

Standard conditions

Clauses

1 Interpretation

In the interpretation of this *Contract*:

- axis** shall be a straight line drawn in the direction of the *length of pool* contained substantially within the pool outline at an agreed position
- bad ground** means ground unsuitable for the purposes of the works, including fill liable to subsidence, ground containing cavities, faults or fissures, ground contaminated by harmful substances and ground that is or becomes soft, wet or unstable
- costs** means *direct costs*, *overheads*, and, where relevant, includes selling commission
- datum point** means an undisturbed fixed point the level of which is able to be easily determined at all times
- direct costs** means costs directly incurred in performing relevant works or services and does not include *overheads* or profit
- length of pool** means the waterline measurement taken along the agreed *axis* identified in the sketch in Item 3.2
- nominal area of the pool** for the purposes of Clause 15 only shall be calculated by multiplying the *length of pool* as defined herein by the *width of pool* as defined herein
- overheads** means all expenses (other than expenses of actual construction) properly incurred by the *Contractor* in the course of his or her business
- overburden** means that part of the site which needs to be excavated above the level nominated in Item 3.1 at which the top of the pool is to be positioned to provide for the total work contracted for, including walkways and surrounds and, where practicable, sloping back any embankment formed by the excavation to help ensure the stability of such embankment

The *Contractor* shall obtain all necessary approvals within 90 working days from the date of this *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*. If the *Contractor* fails to do so, the *Customer* shall be entitled to end this *Contract* in accordance with Clause 19.2.

When all necessary approvals have been granted, the *Contractor* shall promptly inform the *Customer* of:

- a) any condition(s) attaching to any approval, including those with which it is the *Customer's* responsibility to comply;
- b) whether compliance with such condition(s) will involve a variation to the works;
- c) the reasons why the *Contractor* believes that compliance with such condition(s) will involve a variation to the works; and
- d) a genuine estimate of the cost of carrying out the variation,

and apply for instructions.

As soon as practicable after being informed of the above matters, the *Customer* may:

- a) instruct the *Contractor* to promptly commence the works and comply with any condition(s) attaching to any approval and carry out any variation to the works; or
- b) if the estimated cost of carrying out any variation would increase the *Contract* price by an amount equal to or exceeding twenty (20) percent, end the *Contract* in accordance with Clauses 19.2 and 19.3.

If the *Customer* instructs the *Contractor* to promptly commence the works and comply with any condition(s) attaching to any approval and carry out any variation to the works, the *Contractor* shall comply with those instructions.

5 Passing of property

Upon payment of each sum specified in the relevant schedule in Item 6, the property and risk in all items fixed for the purposes of the *Contract* at the date of the payment shall pass to the *Customer*. For any item which the *Contractor* has supplied but has not agreed to fix, the property and risk in such item shall pass upon it being received, receipted and paid for by the *Customer*.

6 Taxes

The *Contract* price includes sales tax and duty where applicable. The *Contract* price may be increased by the amount of any increase in sales tax or existing duties or by other taxes or duties imposed after the date of this *Contract* which directly affect this *Contract*.

- b) a fair and reasonable extension of time for completion of the pool in accordance with Clause 7.

10 Variations

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All requests by either party for any variation in the works or their progress shall be confirmed in writing and shall be subject to acceptance by the other party, with any variation in price and where necessary, any additional time for completion of the pool to be agreed upon in writing and signed and dated by or on behalf of the parties. The *Contractor* shall provide a copy of the variation to the *Customer* as soon as practicable after it has been signed and, in any event, before the variation work is commenced by the *Contractor*. Payment or an allowance for credit for such variation in the works or their progress shall be made at the time of making the payment appropriate to the nature of the variation, in accordance with Item 6, unless otherwise agreed in writing.

The variations shall be valued in accordance with the rates shown in Item 3.11, or where those rates are not applicable to the variation, by agreement between the parties.

No Item included in the *Contract* price shall be deleted without the written approval of both parties.

11 Boundary survey

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The *Contractor* is responsible to ensure that the work is carried out on the *Customer's* land. If there is any doubt as to the correct location of the boundaries, the *Contractor* shall take all necessary steps to determine their position. If the position of the boundaries can only be determined by a boundary survey, the *Contractor*, at the *Customer's* cost, shall provide a boundary survey.

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12 Rectification periods

The *Contractor* shall rectify any defects as follows:

a) Structure

Defects discovered in the construction of the structure, excluding surface finishes, within the period stated in Item 4 of this *Contract* after placement of concrete to the structural shell, which are due to faulty workmanship or the use of defective or inappropriate materials by the *Contractor*.

