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HOME BUILDING CONTRACTS ACT 1991



**HOME BUILDING
CONTRACTS AMENDMENT
REGULATIONS 1996**

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Made by His Excellency the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Home Building Contracts Amendment Regulations 1996*.

Principal regulations

2. In these regulations the *Home Building Contracts Regulations 1992** are referred to as the principal regulations.

[* *Published in Gazette 3 April 1992, pp. 1465-68.*
For amendments to 16 August 1996 see 1995 Index to Legislation of Western Australia, Table 4, p. 146.]

Regulation 4 amended

3. After regulation 4 (5) of the principal regulations the following subregulation is inserted —

“
 (6) The form of contract set out in Schedule 6, prepared by the Housing Industry Association Limited, is prescribed for use for contracts for the manufacture, supply and installation of built-in furniture and fixtures, but this subregulation does not affect copyright in that form of contract.
”

Schedule 6 inserted

4. After Schedule 5 to the principal regulations the following Schedule is added —

“

SCHEDULE 6

[reg. 4]



**AGREEMENT FOR THE
MANUFACTURE AND SUPPLY OF
BUILT-IN FURNITURE AND
FIXTURES**

While this contract can be used for all agreements for the manufacture, supply and installation of built-in furniture and fixtures it should be noted that the Home Building Contracts Act only applies to contracts which are to be installed in a dwelling where the amount payable under the contract is greater than \$6,000 or less than \$200,000.

Prepared by the Housing Industry Association Ltd
ACN 004 631 752

Copyright Housing Industry Association Ltd **Form 31**

AGREEMENT FOR THE MANUFACTURE AND SUPPLY OF BUILT-IN FURNITURE AND FIXTURES

IMPORTANT DISCLAIMER

Whilst this Agreement has been designed to comply with the provisions of the Home Building Contracts Act 1991, no person should use or rely on the contents of this Agreement without first obtaining advice from their own solicitor. This Agreement is sold and distributed on the terms and understanding that the Housing Industry Association Limited and the National Kitchen and Bathroom Association and their officers, consultants and professional advisors are not responsible for any error in or omission from the Agreement or its failure to comply with the provisions of the Home Building Contracts Act 1991 or any other law, Housing Industry Association Limited and National Kitchen and Bathroom Association and their officers, consultants and professional advisors expressly disclaim all and any responsibility to any person whether a party to the Agreement or not in respect of anything, either included in or omitted from the provisions of this Agreement and anything, and the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the provisions of this Agreement.

The Contractor named in the Schedule hereto (“the Contractor”) HEREBY AGREES with the Client named in the Schedule and if more than one jointly and severally (“the Client”) as follows:

1. AGREEMENT

- (a) The Contractor agrees to manufacture, supply and install in a proper and workmanlike manner the built in furniture and fixtures described in the Schedule in accordance with this Agreement and all drawings, specifications addenda and schedules (“the Works”) as agreed between the parties and for the purpose of identification signed by each of them, for the price indicated in the Schedule as adjusted herein (“the Price”) upon the land and improvements indicated in the Schedule (the “Site”).
- (b) Where applicable and unless stated otherwise, the methods of construction and materials used will be as displayed in the Contractor’s showroom.

- (c) Unless otherwise stated the Works does not include supply and installation of electrical or gas appliances.
- (d) The Contractor reserves the right to use alternative materials of the same kind where improvements of specified materials are available.
- (e) Where the contractor suffers or incurs further cost as a direct consequence of a written law of the State or Commonwealth or as a result of an increase after the date of the contract in any tax, duty or charge imposed by such law then the contractor shall be entitled to an adjustment in the contract price.

2. CLIENT WARRANTIES

- (a) The Client indemnifies the Contractor against variations in timber colour and grain in the use of natural timbers and veneers. The Contractor shall use their best endeavours to procure natural timbers and veneers to reasonably match samples selected by the Client or provided by the Contractor.
- (b) The Client warrants that the Site will support the Works. Where the Contractor using due diligence uncovers evidence after commencing installation that the Site may not support the works the Client must furnish an inspection report from a party acceptable to the Contractor as to the ability of the Site to support the Works. Where variations to the Works are required as a result of the inspection report the Contractor shall be entitled to either terminate this Agreement in accordance with the provisions hereunder or seek a variation.

