

CONDITIONS OF CONTRACT

1. (a) The Trade-Contractor will complete the works described in **Schedule 1** ("the works") by the date for completion (see **Schedule 3**) in a workmanlike manner in accordance with relevant Plans and Specifications.
- (b) If the Trade-Contractor discovers or believes there is a discrepancy between or in the plans and specifications he must immediately refer the same to the Builder for instructions. Unless otherwise noted, precedence of documents will be the order of listing in **Schedule 1**.
- (c) The work of the Trade Contractor is to comply with the objectives and requirements of the Building Code of Australia as relevant to the work.

COMPLETION

2. (a) The construction period and date for completion of the works are set out in **Schedule 3**. The Trade-Contractor, if required, will complete the works in stages as identified in **Schedule 3**. The Trade-Contractor has satisfied himself that it is practicable to complete the works in a workmanlike manner within the construction period set out in **Schedule 3**.
- (b) The Builder must allow a fair extension of time in respect of any delay not caused or contributed to by an act or default of the Trade-Contractor. In the event that the Builder receives an extension of time under the head contract he, in so far as it is relevant to the works, must pass onto the Trade Contractor the extension of time.
- (c) If the Trade-Contractor fails to complete the works or any stage by the date specified in **Schedule 3** or within any extended time approved in **writing** by the Builder then the Trade-Contractor must pay or allow by way of liquidated damages the sum stated in **Schedule 2** for the period during which the works or the relevant stage remains incomplete.

INSPECTIONS AND SITE MEETINGS

3. The Trade-Contractor must, upon reasonable notice, comply with the Builder's directions with regard to inspections of the works and must be available to attend site meetings relevant to the works. The parties are to use site meetings as a means of settling issues such as variations and compliance with or adjustment of construction timetables.

PAYMENT CLAIMS AND PAYMENT TERMS

4. (a) Payment claims must relate to the contract price and are to be made as required by the timetable set out in **Schedule 2**.
- (b) If there are no payment claim period details set out in **Schedule 2** then the Trade-Contractor is entitled to make a claim for payment every 4 calendar weeks from the commencement of work.
- (c) Any payment claim pursuant to (a) or (b) above must identify and relate to the work actually done by the Trade-Contractor and must properly value the work with reference to the contract price and the work done.
- (d) **A payment claim does not include nor does the contract price an amount for a variation unless the price of the variation has been agreed in writing. Payment claims are to strictly comply with this requirement.**
- (e) **Any dispute as to a payment claim is to be advised in writing to the Trade-Contractor within 10 business days of receipt of the payment claim. This applies to payment claims which are submitted prior to, or after, the date or period specified in Schedule 2.**

Payment Claims Received After Due Date.

- (f) Where a payment claim required by the contract to be submitted by a specified date or period is submitted after the date or period then payment of the same may be postponed until the next payment period. However the payment claim, even though received late, should still be assessed pursuant to (e) above.

PAYING A PAYMENT CLAIM

5. (a) **The Builder is to pay to the Trade-Contractor the amount properly claimed in the payment claim or if it is disputed or adjusted the amount which is consequently admitted as being payable. The amount payable is to be determined by applying clause 4(d). The payment will be made on the date determined by reference to Schedule 2(ii)B. If clause 4(e) applies the date for payment may be altered to the next payment date.**
- (b) However, before becoming entitled to receive any payment the Trade-Contractor must deliver to the Builder:-
 - (i) a statement signed by him that no wages or other payments such as workers compensation or payroll tax are due and owing by him in respect of the works as at the date of payment;
 - (ii) any certificate or warranty in relation to the work; and
 - (iii) a tax invoice for an amount equivalent to the sum to be paid by the Builder in a form satisfactory to the Australian Tax Office.

RETENTION

6. (a) The Builder may retain ten percent (10%) of monies becoming due under the contract until the sum retained is equal to five percent (5%) of the amount payable under this contract.



- (b) One half of any monies so retained will be released on practical completion of the work or when the Builder takes over the works. The balance of any retention money must be released no later than the expiration of the Builder's head contract defects liability period. The period is set out at **Schedule 2(iv)**.

VARIATIONS TO THE WORK

7. (a) The Trade-Contractor will vary the works as reasonably required by the Builder but will not be entitled to claim payment for any variation not authorised in **writing** by the Builder and agreed as to price..
- (b) The Builder is to provide **written** instructions regarding any variations to the works which the Builder requires. In addition the Builder must, when appropriate, adjust the construction period to allow for the variation.
- (c) The agreed price of any variation will be added to or deducted from the Contract price and can be included in a payment claim. Refer to clauses 4(a) and 4(d). The contract price does not include an amount for variations where the price or amount payable for the variation has not been agreed or determined.

Should the parties not agree upon a price the Builder may require the Trade-Contractor to execute the variation and the matter of price is to be referred to dispute resolution under this contract. The Builder may at his option have the variation carried out by another person, in which case the Trade-Contractor will allow access to such person and his employees as required.

- (d) **If the Trade Contractor carries out work, which he considers to be a variation, in the absence of written instructions from the Builder, then the same will be at the Trade-Contractor's sole risk. Refer to clauses 7(a), 7(c), 4(d) and 4(f).**

HOURS OF WORK

8. No part of the works are to be executed outside the ordinary working hours identified at **Schedule 3 (ii)** without the Builder's prior **written** consent.

