

Terms of Service

By accepting the Proposal for services to be provided by Acme Pool & Spa cc, you/the client agrees to the following Terms of Service:

- 1) You have contracted Acme Pool & Spa cc to construct, renovate and/or repair your Pool (the “**Project**”).
- 2) Any plans for the Project attached to this Proposal will form part of this agreement for the Project, once the Proposal is accepted by you.
- 3) The costing provided in this Proposal is subject to a full site inspection. If a site inspection has not been conducted by Acme Pool & Spa cc, prior to providing this Proposal, the Proposal may need to be amended to include any additional costs that may be identified during a site inspection. Acme Pool & Spa cc reserves the right to do so.
- 4) Amendments or Alterations to Proposals once accepted
 - a) After accepting a Proposal, the terms and specifications of the Proposal can only be altered or amended in writing between the parties. If you wish to amend, alter or change the specification of the Project in any manner (“**Project Variation**”):
 - b) Acme Pool & Spa cc, will not be obliged to accept any proposed Project Variation, and may (in its discretion) refuse to do so if the progress of the work done on the Project does allow for the proposed Project Variation, where the proposed Project Variation would have an adverse effect on the structure or the build quality of the Project, or where, in its professional opinion, the proposed Project Variation is not advisable or permissible for the Project.
 - c) Any Project Variation may result in a cost variation, which you will be liable to pay.
 - d) The Project Variation and any cost variations must be recorded in writing, in a revised Proposal/addendum and signed by the parties, before the Project continues as amended.
 - e) Acme Pool & Spa cc, will be entitled (if, in its opinion, it becomes necessary to do so) to stop work on the Project, until the proposed Project Variation any additional cost variations associated therewith are agreed to in writing by the Parties, and payment of any additional deposit required by Acme Pool & Spa cc, for the variation, is made.
- 5) Your obligations in relation to the Project
 - a) You will be required to provide all the water, electricity, toilet facilities and storage required by Acme Pool & Spa cc during the Project.
 - b) You will be required to provide safe, secure parking for Acme Pool & Spa cc vehicles during the Project.
 - c) You undertake to water the gunite/concrete construction three (3) times daily for a period of five (5) days where applicable. Acme Pool & Spa cc accepts no liability for any damage caused to the pool as a result of your failure to do so and your failure to do so may invalidate your guarantee.
 - d) You will be required to provide Acme Pool & Spa cc with access to the Project site for all equipment and materials required for the Project.
 - e) If the Project site is in a complex or estate, you must provide Acme Pool & Spa cc, with the necessary access in and out of the complex or estate. Any charges levied by the Estate or Complex will be for your account. You will be charged for time taken to clear staff through security procedures at Complex or Estate entrances
 - f) You will be solely responsible for obtaining approved plans (where necessary) for the building/installation of the pool from the relevant local authorities.
 - g) If Acme Pool & Spa cc is contracted to do a semi-installation for a Project, you undertake to complete the installation immediately upon completion of the Project by Acme Pool & Spa cc, (including but not limited to filling of the pool, compacting, paving and electrical connections). Failure to do so may result in the pool sagging or moving, which may invalidate the Project guarantees and warranties provided. Acme Pool & Spa cc, accepts no liability for any damage caused as a result of your failure to complete the pool installation immediately after it completes the Project.
- 6) Additional Costs not included in the Project
 - a) Depending on the circumstances of the Project, some of the following additional costs may be incurred by you during the Project, and these additional costs are not included as part of the Proposal (unless clearly specified in the Proposal as included). If it becomes necessary to incur any of these additional costs, you will be liable for these costs in addition to the costs as stated in the Proposal
 - b) If soil removal is required on site during the Project, you will be responsible for moving, placing and/or distributing the soil as you wish on your premises. If you wish to remove the soil from your premises, or where rubble removal is required during the Project, you will be responsible for arranging your own soil/rubble removal and will be liable for the costs of such removal. Soil and Rubble removal is specifically excluded from any quotation/Proposal provided for the Project (unless clearly specified in the Proposal as included).
 - c) Rubble removal can be arranged through Acme Pool & Spa cc on your request. If you request Acme Pool & Spa cc, to arrange for rubble removal on your behalf, you accept liability for the full costs thereof. Soil and Rubble removal is charged from **R1600-00 (excluding Vat)** per 6cu.m load.