3. CONTRACTOR WARRANTIES

- (a) The Contractor shall be responsible for:
 - (i) A defects' liability period of 120 days from Practical Completion wherein the Contractor shall make good at their own cost defects in the Works (excluding

appliances and proprietary brand accessories not supplied by the contractor under this agreement) where, not completed in accordance with this contract, materials of a merchantable quality not supplied, or the Works not completed in a proper and workmanlike manner.

PROVIDED THAT any claim is made in writing to the Contractor within 120 days from Practical Completion.

- (ii) A warranty period of 5 years from Practical Completion in respect to a failure by the Contractor to manufacture or install the Works in a proper and workmanlike manner PROVIDED THAT any claim is made within 5 years of Practical Completion and within 60 days of the Client becoming aware of the defect.
- (b) The Contractor shall not be liable to remedy any damage or rectify any defects to the Works arising from normal wear and tear or any work carried out by the Client or the Clients' servants or agents at any time.
- (c) Notwithstanding any condition of this Agreement the Contractor shall not be responsible for any defects in proprietary brand accessories or products, and supplied appliances beyond warranties applied by the manufacturer or manufacturers agents.
- (d) The Contractor shall attend to their obligations pursuant to Clause 3(a) within 30 days of written advice being received from the Client or the matter shall be resolved in accordance with the disputes provisions hereunder.

4. ACCESS

- (a) The Client grants to the Contractor uninterrupted access to the Site for the purpose of performance of the Works and all obligations imposed by this contract from the time to commence work specified in the Schedule.

- (b) In the event that access is not available within 14 days the Contractor reserves the right of terminating the Agreement in accordance with the provisions set out hereunder.

5. CONSTRUCTION CONDITIONS

- (a) This Agreement and the plans and specifications referred to in Clause 1 hereof comprise the complete extent of the agreement between the Client and the Contractor.
- (b) All materials shall be new unless specified otherwise.
- (c) Any inconsistency in the documents detailing the Works shall be resolved by applying the terms of this Agreement first. Written specifications quotations and schedules shall take precedence over plans and drawings. Inconsistency between figured dimensions and drawn dimensions shall be resolved by applying the figured dimensions. Larger scale drawings shall take precedence over smaller scale drawings.
- (d) Full regard must be had by the Contractor to the Manufacturer's recommendations available to the Contractor and such shall take precedence over other plans and specifications.
- (e) Where indicated in the schedule the client shall be responsible for the adequate supply of mains single phase electricity for the Contractors use on Site.
- (f) Unless otherwise stated debris and materials removed from the Site prior to installation of the Works on Site remain the property of the Client to be used or disposed of as they consider appropriate.

6. TIME FOR PERFORMANCE

- (a) The Contractor shall commence the Works within the period indicated in the Schedule.

- (b) The Contractor shall complete the Works within the period indicated in the Schedule;

PROVIDED THAT:

- i) nothing in this contract shall require the Contractor to commence the Works prior to access for the purposes of the Works being available; and
- ii) the Contractor shall not be responsible for delays in the availability of materials or labour outside their normal control.

7. DEPOSIT AND PROGRESS PAYMENTS

- (a) The Client shall jointly and severally agree to pay the Contractor the Deposit set out in the Schedule upon signing this Agreement and the balance of the contract price as detailed in the Schedule within 7 days of the Works reaching the stages set out in the schedule together with variations and adjustments.
- (b) If for any reason any progress payment is not made within said 7 days the Contractor shall be entitled, in addition to other rights under the contract, to charge interest on the full amount of the progress payment not received, charged daily at the rate set out in the schedule until the amount is received in full.
- (c) The Contractor shall be entitled to suspend the Works from the date a progress payment is claimed until payment is received in full.
- (d) Where amounts are outstanding for longer than 14 days from the date due for payment the Client accepts responsibility for debt collection costs incurred by the Contractor.

