

A large, bold, black letter 'G' is the central element of the logo. To its left, a white map of Western Australia is set against a background of horizontal black lines.

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HOME BUILDING CONTRACTS ACT 1991

**HOME BUILDING CONTRACTS
AMENDMENT REGULATIONS
1997**

HOME BUILDING CONTRACTS ACT 1991

HOME BUILDING CONTRACTS AMENDMENT REGULATIONS 1997

Made by the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Home Building Contracts Amendment Regulations 1997*.

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 9 June 1997 see *1996 Index to Legislation of Western Australia, Table 4, p. 146 and Gazette 24 January 1997.*]

Schedules 2 and 3 repealed and Schedules substituted

3. Schedules 2 and 3 to the principal regulations are repealed and the following schedules are substituted —

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SCHEDULE 2

[Regulation 4]



HOUSING INDUSTRY ASSOCIATION LIMITED

ACN 004 631752

LUMP SUM BUILDING CONTRACT

**IMPORTANT NOTICE**

Persons intending to use this form of contract should carefully read and examine the document before signing it to ensure that it contains all of the terms, conditions and provisions of their agreement. If any person is unsure as to the nature of the document or its terms, conditions or provisions then they should seek legal advice from a Solicitor before signing it.

The Builder named in Item 1 of the Schedule hereto (“the Builder”) **HEREBY AGREES** with the Owner named in Item 2 of the Schedule (“the Owner”) as follows:

1. AGREEMENT TO BUILD

- (a) The Builder agrees to build and complete for the Owner the building work described in Item 3 of the Schedule (“the Works”) upon the land and existing improvements described in Item 3 of the Schedule (“the Site”) in a proper and workmanlike manner and in accordance with this Contract and the Drawings and Specifications, inclusive of all

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attached Addenda to Specifications agreed between the parties and, for the purpose of identification, signed by each of them (the "Contract Documents") for the Contract Price, terms and conditions herein. The Contract Documents signed by the parties shall constitute the entire Contract between the parties.

- (b) (i) Where there is a difference or inconsistency between the Contract Documents, they will be construed in the following order of precedence: Lump Sum Building Contract, Addenda to Specifications, Drawings, Specifications.
- (ii) Any difference between scaled dimensions and figures on the Drawings shall be resolved by using and applying the figures. Drawings to a larger scale shall take precedence over drawings to a smaller scale.
- (c) Where the Owner requires a lender to provide finance for the Works, the Owner shall use his or her best efforts to obtain the finance as defined in Item 4 of the Schedule. If the Owner is unable to obtain such finance within the period stated in Item 4 of the Schedule, then this Contract shall, unless the parties otherwise agree, be terminated.
- (d) The Builder shall not perform any of the Works nor make any demand for any payment under this Contract including any deposit until the Builder has given the Owner a certificate in the approved form that evidences the taking out of a policy of insurance that complies with Part 3A of the *Home Building Contracts Act 1991* in respect of the Works (Home Indemnity Insurance). Except for the Builder's interest in this Contract and the legal requirement for it to be arranged in respect of the Works, the Builder receives no benefits in relation to arranging Home Indemnity Insurance. The Builder further confirms that Home Indemnity Insurance may be arranged with an insurer of the Owner's choice. Item 13 of the schedule sets out the premium anticipated to be paid by the Builder for Home Indemnity Insurance. If the Builder is unable to obtain Home Indemnity Insurance, from an insurer nominated by the Owner on terms and conditions acceptable to the Builder, the Builder may terminate this Contract by notice in writing to the Owner and the Owner shall pay to the Builder all direct costs paid or payable by the Builder for the purpose of obtaining the building licence up to the time of termination. If the Builder is unable to obtain Home Indemnity Insurance, where no insurer has been nominated by the Owner, on terms and conditions acceptable to the Builder, then the Builder may terminate this Contract by notice in writing to the Owner and the Builder shall be liable for all direct costs paid or payable by the Builder for the purpose of obtaining the building licence up to the time of termination.

2. NECESSARY APPROVALS

- (a) Subject to Clause 2 (b), this Contract is conditional upon:
 - (i) a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* being issued in respect of the Works within FORTY FIVE (45) working days from the date of this Contract;
 - (ii) the Owner and the Builder acknowledging in writing within that period that each of them accepts any condition attached to the licence;

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- (iii) it becoming lawful under the Water Act (as defined in section 9 (6) of the *Home Building Contracts Act 1991*; "the Water Act") within FORTY FIVE (45) working days from the date of this Contract for the Works to be commenced; and
 - (iv) the Owner and the Builder acknowledging in writing within that period that each of them accepts any direction that may be given by the Water Corporation under the Water Act in connection with the carrying out of the Works.
- (b) A condition referred to in Clause 2 (a) does not apply to this Contract:
- (i) to the extent that the subject matter of the condition was completed before this Contract was entered into; or
 - (ii) where the only work to be performed under this Contract is the construction or carrying out of associated work (as defined in section 3 (1) of the *Home Building Contracts Act 1991*) or any other work prescribed for the purpose of section 9 (5) (c) of that Act.
- (c) The Builder shall:
- (i) do all things that are reasonably necessary to be done to ensure that any condition referred to in Clause 2 (a) (i) and (iii) applicable to this Contract is fulfilled; and
 - (ii) not unreasonably decline to accept a condition or direction referred to in Clause 2 (a) (ii) or (iv) that applies to this Contract.
- (d) The Owner shall:
- (i) do all such things as may be required to be done by the Owner to ensure that any condition referred to in Clause 2 (a) (i) and (iii) applicable to this Contract is fulfilled; and
 - (ii) not unreasonably decline to accept a condition or direction referred to in Clause 2 (a) (ii) or (iv) that applies to this Contract.
- (e) If a condition referred to in Clause 2 (a) (i) and (iii) applicable to this Contract is not fulfilled the consequences to, and the rights and remedies of, the parties are as set out in Clause 22.

