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# Contract Terms and Conditions

## 1. CONTRACTOR'S MAIN OBLIGATIONS

The *contractor* will carry out and complete the *works* in accordance with this contract.

## 2. PAYMENT

The *owner* must pay to the *contractor*:

- a) the *contract price* by way of the progress payments at item 5 of *schedule 1*;
- b) any other amount which is payable under this contract on demand after the *contractor* has carried out the work or incurred the cost.

## 3. ACCESS AND USE OF FACILITIES

The *owner* must:

- a) give the *contractor* uninterrupted access to the necessary part of the *site* to carry out the *works*; and
- b) provide the *contractor* with adequate access to available water, electricity and toilet and washing facilities.

The *contractor* will give possession of the *site* back to the *owner* when the *owner* has paid all moneys payable to the *contractor* under this contract.

## 4. COMMENCEMENT

Before the *contractor* is obliged to commence the *works* the *owner* must give the *contractor* written evidence:

- a) that the *owner* owns or is otherwise entitled to have the *works* carried out on the *site*;
- b) of any easements, covenants and encumbrances affecting the *works* on the *site*;
- c) of the *owner's* ability to pay the *contract price*; and
- d) of all necessary building and planning approvals having been received.

If the *owner* does not do so the *contractor* may:

- a) put the *commencement date* back by the delay; or
- b) end this contract.

The *contractor* must ensure the *works* commence as soon as it is reasonably possible.

The *building period* commences on the date the *contractor* commences the *works*.

## 5. DELAYS

The *contractor* is not responsible for any delay caused by something beyond the *contractor's* sole control including any failure by the *owner* to:

- a) make a selection; or
- b) give the *contractor* adequate access to carry out the *works*.

The *building period* will be extended by whatever time is reasonable if the *contractor* claims an extension of time by giving the *owner* written notice.

## 6. SURPLUS MATERIALS

Unless otherwise agreed somewhere else in this contract, demolished materials and surplus materials are the *contractor's* property.

## 7. PRIME COST AND PROVISIONAL SUM ITEMS

The *owner* must select all items for a prime cost item or provisional sum item when required by the *contractor*.

Each prime cost item or provisional sum item must be listed in *schedule 2* and have an allowance stated next to it for the price of the supply of the item or providing the work. Where the price is more than the allowance, the difference plus the margin specified in the *schedule 2* applied to that difference is added to the *contract price* and is payable by the *owner*.

## 8. VARIATIONS

If the *owner* or governing Authority requests a *variation*, the *contractor* will give the *owner* a written quote detailing the work.

If the *owner* agrees to the *variation* by signing the quote and returning the signed quote to the *contractor*, the *contractor* will then do the *variation* in the time agreed.

## 9. UNFORESEEN CIRCUMSTANCES

The *contractor* is not responsible for any problems with the *site* which are only revealed when carrying out the *works*.

The *contractor* will carry out any work needed to fix any such problem, if the *contractor* considers it necessary for satisfactory completion of the *works*.

Any additional work necessary due to an unforeseen circumstance is a *variation* and Clause 8 applies. If a price is not agreed the *owner* will be charged the actual cost to carry out the work plus another 20% With the *owner's* prior written consent.

## 10. WORK BY OWNER

The *owner* must have the *site* ready when required by the *contractor*.

If the *owner* does not have the *site* ready, any additional work necessary to carry out the *works* is a *variation* and Clause 8 applies. If a price is not agreed the *owner* will be charged the actual cost to carry out the work plus another 20%.

## 11. PRACTICAL COMPLETION

The *contractor* must:

- a) reach *practical completion* by the end of the *building period*, as extended; and
- b) give the *owner* a written notice of *practical completion*.

The notice of *practical completion* is to state the date of practical completion and set out the *contractor's* final progress claim. On *practical completion*, the *owner* must:

- a) inspect the *works* with the *contractor*; and
- b) give the *contractor* a written, signed list of any defective or unfinished work.

The *owner* must immediately pay the amount of the final progress claim on *practical completion*.

## 12. CONTRACTOR'S RIGHT TO FIX

If at any time the *owner* claims the *works* are defective, the *owner* must, as soon as possible, tell the *contractor* by written notice.

If the *contractor* accepts responsibility, the *contractor* has the right to fix the defect, but must do so within 28 days.

## 13. SUBCONTRACTING

The *contractor* may sub-contract any of the *contractor's* obligations.

The *owner* must not give instructions to or make inquiry of the *contractor's* sub-contractors, workers or suppliers.

## 14. RISK

All materials are at the *owner's* risk once delivered to the *site*.

## 15. INSURANCE

The *contractor* will have public liability insurance of at least \$10m. The *owner* must ensure that the *owner* is similarly insured. If the *owner* tells the *contractor* to insure the *works* against loss or damage or to similarly insure the *owner's* property while the *works* are being carried out, the *owner* will be charged the *contractor's* actual cost of insuring plus another 20% for arranging this insurance.

## 16. WHOLE AGREEMENT

Subject to law, these general conditions, schedules and the plans and specifications comprise the contract which contains the whole agreement between the *owner* and the *contractor*.