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b) Surface finishes

Defects discovered in the *surface finishes of the pool* (other than staining due to the *Customer* failing to correctly maintain the pool, including chemical balance in accordance with the instructions provided by the *Contractor*, or staining resulting from the nature of the water used to fill the pool) within the period specified in Item 4 of this *Contract* from the date of the filling of the pool with water, which are due to faulty workmanship or the use of defective or inappropriate materials by the *Contractor*.

14 Unforeseen subsurface conditions

Where unforeseen subsurface conditions are encountered, the following shall apply:

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- a) Should the *Contractor* in constructing the pool or in making a satisfactory access for the equipment detailed in Item 3.10:
 - i) encounter materials such as shale, rock or other obstructions which were not reasonably foreseeable at the time of signing this *Contract* and which unreasonably impede the normal progress of the equipment detailed in Item 3.10;
 - ii) encounter high-water tables or any water (other than rainwater falling directly into the pool or onto the excavation) requiring pumping;
 - iii) encounter sewerage or other drains, electrical or other wiring or water, gas or other pipes requiring relocation, reinstatement or alteration, the location of which is not accurately identified at Item 2; or
 - iv) encounter bad ground and consider it necessary to provide below existing ground level piling or any other process necessarily involved in ensuring the structural adequacy of the pool,

then the *Contractor* shall notify the *Customer* in writing:

 - A) of the need for such work;
 - B) a genuine estimate of the likely cost of such work based upon the circumstances known to the *Contractor* at that time; and
 - C) request the *Customer's* authority to proceed with such work.
- b) The *Customer* shall not be entitled to cancel this *Contract* on the grounds that any such work is necessary and, on obtaining the *Customer's* authority, the *Contractor* shall proceed with such work. In the event that the estimated cost of any such work would increase the *Contract* price by an amount equal to or exceeding twenty (20) percent, the *Customer* shall be entitled to end this *Contract* in accordance with Clause 19.2.
- c) Provided that the *Contractor*:
 - i) informs the *Customer* of the need for such work; and
 - ii) gives the *Customer* a genuine estimate of the likely cost of such work based upon the circumstances known to the *Contractor* at the time;
 - iii) receives authorisation from the *Customer* to proceed with such work; and
 - iv) completes such work;

THE *Customer* AGREES TO PAY THE *Contractor* at the rates specified in Item 3.11 for the type of work involved in removing or overcoming the effects of such items encountered or in providing such structural adequacy 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 carrying out of SUCH WORK.

17 Utilities

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The *Customer* shall at the *Customer's* own expense supply the *Contractor* with a reasonable supply of electricity and water for construction purposes and suitable water to fill the pool.



If necessary services are not available on site, it may be more appropriate for the *Contractor* to connect these services to the site as part of the work under this *Contract*. If the *Contractor* is to be responsible for the connection of these services to the site the estimated cost should be identified in Item 1.1.

18 Suspension of work

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If the *Customer* defaults in the due payment of any moneys payable in accordance with this *Contract*, the *Contractor* shall be entitled to suspend the works until such moneys are paid and the *Contractor* shall be entitled to a fair and reasonable extension of time for completion of the pool.

19 Ending of Contract by Customer



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

19.1 Due to the fault of the Contractor

If the *Contractor*:

- a) is unable or unwilling to complete the work or abandons the work;
- b) suspends the work before completion without reasonable cause;
- c) fails to proceed diligently with the work;
- d) fails to remedy defective work or remove faulty or unsuitable materials which materially affect the work; or
- e) without reasonable cause fails to comply with an order or direction of a public authority with respect to defective or incomplete work, which would materially affect the quality and/or progress of the work,

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

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

If the *Customer* ends the *Contract* due to the fault of the *Contractor*, any unfixed materials or fittings on the site may be retained by the *Customer*.

23 Fencing

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Neither party shall fill the pool nor cause the pool to be filled prior to the erection of any safety fencing required by the relevant local government or regulatory authority. If the erection of such a fence is agreed to be the responsibility of the *Customer*, then such fencing shall be erected within such time as to avoid delay to the progress of the works or damage to the pool.

24 Handover

Upon handover of the pool, the *Contractor* shall adequately instruct the *Customer* in maintenance of the pool and its related equipment, and shall provide the *Customer* with written or visual maintenance and operating instructions including advice on the procedures required to maintain the water in a condition suitable for swimming.