OCCUPATIONAL HEALTH AND SAFETY OBLIGATIONS AND REGULATIONS

9. (a) The Trade-Contractor must establish and maintain a work procedure which ensures workplace safety for the Trade-Contractor, his employees and any other person on the site. This includes a duty to inspect and ensure any equipment is fit for its purpose. The Builder is entitled to receive a copy of the Trade-Contractor's site safety plan.
- (b) The Trade-Contractor is to give necessary Notices and pay any fees relevant to the Trade-Contractor's work and will comply with all provisions and requirements, Statutory or otherwise, relevant to the works.
- (c) Should the Trade-Contractor or his employees or any Trade-Contractor from him be permitted to use any scaffolding or equipment or equipment belonging to or provided by the Builder THEN such is on the express condition that no warranty or other liability on the part of the Builder will be created or implied as to the condition or suitability of the said scaffolding or equipment or otherwise. Refer to clause 9(a) above.

SUB-LETTING

10. The Trade-Contractor can not assign this Agreement or sub-let any portion of the same without the **written** consent of the Builder. In any event the Trade-Contractor remains responsible for the work under the contract.

REMOVAL OF WORKMEN

11. The Builder may require the removal from the works of any person employed by the Trade-Contractor who in the opinion of the Builder is incompetent or misconducts himself.

CLEANING UP

12. (a) The Trade-Contractor must keep the work site clean and tidy as they proceed. Any rubbish is to be placed in the area or facility nominated by the Builder or properly disposed of by the Trade-Contractor.
- (b) On completion the Trade-Contractor will remove all his plant and equipment and leave the works clean and tidy ready for immediate use or occupation. If the Trade-Contractor fails to do so the Builder may carry out the work necessary to achieve this outcome. The cost thereof may be deducted from any monies due or becoming due to the Trade-Contractor. The Builder must provide no less than **two (2) working days written** notice of his intention to take such action. The Trade-Contractor is entitled to attend to any work within this period of notice.

DAMAGE AND DEFECTS

13. (a) The Trade-Contractor will pay to the Builder the cost of making good any damage caused by him or his employees or his Trade-Contractors to the work of the Builder or of any other Trade-Contractor.
- (b) The Trade-Contractor will maintain the works until completion and thereafter make good all defects that may appear in the works prior to the expiration of the Builder's Defects Liability Period under the Head Contract. This duty will not relate to any defects which are caused to the Trade-Contractor's work by other parties for whom the Trade-contractor is not responsible.
- (c) Corrective or remedial work must be undertaken within **ten (10) days** (or an alternate period as agreed by the Builder) of notification of the same to the Trade-Contractor. If the need to carry out the corrective or remedial work is urgent then the Trade-Contractor will attend to the same as a matter of urgency.
- (d) A failure to comply with the above requirements will entitle the Builder to arrange for other parties to carry out the work. The cost of this will be payable by the Trade-Contractor.



INSURANCE

14. (a) The Trade-Contractor must insure against liability at common law and under the Workers' Compensation Act in respect of any person employed by him in or about the execution of the works or in respect of whom he may be or become liable whether employed by him or not.
- (b) The Trade-Contractor must also insure against liability to third persons or in respect of the property of third persons in an amount satisfactory to the Builder.
- (c) The Trade-Contractor must detail the insurances relevant to his work at **Schedule 4** and must provide copies of the policies to the Builder. All policies are to be current for the period of time when work is carried out by the Trade-Contractor.
- (d) **The Trade-Contractor is not entitled to rely upon or call on the insurance of the Builder regarding the Trade-Contractor's work.**

DETERMINATION OF HEAD CONTRACT

15. Should the Head Contract be determined for any reason the Builder may determine this Contract. The Builder is liable to reimburse the Trade-Contractor only for work already carried out and any expense incurred in connection with the works. The Trade-Contractor is not entitled to recover loss of profit for any work not executed.

DEFAULT

16. If the Trade-Contractor becomes bankrupt or goes into liquidation or if he makes default in any of the following respects viz.:
 - (a) he wrongfully suspends the work before completion; or
 - (b) he fails to proceed with the works with reasonable diligence or in a competent manner; or
 - (c) subject to **clause 13(c)** he fails to comply with a notice from the Builder requiring him to remove and replace defective work or improper materials; or
 - (d) he commits a breach of the contract

THEN the Builder may by notice in **writing** determine this Contract. Such determination will not prejudice any right of the Builder to recover from the Trade-Contractor damages for any breach.

DFT LICENCE DETAILS FOR RESIDENTIAL SUBCONTRACTING

17. The Trade-Contractor warrants that he is the holder of a current and valid licence from the Department of Commerce, Home Building Services which permits the carrying out of residential building works which are the subject of this Trade-contract. The Trade-Contractor undertakes to ensure that this licence remains valid throughout the period of the Trade-contract and acknowledges the validity of such licence is a fundamental condition of this contract.

DISPUTE RESOLUTION

18. If any dispute or difference (a dispute) concerning this Agreement arises between the Builder and the Trade-Contractor then either party must give the other **written** notice of the dispute. The notice is to detail matters relevant to the dispute.

Within five (5) business days after the giving of such a notice the parties must confer at least once to attempt to resolve the dispute or to agree on a method of resolving the dispute by other means such as mediation, expert determination or arbitration. At any such conference each party must be represented by someone having the authority to settle the dispute.

A dispute as to valuation of variations which is not resolved at the conference required above is to be referred to arbitration or expert determination.

Nothing in this Clause prejudices the right of either party to have a dispute, dealt with pursuant to the Building and Construction Industry Security of Payment Act 1999.

NOTICES

19. A notice is deemed to have been given and received:
 - (a) (i) if addressed or delivered to the relevant address in the Contract or that address last communicated in **writing** to the person giving the notice; or
 - (ii) sent to the fax number nominated in the contract details or subsequent alternate number advised in **writing**; and
 - (b) will be served on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) 3 days after posting.

DEFINITIONS

20. Words herein denoting persons shall also denote Limited Companies and words denoting the singular shall include the plural and vice versa.