3. OWNER'S WARRANTIES

- (a) The Owner warrants that:
- (i) The Owner has title and is entitled to build on the Site.
 - (ii) The Site is subject only to those encumbrances, restrictive covenants and easements detailed in Item 5 of the Schedule.
 - (iii) The Builder has access to the Site for the purposes of this Contract or will be given access not later than the date by which the Builder is required to start the Works in accordance with Clause 9 (a).

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- (iv) The existing pegs adequately delineate the Site boundaries.
 - (v) The Site will support the Works.
 - (vi) Power and water (under normal mains pressure) is available to the Site and the Works during construction at the Owner's expense.
 - (vii) The Owner authorizes the Builder to apply for and take out Home Indemnity Insurance in respect of the Works.
- (b) The Builder may at any time prior to the commencement of the Works, by notice in writing require the Owner to satisfy the Builder that the Owner has title to the Site and/or that the Owner is able to pay the Contract Price by production of evidence in writing and if the Owner shall fail to do so within TEN (10) working days of the receipt of such notice the Builder may terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) working days unless such satisfaction is dependent on any of the Conditions stated in Clause 1 (c) or 28.
 - (c) Unless the Builder has prepared or caused to be prepared the Contract Documents, the Owner warrants the same are accurate, free of error and consistent in every respect and do not infringe copyright, letters patent or registered design and the Owner shall indemnify the Builder against any action, claim, costs or expenses arising from any breach of this warranty.
 - (d) Subject to sub-clause (c) hereof and where the Contract Documents have not been prepared or caused to be prepared by the Builder, any discrepancy or error in the Contract Documents shall be dealt with in accordance with Clause 12 (b) or (d).

4. BUILDER'S DUTIES

- (a) In addition to the requirements of Clause 2 the Builder shall obtain any permits or licences that are required for the performance of the Works pursuant to all statutes, codes, ordinances, rules, regulations, proclamations or orders of any officer and/or body lawfully empowered to make or issue the same.
- (b) The Builder shall comply with all relevant statutes, regulations and local laws and any lawful orders or directions made thereunder which relate to the Works and shall indemnify the Owner from and against all monies payable thereunder and for monies payable for any breach thereof provided that the Builder shall not be liable to indemnify the Owner for any breach caused by third parties other than the Builder or the Builder's agents.
- (c) If a variation of the Contract Documents or Works is necessary to enable the Builder to comply with Clause 4 (a) and (b) it shall be dealt with in accordance with Clause 12 (b) or (d).

5. SITE CONDITIONS**(a) Site Boundaries**

If the Builder has any reasonable doubt as to the accuracy or true position of the boundaries of the Site and considers

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that it is necessary to engage a licensed surveyor to survey and adequately peg, re-peg or delineate the Site, then this shall be dealt with in accordance with Clause 12 (b) or (d).

(b) **Structural Support**

If, at any time, the Builder becomes aware, based upon reasonable grounds, that the Site may not support the Works and considers it necessary to engage a practising structural engineer to inspect and certify the Site is capable of supporting the Works as proposed, then this additional cost shall be dealt with in accordance with Clause 12 (b) or (d).

(c) **Excessive Structural Costs**

If the practising structural engineer's inspection and certification shows that additional structural support costs will be incurred then these additional costs shall be dealt with in accordance with Clause 12 (b) or (d) except that where the additional costs to be incurred exceed 5% of the Contract Price, the Owner may by notice in writing terminate this contract.

(d) **Hard Digging or Other Unforeseen Requirements**

Unless otherwise specified in the Contract Documents, digging requiring the use of pick, axe, crowbar, blasting or machinery and the removal of rocks, soil, dewatering, pile and keel to sewer lines and consequent restoration and drainage of the Site or other such unforeseen requirements have not been allowed for in this Contract and shall be dealt with in accordance with Clause 12 (b) or (d).

(e) **Power and Water Not Available**

In the event power and water are not available the Builder's reasonable costs and expenses incurred due to power and water not being so available, shall be dealt with in accordance with Clause 12 (b) or (d).

6. THE CONTRACT PRICE

(a) The price for the Works shall be the amount set out in Item 6 of the Schedule which shall be subject to the adjustments and variations provided for in this Contract. The price so adjusted shall hereinafter be called the "Contract Price".

(b) If there is a delay in the commencement of the Works beyond the period of FORTY FIVE (45) working days after the date of this Contract being a delay:

(i) that is caused solely by the failure of the Owner to comply with a condition imposed on the Owner by this Contract, including the provisions of Clause 3 (b); or

(ii) that occurs without any failure on the part of either the Owner or the Builder to comply with his or her obligations under this Contract then the consequences to, and the rights and remedies of, the parties are as set out in Clause 22 (d) and (e).

