

Clauses

surface finishes of the pool	in Clause 12 includes the finish applied to, or the treatment of, the internal surface of the structural shell and the exposed surfaces of the coping of the pool
water depth	means the vertical distance from an imaginary horizontal line drawn at the level of the midpoint of the operating range of the skimmer box to the floor of the pool at critical locations as shown on the sketch of pool in Item 3.2
width of pool	shall be calculated by taking the average of a minimum of three waterline measurements taken at right angles through the <i>axis</i> to agreed critical points on the walls of the pool identified in the sketch shown in Item 3.2
words in the singular	include the plural and words in the plural include the singular, according to the requirements of the context

2 Workmanship

The *Contractor* agrees to complete all work detailed in this *Contract* using suitable new materials as specified and complying with all references to Australian Standards and Codes of Practice, with due diligence in accordance with the *Contract* and the approved plans and specifications.

3 Provisional allowances

- 1) The *Contractor* warrants that any provisional allowance listed in Item 5 is a genuine estimate of the direct cost of the work or the item to which it relates, based upon the conditions, circumstances or *Customer* requirements reasonably ascertainable by the *Contractor* at the date of this *Contract*.
- 2) When the cost of any work or any item covered by such provisional allowance becomes known, the *Contract* price shall be adjusted by the amount of any variance between the provisional allowance and the cost.
- 3) Payment or credit allowance for such variance shall be made at the time required by Item 6 for making the payment appropriate to the nature of the work or relating to the item which is the subject of the provisional allowance.

4 Obtaining approvals and commencement of work

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The *Contractor* shall prepare plans and specifications and submit them to the appropriate local government and regulatory authorities for approval without undue delay. The cost of preparation of such plans and specifications, and all fees and charges of regulatory authorities shall be included in the *Contract* price. The *Customer* shall pay any security deposits required by any regulatory authority. The *Contractor* shall not be liable where refund of any such deposit is withheld or refused by the relevant authority for any reason provided the *Contractor* has complied with the conditions of this *Contract*.

7 Extension of time

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Should the commencement of the works, once all the necessary approvals have been obtained, or should the progress of the works, once commenced, be delayed by any of the following causes:

- a) any weather sufficiently inclement to prevent the *Contractor* proceeding with the works, or conditions on site resulting from inclement weather, or weather or conditions unsuitable for carrying out any necessary process;
- b) proceedings being taken or threatened by or disputes with neighbours adjoining the site, or nearby residents;
- c) any civil commotion or any industrial disputation affecting the manufacture or supply of materials and/or equipment or the on-site construction;
- d) trade, gazetted, proclaimed or public holidays and any shutdown for annual holidays applicable to the locality of the property;
- e) any other matter, cause or thing,

TO THE EXTENT THAT SUCH CAUSES ARE BEYOND THE REASONABLE CONTROL OR KNOWLEDGE OF THE *Contractor* AT THE DATE OF THE *Contract*, then in any such case the *Contractor* shall be entitled to a fair and reasonable extension of time for completion of the pool.

If the *Customer* so requests, the *Contractor* shall, within 14 days, provide the *Customer* with a written statement specifying the total extension of time to that point and specifying the cause and duration of each delay, whether during construction or after completion.

8 Cost due to delays by Customer

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Should there be any delay in the progress of the works, once all the necessary approvals have been obtained, as a result of any direction, omission, act or default on the part of the *Customer*, the *Customer's* servants, agents or other *Contractors*, then THE *Contractor* SHALL BE ENTITLED TO charge the *Customer* with any additional costs, incurred as a result of any such delay.

9 Compliance with legal requirements

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The *Contractor* shall ensure that the *Contract* works comply with the requirements of all relevant regulatory authorities.