- d) If it is necessary to move or remove trees, walls, fencing or any other obstruction from the Project site in order for Acme Pool & Spa cc to gain access to the Project site or work on the Project, you will be required to arrange for the obstruction to be moved or removed and will be liable for all the costs involved.
 - e) Acme Pool & Spa cc does not provide any guarantee or warranty that the condition of the soil or the ground at the Project site is suitable for the Project. Abnormal conditions such as unstable soil, turf soil, clay soil and morass, underground water or other similar unforeseen conditions may present itself when working on the Project. You acknowledge that the existence of any unforeseen soil or ground conditions that may be present at Project site may result in an additional cost for the Project. You will be notified by Acme Pool & Spa cc during the Project should any such conditions present themselves, and the additional costs associated therewith will then be discussed and agreed with you.
 - f) The swimming pool will be dug by hand or machine (site dependent) and the excess ground will be placed next to the pool. If the ground is unsuitable for digging by the ordinary means specified above, jack hammering and/or rock breaking may be required. This will be an additional expense, not included in the Proposal. If required, jack hammering will be an additional cost of approximately **R2500-00 (excluding VAT) per day.**
 - g) An additional cost will also be charged if Acme Pool & Spa cc needs to remove rock or jack hammer material out of the excavation, and/or should additional filling material be needed and/or should additional gunite and/or sandbag profile be needed to fill holes in the excavated hole.
 - h) The repair and/or replacement of any damaged cables, water and sewer lines and/or waste pipes or any obstruction during construction will be for your account.
 - i) In weak drainage areas, water drains/wells will be made by Acme Pool & Spa cc, at the sole discretion of Acme Pool & Spa cc. You will be liable for the additional costs of labour and material incurred for building these water drains/wells. Should you stop or prevent Acme Pool & Spa cc from making the necessary drains/wells for the Project, all guarantees and warranties provided by Acme Pool & Spa cc for the Project will become invalid. If water drains/wells are required, you will be notified and quoted by Acme Pool & Spa cc.
 - j) If the Project is being carried out at a Project site where the house is still being built, and it becomes necessary for Acme Pool & Spa cc to stagger the Project over a period of time as a result, you will be liable for the increase in any building material prices and labour costs for the Project as a result of the time delay on the Project.
- 7) Product specifications**
- a) Please note that all coloured marbelite will be mottled in appearance and will not be uniform. This is due to the cementitious nature of the product. This can be reduced by correct maintenance of the pH levels in the pool chemistry, and is not considered a defect in the product.
 - b) Marbelite pools must be filled with water continuously (without interruption) until the mosaic line is reached. Failure to do so may result in a watermark stain on the marbelite, which is irreversible. Acme Pool & Spa cc does not accept any liability for any watermark stains on marbelite Pools which arise as a result of your failure to fill the pool correctly as specified herein.
 - c) Fibre lined pools may develop a mottle appearance. This is due to chemical reactions and deposits of high levels of Lime and Calcium in our water and can be treated with metal removers and brushing. It is a water chemistry issue and is not considered a defect in the product.
 - d) Fibreglass pools must be filled with water continuously (without interruption) until the mosaic line is reached. Failure to do so may result in a watermark stain on the fibreglass, This is reversible with chemical treatment and brushing, however, Acme Pool & Spa cc does not accept any liability for any watermark stains on Fibreglass Pools which arise as a result of your failure to fill the pool correctly as specified herein
- 8) Limitation of liability**
Acme Pool & Spa cc accepts no liability whatsoever arising from:
- a) the late commencement of and/or completion of the Project due to circumstances beyond its control;
 - b) delays that arose as a result of your conduct, failure or delay;
 - c) any damage or loss at the Project site, including but not limited to any damage or loss to the garden, driveway, cables, water and sewer lines and/or waste pipes, and/or any property during any stage. It will be your responsibility to ensure that Acme Pool & Spa cc has clear and unobstructed access to the Project site and that all garden equipment and outdoor furniture, except the garden hose, is locked away and removed from the Project site.
 - d) any Acts of God that may cause damage to the pool (or any other part of the Project) or that may result in a delay of commencement and/or completion of the Project;
 - e) any damage to the Pool caused as a result of your failure to adhere to:
 - i) any product specifications or care instructions for the pool provided herein or advised to you on completion of the Project; and/or
 - ii) any of the terms set out in these Terms of Service.
- 9) Payment Terms**
- a) Unless otherwise stated in the Proposal, our standard payment terms are as follows:
 - i) **New Pools**
(1) 30% of the Project price as a deposit on acceptance of this Proposal;

- (2) 30% of the Project price before gunite;
- (3) 35% of the Project price before marbelite/fiberglass; and
- (4) The balance of the Project price on completion of the Project.

ii) Renovations

- (1) 65% of the Project price as a deposit on acceptance of this Proposal;
- (2) The balance of the Project price on completion of the Project.

- b) All payments due in terms of this Proposal become due and payable on receipt of an invoice from Acme Pool & Spa cc.
- c) If payment of any amount due to Acme Pool & Spa cc has not been made on the due date, Acme Pool & Spa cc reserves the right to cease any further work on the Project until the overdue payment has been received by Acme Pool & Spa cc.
- d) If the full remaining balance of the payment for the Project is not made within **30 (thirty)** days of the completion of the Project, interest at a rate of **2% (two percentage)** per month will be charged on the outstanding balance, and Acme Pool & Spa cc reserves the right to hand your overdue account over to its attorneys for collection. Should your overdue account be handed over for collection, you agree to pay all the expenses incurred by Acme Pool & Spa cc in recovering any money owing by you, including but not limited to, all legal costs (on the attorney and client scale), collection charges, tracing fees, plus VAT.