(c) If further costs are actually imposed on or incurred by the builder as a direct consequence of a written law of the State of Western Australia or the Commonwealth of Australia or on account of an increase in any tax, duty or other charge

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imposed under any such law after the date of this Contract then the Builder shall be entitled to increase the Contract Price to reflect such further costs. The Builder shall notify the Owner of such further costs and specify to the Owner when such further costs are payable.

7. DEPOSIT AND PROGRESS PAYMENTS

The Owner shall pay to the Builder the Contract Price in the following manner:

- (a) Provided that the requirements of Part 3A of the *Home Building Contracts Act 1991* have been complied with, upon the signing of this Contract the Owner shall pay to the Builder the deposit set out in Item 7 of the Schedule.
- (b) The Owner shall pay to the Builder the balance of the Contract Price by way of progress payments upon the following conditions:
 - (i) Within TEN (10) working days of the service upon the Owner of a notice by the Builder that any of the Works described in Column 'A' of Item 7 of the Schedule have been completed the Owner shall pay to the Builder that portion of the Contract Price mentioned opposite those Works in Column 'B' of Item 7 having taken into account any adjustments in accordance with Clauses 11 and 12.
 - (ii) Where finance for the Works is being provided by a lender, the Owner shall immediately on signing this Contract authorize and direct the lender to make progress payments in accordance with Clause 7 (b) (i).
 - (iii) Any dispute as to the value of the Works completed or the state of the Works at any particular time shall be determined in accordance with Clause 18.
 - (iv) If for any reason any progress payment or the final payment is not made within the times specified the Builder shall be entitled to charge interest thereon at the percentage rate per annum set forth in Item 8 of the Schedule as and from the date upon which the payment fell due until the date upon which the payment is made and the Builder may in addition to any other remedy which he may have against the Owner suspend the Works pending payment.

8. SECURITY

The Owner hereby charges the land constituting the Site with the due payments to the Builder of all the monies that will and/or may become payable hereunder and irrevocably authorizes and consents to the Builder lodging an absolute caveat in respect of the Site to protect the Builder's interests herein.

9. TIME FOR PERFORMANCE

- (a) Subject to this Contract the Builder shall commence the Works within the number of working days specified in Item 9 (a) of the Schedule or as soon thereafter as may be reasonably practicable calculated from the latest of the following dates:
 - (i) on which the Owner shall have complied with the conditions referred to in Clause 2;

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- (ii) on which the Owner shall have complied with any notice given by the Builder pursuant to Clause 3 (b);
 - (iii) on which the Builder is satisfied that the boundaries of the Site have been adequately delineated;
 - (iv) on which provision has been made for adequate water supply to the Site; and
 - (v) on which the Builder has received approval from all relevant authorities.
- (b) Subject to this Contract the Builder shall complete the Works (bring the Works to Practical Completion — Clause 19 (a)) by the time specified in Item 9 (b) of the Schedule. The time for completion of the Works may be extended in accordance with Clause 9 (c) in the event of delay caused by or resulting directly or indirectly from any of the following causes:
- (i) any of the following events which affect directly or indirectly access to or the condition of the Site or the Works or any person engaged on or material employed in or to be employed in or in relation to the Works, namely: acts of God, fire, explosion, earthquake, civil commotion, theft or acts of vandalism, flooding, inclement weather, strikes, industrial action, lockouts or holidays granted in accordance with industrial awards, fires, vehicle accidents, unavailability of labour, vehicles or equipment or permits required;
 - (ii) any alterations to the Works;
 - (iii) any instruction or delay of instruction by or any omission of the Owner;
 - (iv) any deliberate and substantial prevention of or interference with the Works or the progress thereof caused by the Owner;
 - (v) any delay in the supply of materials or transport;
 - (vi) any proceedings being taken or threatened by any disputes with adjoining or neighbouring owners concerning the continuation or variation of delivery to or completion of the Works upon the Site;
 - (vii) any cessation of work pursuant to Clause 7 (b) (iv);
 - (viii) any delay in the commencement of or continuance with the Works, caused by or resulting from an order or directive of a relevant authority or proceedings before the Builders' Registration Board or the Disputes Committee, the Registrar, a mediator, an arbitrator or a Court;
 - (ix) any delay caused by proper investigation of any of the above by the Builder or the Owner.
- (c) Upon the happening of any of the events aforesaid the Builder shall be entitled to seek or make a variation by way of extension of the time for completion of the Works in accordance with the provisions of Clause 12 (b) or (d).

10. POSSESSION OF THE SITE

- (a) The Builder shall be given exclusive possession of the Site and shall be entitled to remain in possession and shall be

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entitled to remain in possession until the Contract Price has been paid in full by the Owner.

- (b) The Owner or an "authorized person" as defined in Section 26 (3) of the *Home Building Contracts Act 1991* shall be given access to the Site to carry out the relevant inspections, provided that such inspections are made during the Builder's normal working hours and such inspections do not unreasonably impede or interfere with the Works.
- (c) Neither the Owner nor any person acting on the Owner's behalf shall give or be entitled to give at any time, directions to the Builder's tradespersons or subcontractors on the Site or elsewhere relating to the Works.
- (d) After Practical Completion the Builder shall be entitled to reasonable access to the site to complete the Builder's obligations under Clause 14.