Where the *Contractor* incurs additional *costs* resulting from any change of such requirements after the date of this *Contract* which refer to the use of the land and which have not been disclosed to the *Contractor* by the *Customer*, then THE *Contractor* SHALL BE ENTITLED TO:

- a) charge the *Customer* with any such additional *costs*, with payment for such additional work to be made upon completion of such work and prior to the filling of the pool with water; and

c) Filtration pipework

Defects discovered in the filtration pipework of the pool within the period specified in Item 4 of this *Contract* from the date of the filling of the pool with water, provided that such defects are due to faulty workmanship or the use of defective or inappropriate materials by the *Contractor*.

d) Equipment manufactured by others

Defects discovered within the period specified in Item 4 in any accessories or other items installed by the *Contractor* or the manufacturer or which are due to faulty installation, workmanship or the use of defective or inappropriate materials by the *Contractor*.

The *Contractor* shall, within a period not exceeding 21 days after receipt of written notice from the *Customer*, commence to rectify and shall rectify with due diligence such defects at his or her own cost. This period may be extended as a result of conditions on site which are not suitable for carrying out rectification or any other agreement between the parties.

Should it become necessary to empty the pool to effect rectification, the *Contractor* shall, upon refilling the pool with water supplied at the *Customer's* expense, provide chemicals to retreat the water to a standard suitable for swimming.

13 Warranties

The *Contractor* warrants that:

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- a) the work will be performed in a proper and workmanlike manner, and in accordance with the plans and specifications, prepared by the *Contractor* based on the sketch in Item 3.2 and agreed to by the *Customer*;
- b) all materials supplied by the *Contractor* will be good and suitable for the purpose for which they are used and unless otherwise stated in the *Contract*, those materials will be new;
- c) the work will be done in accordance with, and will comply with, the law;
- d) the work will be done with due diligence and within the time stipulated in the *Contract* or, if no time is stipulated, within a reasonable time;
- e) if the work consists of the construction or the making of alterations or additions, repairing, renovation, decoration or protective treatment the work will result, to the extent of the work conducted, in a pool that is reasonably fit for use; and
- f) the work and any materials used in doing the work will be reasonably fit for any purpose or result, made known by the *Customer* to the *Contractor* or any employee or agent of the *Contractor*.

- d) Should it be necessary to put in formwork or backfilling as a result of a collapse of the excavation or to remove the effects of such collapse, provided that such collapse was caused by conditions beyond the *Contractor's* control, THE *Customer* AGREES TO PAY THE *Contractor* at the rates specified in Item 3.11 for the type of work involved or, where no such rates are specified THE *Customer* AGREES TO PAY THE *Contractor* ANY ADDITIONAL *costs*, AT RATES THAT ARE AGREED, *overheads* AND PROFIT, AT THE RATE SPECIFIED IN ITEM 11, arising from the erection of such formwork or in removing or overcoming the effects of such collapse.
- e) The *Contractor* shall provide written details of all such *costs*, *overheads* and profit when making a claim for payment under the provisions of Clause 14. All such payments shall be made at the time of making the payment appropriate to the nature of the work involved, in accordance with Item 6.

15 Acceptable tolerances and damage

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The *Contractor* shall adhere to the dimensions of the pool as described in Items 3.1 and 3.2 of the *Contract* or as varied by agreement, within +10% or -5% of the agreed *water depth* and within +5% or -1.5% of the agreed length and within +10% or -2.5% of the agreed *width of pool*. The *Contractor* shall not be liable to rectify or make any financial compensation adjustment for any variation in these dimensions where such variation is within the applicable tolerance stated above.

Upon the completion of the pool and provided that the *Contractor* has placed the coping finishes, the top of the finished or structural coping shall be within +70mm and -40mm of the agreed height in relation to the *datum point* and level to within 25 mm along the water's edge.

16 Access

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The *Customer* shall provide to the *Contractor* the access detailed in Item 3.10. The *Contractor* shall not be liable to the *Customer* for any damage to driveways, footpaths, underground services and drains, or any private or public property, caused by reasonable acts of the *Contractor* necessarily done while gaining access as detailed in Item 3.10 consistent with the *Contractor's* obligation to render services with due care and skill.

If reasonable access is not available when required by the *Contractor*, the period for completion of the pool or the period for performance of the rectification work, as the case may be, shall be extended by the period during which access is not available and the *Contractor* shall be entitled to claim any additional *costs* to which he or she is entitled under Clause 8.

