

SPASA's Consumer Guide

This information is approved by the Building Services Authority (BSA) as satisfying the requirements of an Information Statement under section 99(1) of the Domestic Building Contracts Act 2000 ("the Act"). It is not part of a contract. It is a guide to assist the customer and the contractor to reach a mutually agreeable arrangement on an informed basis.

For building work being done having a value of \$3300 or more, the Act requires that:

- the contract is in writing;
- the contractor is appropriately licensed, and
- the contractor provides a copy of the written, signed contract to the customer as soon as practicable after the contract is entered into (but no later than 5 working days from the date of agreement) and before commencing any work.

Deposits & Progress Payments - The Act places restrictions on the amount of a deposit that the contractor may claim.

- The deposit must be no more than 10% where the contract price is less or equal to \$20,000, or, 5%
- where the contract price exceeds \$20,000.

These maximum deposit amounts cannot be exceeded.

- Progress payments may not be made in advance of the Installment Schedule requirements, or, in advance of the Work progress.

(Contractor to provide evidence to support any claims).

The **SPASA prepared Contract documents** are drafted as a combination document, providing for:

- the **general conditions**, which outline the terms and conditions of the Contract and forms the basic agreement between the parties;
- a **schedule**, which sets out the particulars of the Contract;
- a **plan-scope of Works**, which details the size and shape of the pool/spa, the location and extent of finishes, the location of fixed equipment and the relationship of the pool/spa to its surroundings, including the home, safety fencing and property boundaries; and the **specifications**, which describe the work, the materials to be used, and the equipment to be included;
- **additional conditions**, plans and/or specifications, which may be inserted, removed, or amended by the parties; and
- **excluded items**, listed in the specifications and elsewhere within the Contract, which have the potential to increase the Contract Price significantly. The effect of these items should be discussed and clearly understood by the parties.
- **Prime Cost items & Provisional Sums**, on separate schedules, describing each item and showing the estimated cost of each, any margin that the Contractor may charge, the total price, and when payment is required.
- When claiming payment for these items the Contractor must give the Customer evidence of the cost (e.g.

Invoices/Receipts).

Once signed, a contract is a binding agreement between the Customer and the Contractor, and can therefore be enforced legally, and, if any changes are required, a separate variation to the Contract must be negotiated and confirmed in writing by both parties prior to those works being commenced.

- Both parties have rights and obligations under the Contract. If necessary, consult a solicitor for advice.
- The Contract must reflect the work that both parties have agreed is to be carried out, and the price to be paid for that work.
- Neither party should try to obtain work, materials or payment to which they are not entitled under the Contract.
- If either party feels that this specific Contract does not meet their needs, it can be amended, or a special Contract can be drafted.

Where applicable, **Building Approvals & Inspections** must be obtained from a building certifier, accredited by BSA.

- The certifier may either be associated with a Local Government, or a private certifier able to work anywhere in Queensland.
- Such inspections do not ensure compliance with the terms of the Contract, or judge the quality of the work.
- If the Customer wishes to separately engage a building certifier, the Act states that the engagement must be in writing, with the certification fee stated.
- It is unlawful for a building certifier to certify or approve works in which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

Where construction approval or similar authorisation additionally requires a detailed engineering design, or foundation data, soil test, contour survey etc as part of such approval, then such plans, designs or certificates must be attached to, and included upon the signing of the Contract.

Equipment & Accessories should be clearly discussed between the parties to ensure that specified items such as filters, heaters, pumps etc are suitable for the pool/spa size and anticipated bather load, and, have an appropriate service life.

- All inclusions agreed between the parties must be clearly identified in the Contract.

Fencing, of outdoor swimming/spa pools is a mandatory requirement in Queensland, and,

- the Customer (Resident Owner) is responsible for the erection and continuing maintenance of appropriate fences and gates.
- If not included in the Contract, fencing must be arranged separately by the Customer, and be properly installed prior to the pool being filled.
- Fencing & Final Approvals by Authorities is the responsibility of the Customer.

Dispute Prevention - Misunderstandings can occur for many reasons, including:

- inaccurate or incomplete documentation;
- poor communication;

- unsatisfactory work;
- delays; and
- lack of knowledge of building practices.

The Customer & the Contractor should maintain regular contact and discuss anything not understood.

- Records of key events, dates & details of meetings, phone calls etc should be kept.
- Communication is the key.

Dispute Resolution - If the Customer has a problem or a concern about some aspect of work being done, the Customer must immediately advise the Contractor (both orally and in writing).

- If the Customer is not happy with the outcome, the Customer can contact SPASA or the nearest BSA Office for further advice.
- BSA has a Dispute Management Division, which provides information and assistance in dealing with disputes between Contractors and Customers regarding defective or incomplete building work.
- As the regulatory Authority, the BSA has the power to direct the Contractor to rectify defects (following completion of the Works).
- SPASA also provides assistance in dealing with concerns & disputes by a facilitation & mediation service as a “cost free” benefit to Customers of SPASA Member Contractors.
- Additionally, Contractors and Customers are entitled to take any domestic building dispute to Queensland Building Tribunal, or, pursue their concerns in the Courts or Arbitration systems.
- Expert legal advice should be obtained before commencing proceedings or taking any action under the Contract (e.g. Termination - **See Clauses 16-18**).
- *Act promptly - as time limits apply for the lodgement of disputes. See Clause 26 of the Contract.*

Quality Control - is the responsibility of the Customer, working with the Contractor to check the quality of the work.