11. PROVISIONAL SUMS AND PRIME COST ITEMS

- (a) Where Provisional Sums or Prime Cost Items are included in the Contract Price, the Owner shall, within FIVE (5) working days of receiving a request from the Builder, supply to the Builder in writing, all necessary directions and selections regarding the work and/or goods comprised in any Provisional Sums and Prime Cost Items.
- (b) Provisional Sums stated in Item 10 (a) of the Schedule or detailed in the Contract Documents include:
 - (i) the total cost to the Builder for materials, subcontractor charges, delivery to the Site and installation; and
 - (ii) an additional amount calculated as the percentage set out in Item 11 of the Schedule of the cost in Clause 11 (b) (i) for the Builder's supervision, overhead and profit.
- (c) The Prime Cost Item amounts stated in Item 10 (b) of the Schedule or detailed in the Contract Documents, exclude the costs of delivery to the Site, the cost of installation, fixing, supervision, overhead and profit which are included in the Contract Price.
- (d) Upon completion of the work the subject of a Provisional Sum or on installation of an item the subject of a Prime Cost Item, or at the next progress payment notice, the Builder shall provide the Owner with an itemised statement of the cost for the work or the items, calculated in accordance with the provisions of Clauses 11 (b) and (c) hereof, and the Contract Price shall be adjusted accordingly and paid in accordance with Clause 7.

12. VARIATIONS

- (a) If the Owner wishes to make any variation to the Works and/or the Contract Documents the Owner or the Owner's agent shall give the Builder a written request for such variation. The Builder may decline to agree to the variation requested but in the event that the Builder is prepared to agree to the variation:
 - (i) the Builder shall prepare and give to the Owner or the Owner's agent a variation document setting out the terms of, and the cost to be incurred on account of, the variation;

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- (ii) the Owner or the Owner's agent shall sign and return the variation document to the Builder;
 - (iii) the Builder or the Builder's agent shall sign and insert in the variation document the date that he signs it and forward a signed copy to the Owner or the Owner's agent as soon as is reasonably practicable thereafter and before the work to which the variation relates is commenced; and
 - (iv) the variation shall be carried out as if it were part of the Works under the Contract.
- (b) The Builder shall be entitled to vary all or any of the Works and/or the Contract Documents made necessary by:
- (i) any written direction lawfully given by a building surveyor or other person acting under a written law; or
 - (ii) circumstances that could not reasonably have been foreseen by the Builder at the time when this Contract was entered into if the Builder gives to the Owner, within the time specified in Clause 12 (c), a statement setting out the reason for, and the cost to be incurred on account of, the variation and a copy of any direction referred to in Clause 12 (b) (i)
- PROVIDED THAT Clause 12 (b) (ii) shall not enable the Builder to make any variation by reason only of an increase in the costs of labour (including related overhead expenses) or materials or both, to be incurred by the Builder.
- PROVIDED ALSO THAT where an Owner is given a statement by the Builder for the purposes of Clause 12 (b) (ii) and the Owner considers that the variation is not one to which Clause 12 (b) (ii) applies then the Owner may make an application to the Disputes Committee for relief under Section 17 of the *Home Building Contracts Act 1991* within FOURTEEN (14) days of being given the statement.
- (c) The Builder shall give the statement referred to in Clause 12 (b) to the Owner within FOURTEEN (14) days after the Builder:
- (i) received notice of the direction under Clause 12 (b) (i); or
 - (ii) became aware or should reasonably have become aware, of the circumstances referred to in Clause 12 (b) (ii) as the case may be.
- (d) If any variation to the Works and/or the Contract Documents is required pursuant to Clause 3 (d), 4 (c), 5 (a)-(e) or 21 but not as a result of a direction under Clause 12 (b) (i) or the circumstances referred to in Clause 12 (b) (ii) then:
- (i) the Builder shall prepare and give to the Owner a variation document setting out the terms of and the cost to be incurred on account of the variation so required;
 - (ii) if the Owner signs and returns the variation document to the Builder then the provisions of Clause 12 (a) (iii) and (iv) shall also apply to the variation;

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- (iii) if the Owner does not sign and return the variation document to the Builder within FIVE (5) working days of being given the variation document then the Builder shall be entitled to either carry out the work required but without any adjustment to the Contract Price or to terminate this Contract pursuant to Clause 16 (g).
- (e) The price of a "variation" shall unless previously agreed in writing be calculated as follows:
 - (i) If the amount is additional to the Contract Price it shall be equal to the cost of the labour and materials supplied together with other costs properly incurred as a consequence thereof plus that percentage of such additional costs as set forth in Item 11 of the Schedule and shall be added to the Contract Price, and unless previously paid, shall be added to the next progress payment due after the execution of such work.
 - (ii) If it shall result in a decrease in cost the amount of such decrease shall be deducted from the Contract Price and shall be equal to the costs of labour and materials and other costs properly saved, and any such decrease shall be deducted from the final payment hereunder.
- (f) The Owner shall obtain the consent of his or her lender (if any) prior to requesting or authorising the Builder to carry out extra work or to vary the Works in any way.
- (g) The Builder may, at any time prior to the commencement of any building work that is to be performed by way of a variation pursuant to the provisions of this Contract, by notice in writing require the Owner to satisfy the Builder that the Owner is able to pay the cost to be incurred on account of the variation by production of evidence in writing and if the Owner shall fail to do so within TEN (10) working days of the receipt of such notice the Builder may terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) days.