25 Disputes

If the *Customer* or *Contractor* considers that a dispute has arisen in relation to any matter covered by this *Contract*, either during the progress of the work or after it has been ended, that person shall give to the other party written notice of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.



Even if a dispute has arisen the parties shall, unless acting in accordance with an express provision of this *Contract*, continue to perform their obligations under the *Contract* so that the work is completed satisfactorily within the agreed time.

Notes for the guidance of users of the Contract

(These notes are not part of the *Contract*)

The following notes have been provided to assist users of the *Contract*, and to explain the intent and effect of some Items and Clauses. For complete understanding of the *Contract*, however, it is necessary to study all of the Items and Clauses. Details which are specific to a project and site and which need to be filled out are located at the front of the document as CONTRACT ITEMS.

Notes

1 Contract price



THE PRICE IN ITEM 1 MAY NOT BE THE FINAL COST TO THE *Customer* OF HAVING THE POOL CONSTRUCTED.

See Item 5, Provisional allowances for work or items included in the Contract price. The *Contract* price will be adjusted when the actual costs are known.

Consider all *Contract* items where the *Customer* is to provide items, equipment or materials or pay additional rates as well as all items not included in the *Contract* price (refer to Contract Items 3.3 to 3.11).

Where any work items are not included in the *Contract* price, these should be clearly identified under Item 10. The listing provided in Item 10 is not exhaustive, but mentions items that are generally agreed to be extras and are not usually included in the *Contract* price. However, this is left up to the parties to negotiate in each instance. (See also Clauses 4 and 14(b)).

2 Correct location of the pool

In entering into a *Contract* for the construction of a pool, the attention of the parties involved is directed to the need to ensure that the boundaries of the *Customer's* property are accurately known and clearly defined, and that the pool is accurately located within them at the commencement of construction (see Clause 11). In the building of swimming pools, which are by their nature both costly and permanent, this is a subject that often does not receive sufficient attention.

5 Delays

Matters which may cause delay are covered by Clauses 4, 7, 8, 9, 10, 11, 14, 16, 17, 18, and 23. Delays of days or even weeks may occur during the construction period for various reasons recognized by the *Contract*. For example, it is not only rain on the construction site that can delay construction. Other causes for delay include excessive wind, dust and extremes of temperature (both hot and cold), as a number of the construction processes require optimum conditions. Inclement weather or conditions on sites other than the *Customer's* site can also affect the progress of constructing the pool. It is important to note the procedure in Clause 7 by which the *Contractor* can claim an extension of time.

6 Clause 12, Rectification

Pool builders and *Contractors* generally provide a warranty regarding the soundness of construction of a pool and its ability to hold water and to function as a swimming pool. However, the duration of such warranties may vary, and generally form a point of competition in a *Contractor's* offer.

Because the surface finish of a pool may deteriorate or stain if the pool is not properly maintained by the *Customer*, pool builders do not generally warrant the finish against staining, but they should provide a warranty against faulty workmanship or inappropriate materials with regard to surface finish. It should be noted that staining will generally not occur in a properly constructed pool if the pool water is maintained correctly, and if the pool is kept free of foreign matter.

Commonwealth, State and Territory laws also apply to the *Contract* warranties against faulty workmanship or materials (see Clause 13). These statutory conditions and warranties are separate from the defects rectification periods provided by the *Contractor* in Clause 12 and any warranties provided by the manufacturer. The protection provided by these statutory conditions and warranties generally cannot be excluded or limited by the *Contract*.