10) Project Guarantees and Warranties

- a) The Project comes with the following guarantees and warranties:
 - i) a 5 (five) year conditional guarantee against structural failure of the gunite shell;
 - ii) a 1 (one) year workmanship warranty on the coping and mosaic;
 - iii) a 1 (one) year guarantee on marbelite, against failure of adhesion only;
 - iv) a 3 (three) year PRO RATA guarantee on fibreglass lining against failure of adhesion only;
 - v) a 10 (ten) year manufacturer's guarantee on the fibreglass premoulded shell as per their terms.
 - vi) Pumps, Filters, Heat Pumps, Chlorinators, and Solar Panels etc will be guaranteed by manufacturer and these guarantees/warranties will be provided to you.
- b) On completion of the Project, Acme Pool & Spa cc will provide you with a non-transferable standard written guarantee which becomes valid provided that you have complied with the provisions of these Terms of Service and have affected all payments due to Acme Pool & Spa cc.
- c) Any failure by you to comply with all the specifications and conditions contained in these Terms of Service, may result in these warranties and guarantees becoming invalid notwithstanding the fact that full payment has already been received and a guarantee issued.
- d) The warranties and guarantees provided by Acme Pool & Spa cc will not cover any Acts of God which may result in damage or destruction of the pool or any part of the Project covered by these warranties and guarantees.
- e) In the event of Acme Pool & Spa cc being contracted to attend to any repairs, renovations and or marbelite/fiberglass lining to an existing pool structure, Acme Pool & Spa cc takes no responsibility for the existing structure of the pool. Should the existing structure be defective, crack or collapse, the guarantee for the work done by Acme Pool & Spa cc may be invalidated.

11) Cancellation

- a) On acceptance of this Proposal by you, a binding agreement between the Parties has been concluded. Accordingly, after acceptance of this Proposal, this agreement may only be cancelled if such cancellation is recorded in writing and signed by both parties.
- b) Should this agreement be cancelled or terminated after signing the Proposal and before the completion of the Project, for any reason whatsoever, Acme Pool & Spa cc will be entitled to charge you an early cancellation fee of 10% of the total contract value plus any costs and expenses that Acme Pool & Spa cc has already incurred in respect of the Project.

12) Defects and Snags

- a) The parties agree that all reasonable complaints about any defects in workmanship will be notified to Acme Pool & Spa cc in writing as soon as they are discovered by you and, once the Project is complete, must be notified to Acme Pool & Spa cc in writing within 5 (five) days. If no defects or snags are notified to Acme Pool & Spa cc within this time period, it will be accepted that you are satisfied with the work done and that all work done is to standard and correct.
- b) The lodging of a complaint or notification of a defect or snag on the Project will not, in any way, excuse or indemnify you from making any payment due and payable to Acme Pool & Spa cc for the Project.

13) Domicilium

- a) You hereby choose as your Domicilium address (*domicilium citandi et executandi*), for the service of all notices and legal proceedings, the physical address set out in the Proposal. Any notice or communication required or permitted to be given in terms of this agreement will be valid and effective only if in writing, but it will be competent to give notice by fax or e-mail.
- b) You may change your Domicilium address to another physical address in South Africa, by written notice to Acme Pool & Spa cc, provided that the change will only become effective 5 (five) business days from the deemed receipt of the notice by the other Party.

14) General

- a) The Proposal and these Terms of Service ("this agreement") constitutes the whole of the agreement between the parties. No Party will be bound by any express or implied term, representation, warranty, promise or the like, not recorded in this agreement.
- b) If any provision of this agreement should be invalid, unenforceable, defective or illegal for any reason whatsoever, then that provision will be deemed to be severable from the remaining provisions of this agreement which will continue in full force and effect, provided that the essentials for the existence of the agreement still exist after its severance.
- c) No indulgence which either party ("the grantor") may grant to the other ("the grantee") will constitute a waiver of any of the rights of the grantor, who will not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.
- d) Acme Pool & Spa cc will be entitled, at its sole discretion, to use any sub-contractor necessary or required to complete the Project.
- e) If there is a conflict between any of the provisions of the Proposal and the provisions of these Terms of Service, the provisions of the Proposal will take precedence, to the extent that such provisions conflict with each other and cannot be reconciled.
- f) **By signing the Proposal, you acknowledge that you have read, accepted and agree to be bound by these Terms of Service.**
- g) **By making payment of the deposit (as set out in the Proposal), whether or not the Proposal and these Terms of Service have been signed, you are deemed to have read and accepted the terms of the Proposal and these Terms of Service and will be bound by them**

Sign acceptance : _____

Name : _____

ID No : _____