13. INSURANCE

In addition to any insurance cover which the Builder is obliged to obtain for the Works under Part 3A of the *Home Building Contracts Act 1991*:

- (a) The Builder shall in the joint names of the Builder and the Owner and the Owner's lender (if any) insure against loss and damage to the full value under this Contract (plus the requisite amount to cover architects, engineers, quantity surveyors and consultant's fees) all work executed and materials and goods upon the Site whether fixed or unfixed except for goods belonging to the Owner or a third party and shall keep such work, materials and goods insured until the Works are delivered up to the Owner upon Practical Completion and upon request deliver to the Owner evidence of such insurance and such insurance shall be against all liability, loss, action, claim or proceedings in respect of fire, explosion, earthquake, flood, lightning storm and tempest, rioting, civil commotion and the negligent or wilful act of any third party. Should the Builder fail to take out such insurance the Owner may insure the Works as aforesaid and the premiums paid by the Owner in relation thereto shall be deducted from the Contract Price. Upon settlement of any claim under a policy as aforesaid

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the Builder shall rebuild or repair the Works and replace or repair the materials or goods destroyed within a reasonable time of such settlement.

- (b) The Builder shall insure against any liability, loss or damage claim demand and proceedings whatsoever arising out of or connected with or in any way due to the following namely: —
 - (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 Owner or any person for whom the Owner may be responsible;
 - (ii) any injury or damage whatsoever to any property real or personal which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Builder, his or her employees, agents or sub-contractors.
- (c) The Builder shall insure against any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the Builder or the Builder's 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 Owner or its agents.
- (d) The Owner is responsible for and undertakes to have any items supplied by the Owner adequately insured against damages, loss or theft until the Owner takes possession of the Works.

14. DEFECTS LIABILITY PERIOD

- (a) Except where the Owner has taken possession of the Works without the consent of the Builder and subject to Clause 14 (c) and (d), the Builder shall make good at the cost of the Builder as soon as reasonably practicable defects in the Works notified in writing to the Builder within the period specified in Item 12 of the Schedule.
- (b) In Clause 14 (a), "defect" means a failure —
 - (i) to perform the Works in a proper and workmanlike manner and in accordance with this Contract; or
 - (ii) to supply materials that are of merchantable quality and reasonably fit for the purpose for which the Owner required the Works to be performed, not being a failure for which the Builder is specifically declared by this Contract to be not liable.
- (c) The Builder's liability under Clause 14 (a) shall be reduced to the extent of any exemptions made from time to time for the purpose of section 11 (3) of the *Home Building Contracts Act 1991*.
- (d) The Builder shall not be liable to remedy any damage or rectify any defects to the Works arising from any work carried out on the Site by the Owner or the Owner's servants and agents at any time.
- (e) In Clause 14 (a) "Practical Completion" has the same meaning as in Clause 19 (a).

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15. EARLY TERMINATION OF CONTRACT

- (a) In addition to their respective rights and remedies contained herein or in equity the Builder may terminate this Contract in any of the events mentioned in Clause 16 hereof and the Owner may terminate this Contract in any of the events mentioned in Clause 17 hereof.
- (b) Except as provided herein neither party shall be at liberty to terminate this Contract or exercise or enforce any other right or remedy in relation hereto whether pursuant to this Contract or at law or in equity without first giving to the other party a notice in writing specifying the matter complained of and requesting that other party to remedy it within TEN (10) working days of the service of such notice. If such notice is given and the other party fails within such period to remedy the matter complained of then the party giving such notice may terminate this Contract immediately.
- (c) On such termination, subject to any agreement to the contrary or to any determination made pursuant to Clause 18, if the Builder has commenced the Works then the Builder shall be entitled to be paid for all work done and materials used or procured by the Builder and properly chargeable to that date. The amount to be paid shall be the cost of the labour for all work done and materials used and procured as aforesaid and all costs incurred by the Builder plus that percentage of all such costs as set forth in Item 11 of the Schedule but proper allowances shall be made for all payments on account of the Contract Price already made by the Owner to the Builder. The Builder may claim interest at the rate specified in Item 8 of the Schedule hereto on the outstanding balance of monies found to be due and payable from and after the expiration of FIVE (5) working days from the date of such termination of contract until payment of balance of monies is received by the Builder.
- (d) The provisions of Clauses 15 (b) and (c) do not apply to a termination of this Contract pursuant to Clauses 16 (h) and 17 (d) or pursuant to the provisions of Sections 4 (5), 10 (4) or 14 (3) of the *Home Building Contracts Act 1991*. In such cases this Contract may be terminated in accordance with the provisions of Section 19 of that Act and the Owner or the Builder may apply to the Disputes Committee pursuant to the provisions of Section 20 of that Act for repayment of any consideration given by the Owner under this Contract or for payment to the Builder in respect of any materials supplied or any home building work or other services performed by the Builder under or in relation to this Contract.

16. EVENTS ALLOWING BUILDER TO TERMINATE

The Builder may, in addition to any other rights under this Contract, terminate this Contract in any one of the following events: —

- (a) Substantial damage to or interference with the Works or delays to the Works or access thereto by any cause beyond the control of the Builder including (but without limiting in any way the generality thereof) water, flood, fire, storm, tempest, rioting, earthquake, civil commotion or industrial action.
- (b) Any substantial breach of the Contract by the Owner.

