

## **General Conditions to New Pool Construction Agreement**

These general conditions ("General Conditions") are incorporated into and made part of the New Pool Construction Agreement ("Agreement") between Owner/General Contractor ("OWNER") and Oak Wells Aquatics ("OWA").

1. **Plans:** The Sales Layout Approval Form/2D Drawing are part of the Agreement. In case of conflict between the provisions stated in such Sales Layout Approval Form/2D Drawing and the terms of the Agreement or General Conditions, the s Agreement or General Conditions shall prevail.

2. **Permit:** OWA will obtain and pay for county/city building permits required on OWA's work using OWA's standard engineered shell plans. OWNER is responsible for any additional plans, surveying, permits and/or engineering fees. OWNER shall pay any fees associated with OWNER'S Homeowners Association (HOA), including architectural review fees, construction fees, design fees, or surveys to scale fees. OWNER shall furnish any necessary variances and surveys to scale. OWA will pay sales tax on all equipment and materials used in its work. Agreement price is based on building codes and regulations in effect at time of Agreement, and any changes thereafter impacting costs shall be paid by OWNER as a Change Order.

3. **Location:** OWNER is responsible for pool location being within OWNER'S property lines and setback lines. OWNER shall verify location, layout of pool, square footage, decking, enclosed cage, fencing, finish elevation, and any other design features. OWA has no liability for incorrect location of pool or improvements.

4. **Site Preparation:** OWA is not responsible for moving or replanting shrubs, trees, sod, or grass. If clearing of land, removal of stumps, re-routing or re- installation of irrigation systems, removal of fencing, or any special site preparation is required, including retainer walls, fill dirt and compaction, etc., it will be performed by OWNER OWA begins construction.

5. **Construction Schedule:** Work will not be scheduled until the Agreement is signed by OWNER, initial payment is received by OWA, all necessary HOA approvals are obtained by OWNER, permits and any variances, surveying, or engineering which may be required are completed. Pool construction will not begin until all site preparation is completed by OWNER. Estimated construction schedule included in the Agreement is an estimate and there is no guaranteed completion date. OWA is not responsible for delay or failure to perform work when due to acts of God, weather, named storms, strike, war, government prohibition, holidays, delivery and shipping schedule of OWA's suppliers, or reasons beyond OWA's control. Delays caused by OWNER or other trades, delays in payments, and/or changes made after commencement of construction will increase estimated construction period and OWA will not be responsible for meeting estimated time schedules.

6. **Access:** OWNER will provide and maintain free access to the pool site and adequate working room during the course of construction. OWA is not responsible for damage to sidewalks, curbs, driveways, grass or sodded areas, mulched or pine straw areas, irrigation, underground utilities, etc., or any terrain which must be crossed to reach job site including passage to and from filter locations. Should OWA require access to the pool site or access to the pool site is only available through OWNER'S neighbor's property, HOA property or any easement owned or shared with a third party ("Third Party"), OWNER shall obtain permission from the Third Party and provide it to OWA.

7. **Utilities and Water:** OWNER will furnish, at no charge to OWA, electricity and water for building and filling pool. On initiation of construction, these services shall be brought to points designated by the OWA. If required, sanitary sewer, backwash line, or storm sewer connections shall be provided by OWNER. OWA will not be held responsible for staining or discoloration of pool interior due to mineral content or foreign matter inherent in or introduced into water supplied by OWNER to OWA for building or filling pool. If OWNER is on a well system, OWNER agrees the

filling of pool will be completed by water trucks at an additional cost to OWNER.

8. **Grading and Excavation:** OWA's responsibility for grading of the site under the Agreement shall be limited to the immediate pool area including area for piping. Without exact data to the contrary, OWA assumes the topographic variation of the above delineated pool site will not exceed one (1) foot vertical measurement at the time construction is initiated. OWA will perform all normal excavation for pool installation as covered under this Contract. The following are to be considered as abnormal conditions and are additional work to be paid for by the OWNER in accordance with this Agreement entitled "Additional Work Order:" (1) inadequate soil bearing capacity requiring such means of support as piling, grade beams or any other special methods, including over-excavation with sand and/or stone backfill; (2) tree stumps, rock formations above and below ground, boulders, mass concrete or any condition requiring blasting, sawing, jack hammering, or demolition work; (3) high water table requiring pumping and well pointing; (4) underground utilities requiring relocation or removal, including, but not limited to water, sewer, septic tanks, electrical lines, gas lines, internet or television lines, and sprinkler system lines; (5) dirt from pool not sufficient for necessary backfilling and grading and/or additional dirt required for backfilling and grading. In the absence of written acknowledgement to the contrary, OWA assumes that the site is not fill ground and that there are no underground obstructions of any kind that will interfere with OWA's phase of the work. To avoid unnecessary delay during excavation, OWNER agrees that OWA may perform up to \$1,000.00 in additional work required by abnormal conditions without prior notice to or written authorization by OWNER. OWA will not be held liable for floatation of shell if such should occur because of conditions beyond OWA's control. OWNER will be informed as soon as possible of any abnormal conditions encountered in grading and/or excavation. OWA will use excavated earth to rough-grade and back-fill against pool shell. If extra fill is necessary, the cost, including cost of placement and compaction, will be borne by OWNER at OWA's cost plus 25%. Excavated earth from the pool will be placed or removed from job site only on day of excavation with the exception of that required by OWA for backfilling and grading.

