

Australian Standard[®]

**CONTRACT FOR SUPPLY AND
CONSTRUCTION OF A
SWIMMING POOL**

Internal Use Only

This Australian standard was prepared by Committee CS/63, Swimming Pool Contracts. It was approved on behalf of the Council of the Standards Association of Australia on 16 October 1984 and published on 7 December 1984.

The following interests are represented on Committee CS/63:

Australian Consumers Association
Australian Federation of Consumer Organizations Incorporated
Builders Licensing Board, N.S.W.
Bureau of Consumer Affairs, W.A.
Council of Australasian Spa and Pool Associations Ltd
Department of Consumer Affairs, N.S.W.
Department of Public and Consumer Affairs, S.A.
Department of Territories and Local Government
Ministry of Consumer Affairs, Vic.
Municipal Association of Victoria
Royal Australian Institute of Architects
Trade Practices Commission

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 clauses. For complete understanding of the contract, however, it is necessary to study all the clauses.

1. CONTRACT PRICE. THE PRICE IN CLAUSE 1 MAY NOT BE THE FINAL COST TO THE CUSTOMER OF HAVING THE POOL CONSTRUCTED. See Clause 2.7, Optional and Contingent Items. Where any items are not included in the contract price, such items should be clearly identified under Clause 2.7. The listing provided in Clause 2.7 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. Also see Clause 13 (5).

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.

The sketch to be drawn at the end of Clause 2.1 at the time of entering into the contract forms the basis for the preparation of the plans 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. CLAUSES 2.1, 2.2, 2.3, 2.4, 2.5 AND 2.6 DETAILS REGARDING POOL, FINISHES, EQUIPMENT AND ACCESSORIES, SPA, CUSTOMER, PROPERTY AND EXCAVATION. These sections 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 there may be additional relevant details that are required; in these circumstances such other details should be set out in the special conditions clause (Clause 2.10), when the contract is being filled in.

When filling out Clause 2.4, Spa, cover the following details: dimensions, depth, equipment provided (e.g. jets, pumps, blowers, heater), interior finish, seats.

THE DETAILS CALLED FOR IN THESE CLAUSES SHOULD BE PROPERLY FILLED IN. IT WILL NOT BE SUFFICIENT TO SIMPLY MAKE REFERENCE TO A CONTRACTOR'S OR MANUFACTURER'S BROCHURE ETC.

These clauses 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 plans, shall be prepared by the contractor for the customer's 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. DELAYS. Matters regarding delay are covered by Clauses 4, 7, 8, 9, 10, 13, 16, 17, 18, 19, 21 and 22. 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. Amongst other causes for delay, excessive wind, dust and extremes of temperature (both hot and cold) can delay construction as many 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.

5. CLAUSE 6, SCHEDULE OF PAYMENTS. Customers should note that payments to be made under Clause 6 fall due for payment within 2 working days of completion of the respective stages 2-4.

6. CLAUSE 12, WARRANTY. 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. Most warranties of the pool structure are for a period of three years or more, and the warranty in this contract is expressed as the extent by which it exceeds this basic three-year period.

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 imply into the contract warranties against faulty workmanship or materials. These statutory conditions and warranties are in addition to the contractual warranty provided by the contractor in Clause 12 and those provided by the manufacturer which are listed in the Annex. The protection provided by these statutory conditions and warranties generally cannot be excluded or limited by contract.

7. CLAUSE 13, 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 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 etc, this may be provided for by deleting the word 'excluded' from relevant items in Clause 2.7 of the contract. If further clarification is necessary in the contract, this can be included under Clause 2.9, Special Conditions.

8. CLAUSE 14, TOLERANCES AND DAMAGES. This clause is not designed to apply to a situation where the variation in the dimensions from those appearing in the 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 percent outside the water depth that the contractor had agreed to provide.

9. SAMPLE SKETCH OF POOL SHAPE, DIMENSIONS AND LOCATION (SEE CLAUSE 2.1).

(NOTE: 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 plan to be submitted to council can be consistent with the intent of the sketch.

An example of a sketch incorporating relevant information is shown opposite.)