8. VARIATIONS

- (a) **BY CLIENT:** If the Client wishes to make any variation to the Works or the terms and conditions of this Agreement, then;
- i) the Contractor shall prepare and give to the Client or their agent a Variation Document setting out the terms of and cost to be incurred on account of the variation and any extension of the time to complete the Works.
 - ii) once the Variation Document has been signed by the Client or their agent and the Contractor and dated, the variation shall be carried out as if it were part of the Works under the Agreement and the express conditions of all the Works are deemed to be varied accordingly.
 - iii) the Contractor shall provide a copy of the signed variation to the Client or their agent prior to commencing the stage of the Works affected by the variation.
- (b) **BY CONTRACTOR:** The Contractor shall be entitled to a variation in respect to the time to complete and cost for circumstances that could not reasonably have been foreseen by the Contractor at the time when this Agreement was entered into or additional work required by written order from a person acting under written law;

PROVIDED THAT:

- i) the Contractor shall provide a statement to the client or their agent setting out the reasons for and the costs of the variation within 14 days of the Contractor becoming aware or should reasonably become aware of such circumstances or receiving such written order.

- ii) the Contractor shall not be able to make a variation for an increase in the cost of labour or materials or both, as detailed in the original Agreement.
- iii) where the provisions of the Home Building Contracts Act apply then where the client disputes that the variation sought by the contractor is due to circumstances which could not reasonably have been foreseen by the contractor at the date of the agreement the client shall not be entitled to apply to the Building Disputes Committee under s.17 of the Home Building Contracts Act 1991 for an order for relief unless he or she makes application to the Building Disputes Committee within 14 days after the statement was given to him by the contractor under clause 8(b)(i) of this agreement.

9. SUB-CONTRACTING

The Contractor shall be entitled to sub-contract the whole or any portion of the manufacture, supply or installation of the Works. Such sub-contracting does not relieve the Contractor from any or all of his obligations pursuant to this Agreement.

10. COPYRIGHT

- (a) Copyright in any plans, design specification and construction methods created in the performance of this Agreement by the contractor or their agents or employees remain the property of the contractor or their agents.
- (b) Where the Client provides any sketch, plan or other document to the Contractor upon which the Contractor relies or is incorporated into the Contract, the Client hereby indemnifies the Contractor against any copyright infringement action or any damages, costs or expenses incurred by the Contractor to any third party in respect thereto.

11. SECURITY AND OWNERSHIP

- (a) Ownership in any goods under the Contractor's obligations pursuant to this Agreement shall not pass to the Client until the progress payment that incorporates such goods in the stage of completion referred to in the Schedule has been paid by the Client. Upon receipt of such payment by the Contractor, title in such goods shall be deemed to have transferred to the Client.
- (b) Notwithstanding provisions to the contrary where the progress payment under the schedule calls for a payment of materials prior to the delivery to the Site, receipt of such payment by the contractor constitutes a transfer of title to the Client for such materials and the Contractor shall ensure that such are clearly identifiable.
- (c) The Client grants access to the Site for recovery of materials and manufactured items pursuant to the Works delivered to the Site and not belonging to the Client under clause 11 (a).
- (d) Materials surplus to the Contractor's obligations under this contract remain the property of the Contractor to dispose of as they consider appropriate.

12. INSURANCE AND RISK

- (a) The Works and materials delivered to the Site under this Agreement shall be at the risk of the Client at all times except as provided hereunder.
- (b) The Contractor shall indemnify the Client against any loss arising out of or connected with or in any way due to the following;
 - i) any personal injury to or death of any person arising out of or in connection with or in the course of the Works,

other than due to the negligent act or omission by the Client or any person for whom the Client may be responsible.

- ii) any injury or damage whatsoever to any property or person which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Contractor, his employees, agents or sub-contractors.
- iii) any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the Contractor or their sub-contractors in or about the Works arising at common law or by virtue of any statute relating to workers' compensation or employers' liability except where such liability, loss or damage claim or proceeding is caused by the negligence or other fault of the Clients or their agents.
- iv) any damage what so ever arising out of or in connection with storage of materials off site or in transit to or from the site.