9. **Payments:** Payment shall be per the Payment Schedule included in the Agreement. Payment is due upon receipt of OWA's invoices. There shall be no retainage held by the OWNER. The interior finish application will not be scheduled until all outstanding invoices, including Additional Work Orders, are paid in full. In the event of a default by OWNER to make payment per the Payment Schedule, OWA may cease Work until such payments have been made in full. A finance charge of 1.5% interest per month will be applied to all delinquent payments of more than ten (10) days. Any additional costs resulting from any such Work stoppage and/or OWNER'S failure to make payment per the Agreement, shall be paid by OWNER to OWA as Additional Work Orders. OWA retains title to new pool equipment until all payments have been made in full, including payments associated with Additional Work Orders. If the total amount owed is not paid in accordance with this Agreement, OWA or its employees may without notice enter the OWNER'S premises and repossess any pool equipment and accessories included in this Agreement and will apply the reasonable value of said equipment and accessories as determined by the OWA, against any unpaid balance due. OWA does not accept credit cards. ACH, check, or cash payments are the only acceptable form of payment.

10. **Warranty:** When the final Payment Schedule invoice is issued and final payment received, OWNER will complete and

sign the Acceptance and Warranty Certificate. Warranty is void unless Acceptance and Warranty Certificate is completed, signed by OWNER and dated by an authorized representative of OWA. The Acceptance and Warranty Certificate may contain punch list items, which will be addressed within a reasonable time period, usually within 30 days. Warranty is void if OWNER fails to pay all amounts owed under the Agreement, including Additional Work Orders.

11. **Additional Work Orders:** The Agreement include only the work, materials and equipment specified therein. Any additional work or change orders ("Additional Work Orders") that adds to this Agreement must be made in writing to OWA. OWA shall issue an Additional Work Order to OWNER indicating the additional work or changes made including the increase (or decrease) in price. OWNER shall sign the Additional Work Order prior to OWA performing any additional work. OWNER agrees that all Additional Work Orders will be prepared and signed by OWA's main office and no representative of OWA on site, including an employee or subcontractor, is authorized to quote prices or issue an Additional Work Order. Payment for Additional Work Orders is due upon receipt of invoice, including a processing fee of \$500.00 per Additional Work Order.

12. **Cancellation:** The Agreement is subject to cancellation by OWA if not accepted by OWNER within ten (10) days from the date on the Agreement. **OWNER are hereby notified of their right to rescind or cancel the Agreement within three (3) working days from the date of this Agreement and any deposit paid will be refunded in full.** After the 3-day cancellation period all deposits will be nonrefundable. Any cancellation of the Agreement by Owner after the 3-day cancellation period is subject to OWA's approval and Owner's payment of all costs incurred by OWA, including costs related to the pool design, engineering, and/or permitting, plus a \$500.00 cancellation fee.

13. **Completion:** OWNER agrees that the swimming pool shall be deemed completed at the time it is put into operation. Any unpaid invoices are due at this time. Use of the pool by OWNER constitutes acceptance whether or not the Acceptance and Warranty Certificate has been completed and signed and/or punch list items complete.

14. **Photographs:** OWNER grants OWA permission to photograph work at OWA's discretion and grants the OWA the right to use photographs for any purposes whatsoever as the OWA may deem fit, unless otherwise noted in writing.

15. **Building Materials Price Escalation and Supply Chain Delays:** If, during the performance of the Work, the price of building material significantly increases, through no fault of the OWA, the price shall be equitably adjusted by an amount reasonably necessary to cover the actual price increases, without any markup for profit or overhead. As used herein, a significant price increase shall mean an increase of 5% or more in the price of any building materials from the date of this Agreement. If delivery of material is delayed (supply chain delays), through no fault of the OWA, the price and/or time shall be equitably adjusted for the actual additional costs and/or time associated with such supply chain delay(s).

16. **Concealed or Unknown Conditions.** If the OWA encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided by the OWNER to OWA or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities, the OWA shall promptly provide notice to the OWNER and OWA shall issue an Additional Work Order.

17. **Hazardous Materials:** OWNER is responsible for any preexisting hazardous materials on site. If the OWA encounters a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), OWA shall, upon recognizing the condition, immediately stop work in the affected

area and report the condition to the OWNER. OWNER shall then pay to have such hazardous materials removed or rendered harmless. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the OWNER and OWA. By an Additional Work Order, this Agreement shall be extended appropriately, and the Agreement amount shall be increased in the amount by the OWA's reasonable additional costs of shut-down, delay and start-up. To the fullest extent permitted by law, the OWNER shall indemnify and hold harmless the OWA and its agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work in the areas affected by the hazardous materials, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

18. **Waivers of Subrogation:** OWNER and OWA waive all rights against each other and any of their subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by any insurance provided to the OWNER or OWA. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **Mutual Waiver of Consequential Damages:** OWA and OWNER waive Claims against each other for consequential damages arising out of or relating to this Agreement including but not limited to damages incurred by the OWNER for losses of use, income, profit, financing, business and reputation, or any other consequential damage. This mutual waiver applies to any consequential damages resulting from a termination of the Agreement.

