

TERMS AND CONDITIONS - Pool Services

INDEPENDENTLY OWNED AND OPERATED ASP POOL SERVICE FRANCHISE: ASP is an independently owned and operated franchise. Customer acknowledges and agrees that these Terms and Conditions are made solely with a local franchise business of the ASP brand. ASP is not an employee or agent of ASP Franchising SPE LLC or Authority Brands, Inc. or any of its affiliates. Customer acknowledges and agrees that ASP Franchising SPE LLC and Authority Brands, Inc. are not responsible or liable for any acts or omissions of ASP.

ENGAGEMENT: You are hiring ASP to perform certain pool services described in the attached Invoice (“Services”). ASP shall use reasonable efforts to meet any performance dates specified in the Invoice and any such dates shall be estimates only. Any unforeseen or additional work outside scope of any written Invoice will be additional and require written approval by both ASP and Customer. If any electrical work is needed to complete this job, an additional charge will apply from ASP’s selected electrician. The Invoice and these Terms and Conditions are accepted by Customer and ASP through its authorized agents or representatives with full knowledge of the contents thereof and acquiescence thereof. These Terms and Conditions and any accepted Invoice constitute the Agreement between the Parties, which may only be amended by writing signed by both Parties. ASP accepts no responsibility or liability for any unforeseen defects in existing structure being repaired.

DISCLAIMER: ASP will not be responsible for any damage to property due to acts of nature, fire, vandalism, misuse or abuse. ASP is not responsible for the performance of any chemicals it does not sell.

WARRANTIES: In its performance of the Services, ASP will use best efforts to avoid damage to your property and to explain to you any potential impacts on the property. Normal wear and tear is to be expected in the performance of the Services, and you agree that ASP is not liable for any such damage. You acknowledge that the Services are purchased “as is” and ASP does not provide any warranty for the Services except as expressly set forth herein. ASP makes assessments on the property using industry-recognized methods, but cannot guarantee the efficacy of the Services, as each individual property and its conditions are different. You agree to submit any complaints regarding the Services to ASP in writing within seventy-two (72) hours of discovery of the issue, so that ASP can remedy the complaint in the manner it deems appropriate. Failure to submit a written complaint within such period constitutes satisfactory acceptance of the work performed. You agree to indemnify and hold ASP and its employees, agents, representatives, and contractors harmless from any damages or claims arising from a breach of this Agreement by you. By entering into this Agreement, you warrant that you have full power to authorize the performance of the Services on the property.

MAINTENANCE AFTER INSTALLATION: It is vital that there is a proper maintenance and care program set up after installation or renovation. ASP offers maintenance services. Customer should be aware of normal deterioration of equipment that occurs over time due to exposure to chemicals and/or sunlight. Due to these factors, ASP recommends other annual services (e.g., annual tune-up equipment, filter cleaning) above normal maintenance. Customer is responsible for maintaining the correct water level and keeping trees and plants trimmed away from the pool/spa and equipment and maintaining equipment through annual service to equipment. ASP is not responsible for any damages or deterioration caused by failure of Customer to perform services recommended by ASP or by failure of Customer to properly maintain pool and equipment between visits.

INSURANCE: ASP shall carry standard form workers compensation and general liability insurance and Customer agrees to look only to ASP's insurance relative to any claim arising from ASP's performance hereunder.

WORKING CONDITIONS: Customer is responsible for advising ASP in writing prior to commencement of the work of the location of any life safety systems, utilities, as well as objects or structures which could be damaged by ASP's personnel, machinery, materials or vehicles. Customer is responsible for providing ingress and egress to the work site. ASP's employees, agents, representatives or contractors shall not be required to work in hazardous, improper, or unreasonable conditions, and the Customer agrees to address these conditions to ASP's satisfaction as well as cooperate with ASP to provide a safe and proper working environment and to not interfere with the progress of the work.

LIMITATION OF LIABILITY: IN NO EVENT SHALL ASP BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL ASP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO COMPANY PURSUANT TO THIS AGREEMENT.

FORCE MAJEURE: ASP shall not be liable or responsible to you, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of ASP including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

COMPLETION AND ACCEPTANCE. Customer shall immediately inspect the work performed by ASP and any aspect of the work not acceptable to Customer must be specifically noticed in writing to ASP within seventy-two (72) hours of ASP's performance of its work. ASP shall then be given a reasonable opportunity to address such an issue. A full and complete acceptance of the work shall be presumed upon the Customer making payment.

PAYMENT: Upon acceptance of the Invoice, payment for the Services will be invoiced to you, and is due upon completion of the Services and receipt of the invoice. If the scope of the Services changes by written agreement of the Parties through a Change Order, ASP will be paid for all Services that have been completed and agreed to by you. If an invoice is unpaid after the due date indicated on the invoice, ASP shall add interest of two percent (2%) to the total amount due for each thirty (30) day period that the invoice remains unpaid. You agree to pay ASP in full, even if you dispute the work performed or have a claim for damages arising from the Services. If Customer provides ASP with a credit card number or bank routing information, you hereby authorize ASP to charge such credit card or bank account for the full amount due upon completion of the Services. Any discounts or coupons are invalid for past due invoices.

ASP shall be entitled to keep all monies already paid, and Customer shall pay ASP the amount due for Services already acceptably performed.

Delinquent Accounts: ASP reserves the right to initiate collection procedures if Customer's account is sixty (60) calendar days past due. ASP will attempt to collect past due by first calling the Customer and then sending an e-mail to Customer. Customer is responsible for all court costs, reasonable attorney's fees, and collection costs incurred by ASP in connection with the past due invoices. ASP also reserves the right to report your nonpayment to credit agencies. Proper venue for any litigation stemming from this Agreement will be a court of competent jurisdiction in the county in which ASP is located.

WAIVER OF JURY TRIAL: EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE MATTERS CONTEMPLATED HEREBY.