- The best way to achieve the desired quality is to conduct regular inspections of the Work, by appointment with the Contractor.

Materials & Work - The Customer should ensure that the Contractor is aware of any special finishes, materials or requirements of the Customer, and that the Schedule, Specifications or Plan incorporates those requirements.

- Materials & work specified/supplied by the Customer (or others nominated by him) may not be entitled to the statutory warranties available under the Contract.

Fixtures & Fittings, shown in the plans and specifications for the work are taken to be included in the Contract unless listed as being excluded, and initialled by both parties.

Additional items, or work (landscaping, fencing, surrounds, water features etc) if they are to be included in the Contract must be included under the "Special Conditions" section.

Signing the Contract, protects each party, and must only be done when all sections have been fully prepared and

considered.

- If a Contract is signed without a proper understanding of all issues involved, many important aspects that can effect the overall cost, performance or outcome may be overlooked.
- The two parties should negotiate and agree to any addition, deletion or amendment to any clause in the Contract, before signing the Contract.

Cooling Off Period - Under section 72 of the Act the Customer has a right to withdraw from the Contract during what is known as a "cooling off" period, under certain conditions.

- The Contract provides for a cooling off period of 5 working days within which the Customer may withdraw from it. **See Clause 2 of the Contract.**
- The cooling off period also allows time for the reading of the Contract, for legal advice and/or finance approval to be obtained (if necessary).
Time limits do apply and certain notices have to be given if the Customer exercises those rights.

Unless the work is urgent and it is not practicable to do so, any **Variation to the Contract** must be in writing, and must:

- describe the variation, state the reason for the variation, provide a reasonable estimate of any resultant delay to the completion date, state any change to the contract price and when such increase/decrease will be paid, and
- must be signed by both parties - prior to commencement of those works.
- the Contractor must give the Customer a copy of the variation document as soon as practicable, and at least within 5 working days from when the document is signed. **See Clause 11 of the Contract.**

The Site & Location - The Customer and the Contractor should carefully discuss the access to the site, and materials handling, and if there are any special site conditions, which may present a problem (i.e. wet weather or neighbours' considerations), agreements should be reached and clearly understood by all parties concerned as to how to deal with these matters.

- With the construction/installation of a pool/spa there is a need to ensure that the boundaries of the Customer's property are accurately known and clearly defined, and that, the work is accurately located within them.
- If there is any doubt about the boundaries, the Contractor is obliged to arrange for a boundary survey at the Customer's cost.
- At the commencement of construction, the Customer should attend the site with the Contractor to ensure that the work is commenced in the Customer's preferred location.

Construction sites are dangerous places, and the Customer should take extra care at all times in respect to children, visitors and pets.

- Bear in mind that the Contractor has important responsibilities under the Workplace Health and Safety Act 1995, which includes ensuring that all persons at the site comply with the requirements of that Act.
- For this and other reasons, the Contractor is entitled to exclude unauthorised people from the site, and can reasonably expect that:
- The Customer will exercise reasonable care at all times during the period of construction.

Manufacturers' Warranties, for materials, equipment or accessory etc (where applicable), should be obtained from the

Contractor at handover and kept in a safe place. These warranties are commonly of 12 months duration. Defect rectification is provided by the Manufacturer.

- The Customer should be aware that the shapes & colours of some coping finishes, tiles, internal linings, equipment, accessories & other items may vary from samples inspected, due to the nature of natural materials, manufacturing & installing processes or supply.

Statutory Warranties, are provided for the Customer in the Act, and are stated in the Contract (**See Clause 1.3**), as follows:

"all materials will be good and suitable for the purpose for which they are used, and unless otherwise stated in the Contract will be new. The Contractor will comply with all relevant laws. The work will be carried out in an appropriate and skillful way, and with reasonable care and skill. The work will be carried out in accordance with the plans and specifications. The work will be carried out with reasonable diligence. Provisional sums will be calculated with reasonable care and skill".

Defect rectification is provided by the Contractor in accordance with the Act. **See Clause 25 of the Contract.**

On Completion/Handover, the Contractor will arrange with the Customer for a final pre-handover inspection, at which time the Customer can:

- check the Works thoroughly for defective or missing items, and where necessary, agree and document with the Contractor a list of minor defects, omissions, or items damaged or unfinished,
- provide the final progress payment, and
- be instructed in the correct procedures for the Customer's on going responsibility for continuing maintenance of the pool/spa and equipment.

FINAL APPROVAL & INSPECTION

On Completion/Handover the Contractor will advise the Building Certifier that the works are completed, and the Customer must contact the Building Certifier (within 10 days) and request "Final Approval" of the works.

Because of rights or services that others may have over the property, the Customer should check if easements, rights of way, or services such as water, sewer, gas, electricity, telephone etc are located on the property, and advise the Contractor, as they may interfere with the Customer's preferences. Many of these rights or services will be noted on the certificate of title for the property, or boundary survey or drainage diagram etc