13. PRACTICAL COMPLETION AND COMPLETION PAYMENT

- (a) Practical Completion shall be that stage when the Contractor considers that the Works are complete except for any omissions or defects that do not prevent the Works from being used for its intended purpose.
- (b) The Contractor shall advise the Client of Practical Completion and the Client shall furnish a list of omissions or defects to the Contractor within 7 days of such advice.
- (c) The Completion payment is due immediately once items so advised have been rectified or should a list of omissions or defects not be provided.

14. DISPUTES

- (a) In the event of any dispute between the Client and the Contractor at any time as to any matter or thing arising hereunder or in any way connected with the Works, the Client or the Contractor shall give written notice of the dispute to the other party and allow 7 days for a satisfactory response then;
- (b) Either party may refer the matter for resolution by;
 - i) reference to the Building Disputes Committee or Small Claims Tribunal where applicable; or
 - ii) a mediator appointed by mutual consent; or
 - iii) a written request made for appointment of a mediator to the President of the Housing Industry Association Ltd Western Australian Division setting out the matters in dispute.

15. NOTICES

Any notice given to any party or advice required under this Agreement shall be properly given if forwarded prepaid and addressed to the last advised address and allowance is made for the ordinary course of mail.

16. SUPPLY OF MATERIALS

Should any materials required in the Works not be available when required, the Client shall upon request by the Contractor, specify the use of alternate available materials or insist on the original materials and allow the Contractor an extension of time as a variation to Agreement.

17. TERMINATION OF CONTRACT

- (a) Either party having served prior written notice of 7 days shall be at liberty to terminate this Agreement if the other party commits;
 - i) any act of bankruptcy if a natural person or the appointment of a liquidator, receiver manager or entering into a Deed of Company Arrangement if a corporation.
 - ii) any significant breach of this Agreement.
 - iii) any delay in commencement of the works by the Contractor or lack of access by the Client.
- (b) Where the provisions of the Home Building Contracts Act apply, this agreement may be terminated in accordance with s. 19 of that Act pursuant to ss.4(5), 10(3) and 14(3).
- (c) In the event of termination under clause 17(a) the Client shall reimburse the Contractor for work performed and materials purchased up to the time of notice of termination. The conditions of ownership apply as set out hereon.

18. SEVERABILITY

Any provision of this agreement that is void or unenforceable may be severed without affecting any other provision of this Agreement.

19. AUTHORITY OF AGENT

Where the context admits and where more than one party are named as the Client, each shall be bound jointly and severally by the authorisation of any other party named as Client pursuant to the obligations of this Agreement. Where a person is named as agent of the Client, the Client agrees to be bound as if that agent was acting with their express authority.

SCHEDULE OF PARTICULARS

Item No.	Details
1.	Contractors' Name, Address, Builders Registration No (if applicable), IHA-NKBA Membership No.
2.	Client's Name, Address, Phone
3.	Brief Description of Works
4.	Site Address
5.	Progress Payments (as below/in attached schedule*) Deposit (not to exceed 6.5%) \$ Receipt of materials by Contractor (not to exceed 23.5%) \$ Cabinets fully fabricated/ Delivered to Site* (not to exceed 55%) \$ Completion (not less than 15%) \$ Total Price \$ * (Cross out whichever does not apply)
6.	Interest on late payment % per annum
7.	Time to Commence the Works weeks from contract date
8.	Time to Complete the Works weeks from time to commence
9.	Appliances and accessories included in Contract Price (refer to addenda and schedule for details)
10.	Single phase electrical power available by owner Yes/No
11.	Client appointed agent (For use where neither party will be available to authorize instructions and variations to the Contractor)
12.	This Agreement is dated the day of 19.....
	1. The Notice for Home Owner referred to in Section 4 (2) of the Home Building Contracts Act 1991 was received PRIOR to signing this Agreement; and 2. A copy of this Agreement and supporting documents referred to in Clause 1 have been received. Client: Witness: Client: Witness: Signed for and on behalf of the Contractor: Witness:

By Command of the Lieutenant-Governor and deputy of the Governor,
J. PRITCHARD, Clerk of the Council.