If the cost incurred by the *Customer* to have the work completed is greater than the amount which would have been paid to the *Contractor* if the work had been completed by the *Contractor*, the difference shall be a debt due from the *Contractor* to the *Customer*. Until completion of the work the *Contractor* will not be entitled to any further payment under this *Contract*, provided, however, that nothing contained in this Clause may take away any right the *Contractor* may have to payment under the dispute resolution procedure in Clause 25.

19.2 Otherwise than due to the fault of the Contractor

The *Customer* may also end the *Contract* by notice in writing to the *Contractor* in the following circumstances:

- a) If the *Customer*, within the cooling off period, does not wish to proceed with the *Contract*, by notice in writing to the *Contractor* within the cooling off period (see Item 1.3).
- b) If all necessary approvals for the work have not been obtained within 90 working days of the date of the *Contract*, or such further period as agreed to by the parties or such further period caused by delays which result from acts or omissions on the part of the *Customer* (see Clause 4), by notice in writing to the *Contractor* within 7 days after expiration of such period.
- c) If the estimated cost of carrying out any variation to the works necessary to comply with any condition(s) attaching to any approval (see Clause 4) or dealing with unforeseen subsurface conditions (see Clause 14(b)) would increase the *Contract* price by an amount equal to or exceeding twenty (20) percent, by notice in writing to the *Contractor* in accordance with Clause 19.3.

19.3 Moneys due to Contractor following ending the Contract

Subject to Clause 4 and Clause 14, if the *Customer* elects to end this *Contract* based on the *Contractor's* estimate, then the *Customer* shall do so by giving a written notice within 7 days of being informed of the estimate. Where the *Customer* ends the *Contract* under this provision, THE *Customer* AGREES TO PAY THE *Contractor* for all work performed under the *Contract* by the *Contractor* up to the date of ending the *Contract*.

20 Ending of Contract by Contractor



The consequences for wrongfully ending the *Contract* may be serious and the *Contractor* should seek independent advice before taking any action.

If the *Customer*:

- a) fails to provide satisfactory evidence of title to the land or capacity to pay the *Contract* price including any variations;
- b) fails to pay a progress payment or other amount due under the *Contract* (see Item 6);
- c) denies access to the site to the *Contractor*, the *Contractor's* employees or sub-contractors so as to prevent the work from proceeding (see Clause 16);

- d) fails to perform any work or supply materials which prevents the *Contractor* from continuing with the work under the *Contract* or otherwise obstructs the *Contractor* from performing the work; or
- e) without consent of the *Contractor* prior to completion of the work enters into occupation or otherwise prevents the *Contractor* from carrying out the work;

then the *Contractor* may, where such default is capable of remedy, notify the *Customer* in writing that unless the default is remedied within 10 working days or such longer period as specified, the *Contractor* will end the *Contract*.

Unless the *Customer* complies with the *Contractor's* request within the time allowed, or if the default cannot be remedied, the *Contractor* may end this *Contract* by giving written notice to this effect to the *Customer*.

If the *Contractor* ends the *Contract* under this Clause, the *Contractor* may remove from the site and retain all unfixed materials, fittings and equipment supplied by the *Contractor* and will be entitled to recover all losses and expenses arising from the ending of the *Contract* or to offset such amounts from any amount due to the *Customer*.

21 Insolvency

If:

- a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- b) execution is levied against a party by a creditor;
- c) a party is an individual person or a partnership including an individual person, and if that person:
 - i) commits an act of bankruptcy;
 - ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - iii) is made bankrupt;
 - iv) makes a proposal for a scheme of arrangement or a composition; or
 - v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- d) in relation to a party being a corporation:
 - i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - ii) it enters a deed of company arrangement with creditors;
 - iii) a controller or administrator is appointed;
 - iv) an application is made to a court for its winding up and not stayed within 14 days;
 - v) a winding up order is made in respect of it;

- vi) it resolves by special resolution that it be wound up voluntarily (other than for the purposes of reconstruction; or
 - vii) a mortgagee of any of its property takes possession of that property,
- then:
- A) where the other party is the *Customer*, the *Customer* may end the *contract* by giving notice in writing to the *Contractor*;
 - B) where the other party is the *Contractor*, the *Contractor* may end the *contract* by giving notice in writing to the *Customer*.