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- (c) If the Owner shall make any assignment for the benefit of or enter into any arrangement or composition with the Owner's creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a Receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Owner's estate.
- (d) Any deliberate and substantial prevention of or interference with the Works or progress thereof caused by the Owner.
- (e) Any failure by the Owner for TEN (10) working days after the due date thereof to pay any part of the Contract Price subject to Clause 18 of this Contract.
- (f) The entry into possession of the Works by the Owner prior to practical completion or without the Builder's consent.
- (g) If the Owner fails to sign and return a variation document to the Builder given to the Owner by the Builder pursuant to Clause 12 (d) within the period referred to in Clause 12 (d).
- (h) If the circumstances specified in Clause 22 (b) or (c) occur.

17. EVENTS ALLOWING OWNER TO TERMINATE

The Owner may, in addition to any other rights under this Contract, terminate this Contract in any of the following events: —

- (a) Any substantial breach of this Contract by the Builder.
- (b) If the Builder shall make an assignment for the benefit of or enter into any composition with the Builder's creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or commit an act of Bankruptcy or have a Receiver appointed or if a sequestration order is made against the Builder's estate.
- (c) If the Builder shall without reasonable cause wholly suspend the Works before Practical Completion.
- (d) If the circumstances specified in Clause 22 (b), (c) or (d) (ii) occur.

18. DISPUTES

- (a) In any dispute between the Owner and the Builder at any time relating to this Contract then subject to the rights of either party to apply to the Registrar or the Disputes Committee (or their successors) or any other relevant Statutory Authority, either party shall give to the other notice of such dispute, disagreement or difference and at the expiration of FIVE (5) working days thereafter and in the absence of any settlement the same shall be referred to:
 - (i) a single mediator appointed by mutual consent; or
 - (ii) a single arbitrator appointed by mutual consent; or
 - (iii) in the event that neither (i) nor (ii) are satisfied within FIVE (5) working days, or mediation is not successful, a single arbitrator shall be appointed by the President or his or her nominee of the Housing Industry Association (Western Australian Region)

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provided that such arbitrator shall be a graded Arbitrator approved by the Institute of Arbitrators Western Australian Chapter.

- (b) The conduct of the Arbitrator shall be in accordance with and subject to the provisions of the *Commercial Arbitration Act 1985* and the decision of the single arbitrator appointed shall be final. The rights and obligations of the parties under this Contract shall be modified only to the extent made necessary by such arbitration.
- (c) This Contract and the parties' rights and obligations under this Contract shall in all respects be governed by the laws of the State of Western Australia and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Courts of the said State.

19. PRACTICAL COMPLETION

- (a) Practical Completion of the Works means brought to the stage where the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for its intended purpose.
- (b) The Builder shall notify the Owner when the Builder considers that Practical Completion has occurred and within FIVE (5) working days the Owner and the Builder or his or her representative shall meet at the Works to carry out a pre-handover inspection. If said meeting does not occur the Contract shall be dealt with pursuant to Clause 18 hereof.
- (c) During the pre-handover inspection the parties shall agree to a list of items which require completion or rectification or give notice to the other party within FIVE (5) working days under Clause 18 hereof.
- (d) The final payment shall be due within TEN (10) working days after Practical Completion and upon payment thereof the Builder shall hand the keys of the Works to the Owner or to such persons as the Owner may direct and on acceptance of the keys the Owner shall be deemed to have entered into possession of the Works and to have acknowledged that they have been completed by the Builder in accordance with this Contract and the Builder shall thereupon be relieved and discharged from all responsibilities under this Contract other than the Builder's obligations pursuant to Clauses 14 and 19 (c).
- (e) If the owner takes possession of the Works, permits work outside this Contract, or delivery of goods or chattels to the Works, without prior written consent of the Builder, when the Works are substantially complete but not necessarily at Practical Completion the Builder shall be discharged and relieved absolutely from all his or her obligations and responsibilities under this Contract and the unpaid balance of the Contract Price shall become due and payable immediately, together with interest thereon at the rate specified in Item 8 of the Schedule calculated from the date of taking such action until the date payment is made.
- (f) If the Owner denies access to the Builder or takes possession of the Works prior to the issue by the Builder of a Notice of Practical Completion and without prior written consent of the Builder, the Date of Practical Completion shall be the date such possession is taken.

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- (g) The Works shall be at the risk of the Owner from the date the Owner takes or is entitled to take possession.

20. NOTICES

Any notice given to any party pursuant to the terms of this Contract shall be properly given if addressed to the party and served personally upon him or her or forwarded to him or her by prepaid letter or facsimile addressed to such party at the address given herein or such other address as may be notified in writing by such party to the other. Any notice so posted shall be deemed to have been served unless contrary is shown at the time when by the ordinary course of post the notice would be delivered.

