at such a time as is deemed suitable, unless otherwise agreed to by The Company.

(b) Should further training be required inasmuch as the Company must send an Instructor to the place of business of The Distributor, then financial reimbursement shall be made by the Distributor to the Company at the rate of \$250 + GST per day or part thereof plus all relevant accommodation and travelling expenses by motorcar 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 Distributor's staff to learn adequately the concepts and skills of installation of either spas or swimming pools, and no responsibility is assumed by The Company for the installation of any pool or spa conducted outside its direct surveillance during or subsequent to any such training sessions.

5. (a) The Distributor agrees, if requested by the Company, to join, and during the course of this agreement maintain membership of, or give PROXY to the Company, a suitable trade association or other Guild to be nominated by the Company, and to participate in any pool constructor's Bonding scheme either currently in existence or to be subsequently introduced.

(b) The Company agrees to sponsor the Distributor in his application for membership of any Bonding scheme in existence, 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) Any product supplied by The Company to The Distributor shall be paid for promptly by way of a POST DATED CHEQUE dated FIVE DAYS from the date of Collection by the Distributor from the Company's premises, or the premises of the Company's assigned Manufacturer's Agent.

(b) Until such 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 15 % pa ( Whichever is 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.

(b) In the event of such termination where the Distributor has a display centre with the products of the Company on display either installed or otherwise, any such products must be removed from public view no later than the date of termination of the agreement.

**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:

\_\_\_\_\_  
(for The Distributor)

\_\_\_\_\_  
(for The Distributor)

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

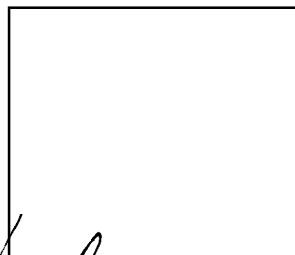
The Common Seal of  
The Distributor



was hereto affixed in the  
presence of:

\_\_\_\_\_

The Common Seal of  
Cascade Industries Limited



was hereto affixed in the  
presence of:

\_\_\_\_\_

Signed   
\_\_\_\_\_  
Managing Director  
CASCADE INDUSTRIES LIMITED

Signed   
\_\_\_\_\_  
Managing Director  
AQUATECH LIMITED