The rights given by this Clause are in addition to any other rights and may be exercised notwithstanding that there has been no breach of *Contract*.

22 Insurance

The *Contractor* agrees to effect Public Liability Insurance of not less than \$5 million and Workers Compensation Insurance so that they are in force from the date on which the *Contractor* commences work on the site and maintain them until the *Contractor* complies with its obligations in Clause 12 and agrees to produce evidence of such insurances upon request by the *Customer*.

On or before the date of this *Contract* the *Contractor* shall effect a contract of insurance which complies with any legislation regulating residential development or housing construction and produce evidence of such insurance upon request by the *Customer*. Without limiting the generality of the foregoing and to the extent consistent with such legislation, the contract of insurance shall insure:

- a) the *Customer* against the risk of loss resulting from non-completion of the works because of the insolvency, death or disappearance of the *Contractor*; and
- b) the *Customer* and its successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the works or the risk of being unable to enforce or recover under the statutory warranty because of the insolvency, death or disappearance of the *Contractor*.

The *Contractor* indemnifies the *Customer* against any liability or loss in respect of death or personal injury or property damage (including damage to or loss of goods or material on site) arising out of, or as a consequence of, the carrying out of the work. However, if such liability or loss arises in whole or in part through the negligence of the *Customer*, the extent of the *Contractor's* indemnity will be reduced by the extent to which the *Customer's* negligence contributed to such liability or loss.

The sketch to be drawn in Item 3.2 at the time of entering into the *Contract* forms the basis for the preparation of the drawings and enables the *Customer* to ensure that the plans have been prepared in accordance with the original intention of the parties. A sample sketch is drawn at Note 9 of these notes.

3 Items 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10; details regarding pool, finishes, equipment and accessories, spa, Customer, property and excavation

These Items of the *Contract* provide for full identification of the details of the pool that the *Customer* is ordering, and are intended to prevent any confusion at a later stage. Some of the details provided for may not be relevant to a particular pool, while in other cases additional details may be required.

If additional details are required they should be set out in the special conditions in Item 12, when the *Contract* is being filled out.

When filling out Item 3.9, Spa, include dimensions, depth, equipment provided (e.g. jets, pumps, blowers, heater), interior finish, colour, seats and other relevant Items.

THE DETAILS CALLED FOR IN THESE ITEMS SHOULD BE PROPERLY FILLED OUT. IT WILL NOT BE SUFFICIENT TO SIMPLY MAKE REFERENCE TO A *Contractor's* OR MANUFACTURER'S BROCHURE OR THE LIKE.

These Items cover the basic details relevant to the *Contract*, but these details may not constitute a complete technical specification. A requirement of the *Contract* is that such a technical specification, accompanied by drawings, shall be prepared by the *Contractor* for the *Customer's* approval and submission to the local authority for approval after the *Contract* has been entered into by both parties.

Customers should be aware that the colour of some coping finishes may vary from samples inspected due to the nature of manufacture or supply. *Customers'* rights may be governed by Commonwealth and State Consumer Laws.

4 Item 6, Schedule of payments

If the *Contract* is to include additional Items such as fencing and landscaping, they need to be included in the schedule of payments and percentage payments should be adjusted accordingly, so that work is not paid for before it is carried out.

8 Clause 15, Tolerances and damages

This Clause is not designed to apply to a situation where the variation in the dimensions from those appearing in the drawings or specifications have been requested by the *Customer* or required by regulatory authorities. The Clause does not restrict or remove any right or remedy the *Customer* may have at common law or under statute where the variation in the depth of the pool is greater than 10% outside the *water depth* that the *Contractor* had agreed to provide.

9 Sample sketch of pool shape, dimensions and location (see Item 3.2)

It is not necessary to draw the pool precisely to scale. However, it is advisable to draw it as near as practicable to scale. Critical dimensions and depths should be shown so that the drawings to be submitted to council can be consistent with the intent of the sketch. An example of a sketch incorporating relevant information is shown overleaf.