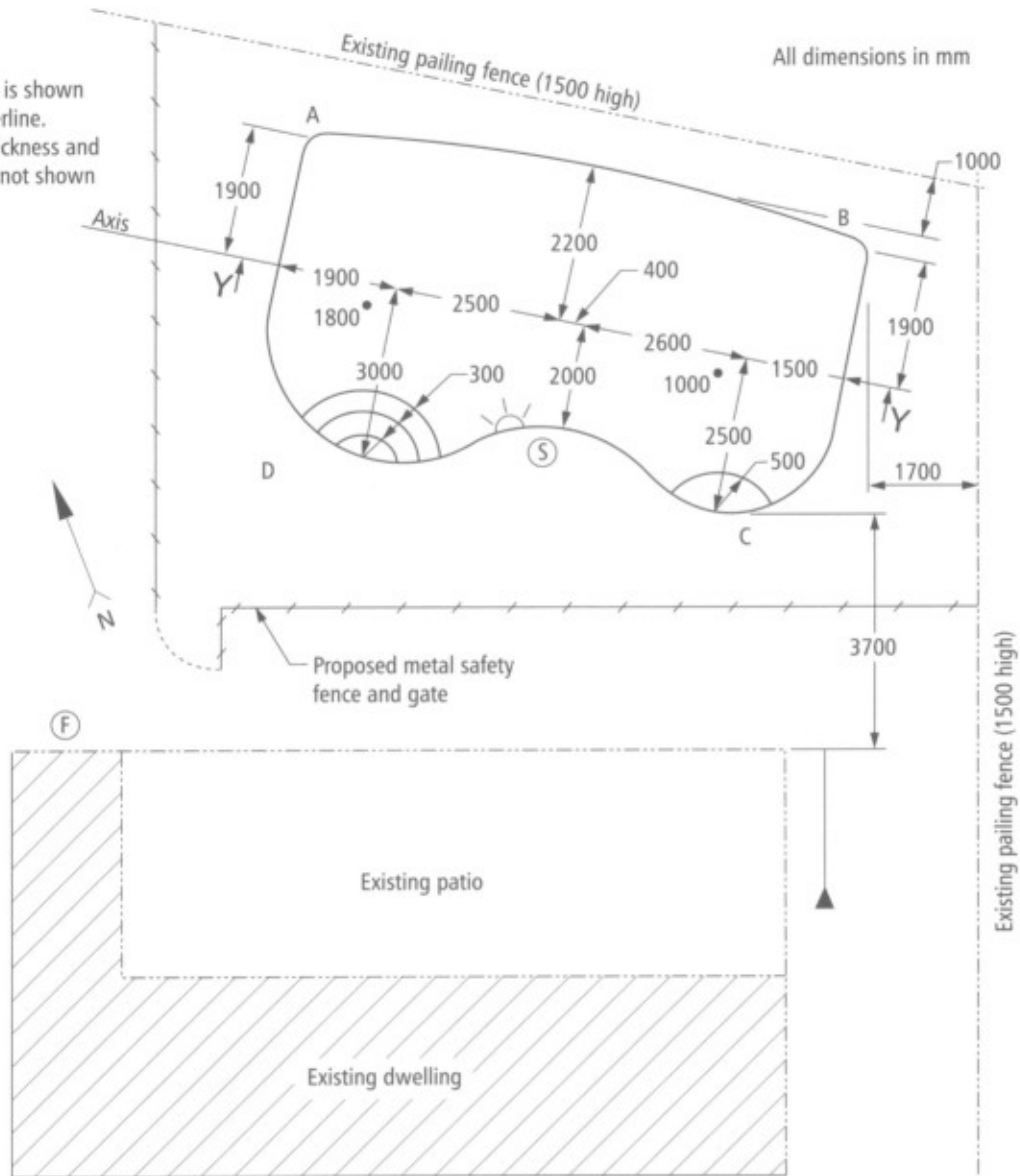
7 Clause 14, Unforeseen subsurface conditions

The principle behind this Clause is that the *Contract* price is based on excavation using the equipment specified and that any work other than this, such as the removal of unforeseen rock or other unforeseen obstructions, is to be charged for as an extra cost.

However, in circumstances where it is agreed that the *Contract* price shall include such things as the excavation of rock or manual excavation, and the like, this may be provided for in Item 3.10 of the *Contract*. If further clarification is necessary in the *Contract*, this can be included under Item 12, Special Conditions.

Sample Sketch

NOTE:
Outline is shown
at waterline.
Pool thickness and
coping not shown



LEGEND

1000 • = Water depth

▲ = Datum

⊖ = Underwater light

ⓕ = Filter and other pool plant

Ⓢ = Surface skimmer

Finished height of pool
above existing ground level

- A : + 150
- B : + 300
- C : + 400
- D : + 150

Calculation of nominal area

$$\begin{aligned} \text{Length of the pool} &= 1900 + 2500 + 400 + 2600 + 1500 \\ &= 9000 \text{ mm} \\ &= 9 \text{ m} \end{aligned}$$

$$\begin{aligned} \text{Width of the pool} &= \frac{1900 + 2200 + 1900}{3} + \frac{3000 + 2000 + 2500}{3} \\ &= 2000 + 2500 \\ &= 4500 \text{ mm} \\ &= 4.5 \text{ m} \end{aligned}$$

$$\begin{aligned} \text{Nominal area} &= 9 \text{ m} \times 4.5 \text{ m} \\ &= 40.5 \text{ m}^2 \end{aligned}$$

Sample section showing overburden

This section should be drawn as a cross-section of the plan on the previous page.

This is not a true representation of the cross-section of the pool.