20. **Arbitration:** This Agreement shall be governed by the laws, rules and regulations of the State of Florida. Both parties agree that they will initially attempt to resolve disputes through discussions among principals appointed by each company. Failing resolution, the parties shall attempt to resolve disputes through mediation conducted in accordance with the Mediation Rules of the American Arbitration Association. Mediation shall take place in the county where the job is located. The parties agree that any and all disputes arising out of or in any way relating to this Agreement, or the breach thereof, and which cannot be resolved through discussion or mediation, shall be finally resolved by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. The county where the job is located shall be the exclusive venue for any dispute resolution proceeding (whether arbitration or litigation), and the parties expressly waive venue as to any other jurisdiction. Judgment upon any award made in arbitration may be entered in any court having jurisdiction. The arbitrator is required to enforce the terms of this Agreement. The arbitrator shall not be authorized to award any punitive damages or any other damages waived or prohibited under the terms of this Agreement. The prevailing party in any arbitration shall be entitled to recover its reasonable expenses related to the arbitration including, but not limited to, its attorneys' fees, paralegal fees and costs, and the arbitrator(s) shall have sole discretion to determine the entitlement to and amount of any expenses awarded.

21. **WAIVER OF THE RIGHT TO A JURY TRIAL:** THE PARTIES FURTHER AGREE THAT SHOULD ANY LITIGATION ARISE DIRECTLY OR INDIRECTLY UNDER THIS CONTRACT, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

22. **Marketing Communications:** By signing this Agreement, OWNER acknowledges that OWA may contact them

via text message, email, or phone with updates, promotions, or offers related to OWA's services. OWNER may opt out at any time by replying "STOP" to any text message, clicking "Unsubscribe" in any email, or notifying OWA in writing. OWA will not share OWNER OWA contact information with third parties for marketing purposes without explicit consent.

23. **Consent to Record Communications:** OWNER acknowledges and agrees that OWA may record verbal communications between OWNER and OWA employees or representatives, or subcontractors for the purposes of project documentation, quality assurance, training, and dispute resolution. Recordings will be kept confidential and used solely for internal purposes, unless disclosure is required by law. By signing this Agreement, OWNER provides express consent to such recordings.

24. **Swimming Pool Safety Publications:** OWNER acknowledges that it is the OWNER'S responsibility, as a new pool and/or spa owner, to read Florida Statute § 515.29 Residential swimming pool barrier requirements available at [https://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0500-0599/0515/Sections/0515.29.html](https://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0515/Sections/0515.29.html) and the U.S. Consumer Product Safety Commission Publication No. 362, "Safety Barrier Guidelines for Residential Pools, Preventing Child Drownings" available at <https://www.cpsc.gov/safety-education/safety-guides/pools-and-spas/safety-barrier-guidelines-home-pools>. OWNER further acknowledges and agrees that it is solely the OWNER's responsibility to install all barriers, alarms, and other safety measures required by the Florida Building Code, unless expressly specified otherwise in the Agreement. OWNER hereby agrees to defend, indemnify, and holds harmless the OWA,

its officers, employees, and subcontractors from and against any and all claims, damages, losses, liabilities, penalties, costs, and expenses (including but not limited to reasonable attorneys' fees and court costs) to the extent caused by OWNER's failure to properly install, maintain, or comply with such barriers, alarms, or safety measures, except to the limited extent caused by the gross negligence or willful misconduct of the OWA.

25. **Final Pool Inspection:** OWNER is responsible for installing, unless otherwise specified in OWA's Estimate, all safety features including required barriers (e.g., fencing), door(s) and window(s) requirements, and pool alarms in accordance with Florida Building Codes and shall be present during final inspection by the appropriate county/city inspector. OWNER acknowledges OWA is prevented from installing the final interior finish and water to the pool prior to inspection. OWNER is responsible for all delays, county/city issued fines, and/or reinspection fees for failure to install all appropriate safety features.

26. **Disclosures and Disclaimers:** OWNER acknowledges it received and read the New Pool Construction Typical Building Schedule Disclosure, Pool Interior Finish Disclosure, Concrete Paver Disclaimer, Natural Stone Disclaimer, Retaining Wall Disclaimer, and Stucco Finish Disclaimer or any additional Disclosures and Disclaimers as provided by OWA.

27. **Final Color and Material Selections:** OWNER shall select colors and materials timely so as to not delay OWA's Work. Changes or modifications to colors and materials by OWNER after Construction Plans submittal to engineering and permitting will result in Additional Work Orders and/or additional fees.