## 17. PREVAILING DOCUMENTS

These general conditions, the plans and the specifications have precedence in that order if there is any inconsistency between them.

## 18. AUTHORITY TO CONSTRUCT

The *owner* must ensure all relevant approvals for constructing are sought prior to start date. If any such approval is not acquired, *owner* will be liable for all and any such liability as a result.

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Owner's Initials: \_\_\_\_\_ Contractor's Initials: \_\_\_\_\_

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19. DEFAULT INTEREST

If the *owner* fails to make any payment under this contract on time, the *contractor* will charge the *owner*, interest at annual rate equal to the Commonwealth Bank overdraft index rate; quarterly charging cycle plus 5% on what is unpaid after then.

20. DEBT COLLECTING COSTS

The *owner* must reimburse to the *contractor* any debt collecting costs (and commissions), including any legal fees on a solicitor and own client basis, the *contractor* pays to recover, or attempt to recover any overdue payment.

21. RETENTION OF TITLE

Title in materials does not pass the *owner* until it has been paid for in full.

If the *owner* fails to make a due payment, the *contractor* may enter the *site* and take reasonable action to remove uninstalled materials without being liable for damage to the *site* caused by such removal.

22. CHARGE OVER LAND

The *owner* charges the land on which the *site* is located in the *contractor's* favour as equitable mortgagee to secure the payment of all moneys payable to the *contractor* under this contract to the extent of a court or tribunal made an order that the *owner* pays that amount to the *contractor*.

23. COPYRIGHT

The *contractor* owns all copyright created by the *contractor* in the plans, the specifications and the workshop drawings.

If the *owner* gives the *contractor* any sketch, plan or other document which infringes someone else's copyright or moral right, the *owner* indemnifies the *contractor* against all claims and costs.

24. OWNER'S JOINT AND SEVERAL LIABILITY

If there is more than one person comprising the *owner* then:

- a) all the *owner's* obligations are joint and several;
- b) the *contractor* only has to give notices to one of the *owner*; and
- c) only one of the *owner* needs accept a quote or sign a notice, and then all are bound.

25. SUSPENSION

If the *owner* is in breach of this *contract*, the *contractor* may suspend the carrying out of the *works*.

The *contractor* must recommence the carrying out of the *works* within a reasonable time after the *owner* has given written notice to the *contractor* that the *owner* has remedied that breach.

26. TERMINATION

If either party is in serious breach of this *contract*, the party not in breach may give the other party a written request to remedy that breach.

If the breach is not remedied within 5 days, the party not in breach may end this *contract* by giving written notice to that effect.

27. INSOLVENCY

Should a party become insolvent, then the other party may, by giving a written notice, end this *contract*. To be insolvent means:

- a) any act of bankruptcy under the Bankruptcy Act by a natural person;
- b) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager, administrator or the entering into of a deed of arrangement if a corporation; or
- c) any act of insolvency.

28. STATUTORY WARRANTIES

To the extent required by the Home Building Act, the *contractor* warrants that:

- a) the *works* will be performed in a proper and workmanlike manner and in accordance with the plans and the specification attached to this *contract*;
- b) all materials supplied by the *contractor* will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- c) the *works* will be done in accordance with, and will comply with, the Home Building Act or any other law;
- d) the *works* will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within a reasonable time;
- e) if the *works* consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the *works* will result, to the extent of the *works* conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- f) the *works* and any materials used in doing the *works* will be reasonably fit for the specified purpose or result, if the *owner* expressly makes known to the *contractor* or other person with express or apparent authority to enter into or vary contractual arrangements on behalf of the *contractor*, the particular purpose for which the works are required or the result that the *owner* desires to be achieved, so as to show that the *owner* relies on the *contractor's* skill and judgment.

29. MANDATORY CLAUSES

To the extent required by the Home Building Act and subject to this clause, the *works* will comply with:

- a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
- b) all other relevant codes, standards and specifications that the *works* are required to comply with under any law; and
- c) the conditions of any relevant development consent or complying development certificate.

The *contractor* is not liable if the *works* do not comply with the above requirements if the failure relates solely to:

- a) a design or specification prepared by or on behalf of the *owner* (but not by or on behalf of the *contractor*); or
- b) a design or specification required by the *owner*, if the *contractor* has advised the *owner* in writing that the design or specification contravenes the above requirements.

To the extent required by the Home Building Act:

- a) all plans and specifications for the *works* including any *variations* to those plans and specifications form part of this contract;
- b) any agreement to vary this contract, or to vary the plans and specifications for the *works* must be in writing and signed by the parties.

30. GST

Where a price is not agreed for an additional charge or omission from the *works*, the amount of Goods and Services Tax attributable to the value for that supply is to be added to the price calculated under the terms of this contract.

31. DECKING MATERIAL.

All decking at the time of practical completion will be suitable for its intended use. If kiln dried soft wood or Hardwood decking is used, DECKS BY DESIGN cannot warrant against imperfections and movement of decking boards, this includes cupping, twisting and cracking. All decking requires regular maintenance by the owner for protection.

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Owner's Initials: \_\_\_\_\_ Contractor's Initials: \_\_\_\_\_

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