21. SUPPLY OF MATERIALS AND UNFIXED MATERIALS ON SITE

- (a) If the Builder is unable to obtain any materials or items selected by the Owner after the date of the Contract as and when he shall require them the Owner shall immediately, upon request from the Builder, select alternative available materials or insist on the original materials provided they are available within TEN (10) working days of being required on Site by the Builder. In either case, any delay and/or additional costs (including freight and transport insurance) in obtaining the same shall be dealt with in accordance with Clause 12 (b) or (d).
- (b) Unless otherwise specified in the Contract Documents, all materials resulting from demolition and/or surplus materials supplied by the Builder in the course of carrying out of the Works, belong to the Builder who shall remove them from the Site before Practical Completion.
- (c) The Owner shall not supply any materials or do any work on the Site before Practical Completion, unless the Builder agrees in writing. If the Builder agrees in writing, and these materials or work need to be incorporated with the Builder's work, the owner shall supply the materials free of defects, or do the work, when required and, in any case, within FIVE (5) working days of the Builder's request. If the owner does not comply, the Builder may supply the materials or do the work, in accordance with Clause 12 (b) or (d). Materials and goods supplied by the Owner (or work done by the Owner) shall remain the responsibility of the Owner as to their suitability for their intended use.

22. CONSEQUENCES OF NON-FULFILMENT OF CONDITIONS

- (a) If any condition set out in Clause 2 (a) is not fulfilled solely because the Builder has failed to comply with the Builder's obligations under Clause 2 (c), this Contract is not affected but remains in force on the same terms and conditions except as otherwise agreed between the parties.
- (b) If any condition set out in Clause 2 (a) is not fulfilled solely because the Owner has failed to comply with the Owner's obligations under Clause 2 (d) this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates this Contract in accordance with Clause 16 or 17 as the case may be, but subject to the provisions of Clause 22 (d).

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- (c) If any condition set out in Clause 2 (a) is not fulfilled and both the Owner and the Builder have, or neither the Owner nor the Builder has, failed to comply with their respective obligations under Clause 2 (c) and (d), this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates the contract in accordance with Clause 16 or 17 as the case may be, but subject to the provisions of Clause 22 (d).
- (d) Where Clause 22 (b) or (c) or Clause 6 (b) applies —
 - (i) the Builder may by notice in writing to the Owner —
 - (A) increase the Contract Price by an amount set out in the notice; and
 - (B) specify when any increased amount is payable, which must be either —
 - (1) not later than TEN (10) working days after the notice is given; or
 - (2) at the time of the next progress payment;
 - (ii) if the amount of an increase exceeds FIVE (5)% of the Contract Price, the Owner may terminate this Contract in accordance with Clause 17 within TEN (10) working days after receipt of notice under paragraph (i) of this sub-clause; and
 - (iii) if the Owner so terminates this Contract, the Owner is liable to compensate the Builder for the reasonable costs inclusive of supervision, overhead and margin incurred by the Builder up to the date of termination.
- (e)
 - (i) If the Owner considers that the amount of a price increase notified under Clause 22 (d) (i) is excessive or unjustified the Owner may apply to the Disputes Committee, within TEN (10) working days after receipt of a notice under that Clause, for a review of that amount;
 - (ii) On a review under this sub-clause the Builder is required to show that the price has been increased to reflect actual increases in costs inclusive of supervision, overhead and margin between the date of this Contract and the date of the notice under Clause 22 (d) (i);
 - (iii) On a review under this sub-clause the Disputes Committee may confirm, vary or disallow the amount of the price increase, and this Contract shall have effect in accordance with the Disputes Committee's decision.

23. ASSIGNMENT

- (a) Each of the parties to the Contract hereby specifically agree not to assign their interest in this Contract without the prior written consent of the other.
- (b) The Builder may at the option of the Builder sub-contract the whole or any portion of the Works but any such sub-contracting shall not relieve the Builder from any of his or her responsibilities or obligations as set forth herein.

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24. SEVERABILITY

- (a) If in consequence of an item in the Schedule not being completed any clause contained herein is held by a Court to be uncertain and thus void, that clause shall be deemed to have been severed from this Contract and shall not invalidate the Contract.
- (b) To the extent that any one or more of the provisions contained in this Contract is prohibited by or is void pursuant to any applicable law, that provision or each of them shall to that extent be ineffective without invalidating or modifying the remaining provisions of this Contract which shall continue in full force and effect as if each provision so prohibited had not been included in this Contract as from its commencement.

25. EXTENT OF BUILDERS LIABILITY

- (a) Notwithstanding anything herein contained to the contrary the Builder shall not be liable to the Owner in respect of any matter for which the Builder provides an indemnity under Clause 13 (a) in an amount exceeding the Contract Price.
- (b) In any event the Builder shall not be liable to the Owner in any way whatsoever for any claim or proceedings in respect of injury, loss, theft or damage to such of the Owner's fittings, finishes, fixtures or any other item, matter or thing which the builder does not supply as part of the Contract Documents.

26. INTERPRETATION

In this Contract words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting persons shall include corporate bodies. A reference to "Owner" or "Builder" includes each of their respective heirs, successors and assigns. "Working days" means Monday to Friday but excluding any day that is a public holiday in the area of the Site or throughout the State of Western Australia. "Registrar" means the registrar appointed under the *Builders' Registration Act 1939*. "Disputes Committee" means the Building Disputes Committee established by section 26 of the *Builders' Registration Act 1939*. Headings in this Contract are deemed not to be part hereof and are not to be used in the interpretation or construction hereof. A reference to statutes or regulations includes any statutory re-enactment or amendment.

27. APPOINTMENT AND AUTHORITY OF OWNER'S AGENT

The Owner (and where there are more than one then each of them) hereby appoints the person or persons named as the Owner's Agent in Item 2 of the Schedule as the authorized agent of the owner to make and sign all variations to the Contract Documents and the Works and the Owner shall be bound by all such variations. If more than one person is named as the Owner's Agent then each of them shall be an individually authorized agent unless the contrary intention is indicated in Item 2 of the Schedule.

28. SPECIAL CONDITIONS

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SCHEDULE OF PARTICULARS

Item No.	Details	Item No.	Details																								
1.	Builder/s Address Builders Registration No. Facsimile No.	9.	(a) Time to commence Works (Clause 9 (a)) working days (b) Time to complete Works (Clause 9 (b)) working days from the date on which work commenced or should have commenced under Clause 9 (a).																								
2.	<table border="0" style="width:100%"> <tr> <td>Owner</td> <td>Owner</td> </tr> <tr> <td>Facsimile No.</td> <td>Facsimile No.</td> </tr> <tr> <td>Address</td> <td>Address</td> </tr> <tr> <td>Owner's Agent (Clause 27)</td> <td></td> </tr> </table>	Owner	Owner	Facsimile No.	Facsimile No.	Address	Address	Owner's Agent (Clause 27)		10.	(a) Provisional Sums (Clause 11) — refer to Addenda to Specifications for details (b) Prime Cost Items (Clause 11) — refer to Addenda to Specifications for details																
Owner	Owner																										
Facsimile No.	Facsimile No.																										
Address	Address																										
Owner's Agent (Clause 27)																											
3.	Works (Clause 1 (a)) Site: Postal Address Title Particulars: Portion of Location and being Lot on Plan/Diagram and being the whole of the land comprised in Certificate of Title Volume Folio	11.	Additional percentage allowed (Clauses 11, 12) %																								
4.	Amount of finance required (Clause 1 (c)) \$ Period for approval working days. Lender	12.	Defects Liability Period (Clause 14) (not less than 120 days from the date of Practical Completion)																								
5.	Encumbrances on the Site (Clause 3 (a) (ii))	13.	Amount of Premium for Home Indemnity Insurance (included in Contract Price) \$																								
6.	Contract Price (Clause 6) \$	14.	* Receipt of Notice for Home Owner. I/We hereby acknowledge receipt of the "Notice for the Home owner" referred to in Section 4 (2) of the <i>Home Building Contracts Act 1991</i> on the day of 19..... <u>PRIOR</u> to signing this Contract. Signed by the Owner Signed by the Owner * Proof of Receipt of Documents. I/We acknowledge receipt of a copy of the signed Contract Documents referred to in Clause 1 (a) of the Contract on the day of 19..... Signed by the Owner Signed by the Owner																								
7.	Deposit (not to exceed 6.5% of Contract Price) (Clause 7 (a)) \$ Progress Payments as follows (Clause 7 (b)): 'A' 'B' <table border="0" style="width:100%"> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>.....</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> <tr> <td>Total</td> <td style="text-align:right">\$</td> <td>.....</td> </tr> </table>	\$	\$	\$	\$	\$	\$	\$	Total	\$	15.	Signing of Contract. This Contract is dated the day of 19 .. Signed by the Owner Witness Signed by the Owner Witness Signed for and on behalf of the Builder Witness
.....	\$																									
.....	\$																									
.....	\$																									
.....	\$																									
.....	\$																									
.....	\$																									
.....	\$																									
Total	\$																									
8.	Interest on late payment (Clause 7 (b)(iv)) %																										

*Home Building Contracts Amendment Regulations 1997***SCHEDULE 3**

[Regulation 4]



HOUSING INDUSTRY ASSOCIATION LIMITED
ACN 004 631752



**LUMP SUM BUILDING CONTRACT
FOR MINOR WORKS**

- To be used for contracts —
- (a) For all kinds of home building work;
 - (b) in respect of which all licences and requirements referred to in Section 9 (1) of the Act have been obtained or satisfied;
 - (c) in which the contract price does not exceed \$30 000.

IMPORTANT NOTICE

Persons intending to use this form of contract should carefully read and examine the document before signing it to ensure that it contains all of the terms, conditions and provisions of their agreement. If any person is unsure as to the nature of the document or its terms, conditions or provisions then they should seek legal advice from a Solicitor before signing it.

The Contractor named in the Schedule hereto ("the Contractor") HEREBY AGREES with the Owner named in the Schedule ("the Owner") as follows:

1. AGREEMENT TO BUILD

- (a) The Contractor agrees to build and complete for the Owner the building work described in the Schedule ("the Works") upon the land and existing improvements described in the Schedule ("the Site") in a proper and workmanlike manner and in accordance with this Contract and all the Drawings and Specifications, inclusive of all attached Addenda to Specifications agreed between the parties and, for the purpose of identification, signed by each of them (the "Contract Documents") and all lawful directives and approvals of relevant Statutory Authorities, for the Contract Price, terms and conditions herein. The Contract Documents signed by the parties shall constitute the entire Contract between the parties.
- (b) The Contractor shall not perform any of the Works nor make any demand for any payment under this Contract including any deposit until the Contractor has given the Owner a certificate in the approved form that evidences the taking out of a policy of insurance that complies with Part 3A of the *Home Building Contracts Act 1991* in respect of the Works (Home Indemnity Insurance). Except for the Contractor's interest in this Contract and the legal requirement for it to be arranged in respect of the Works, the Contractor receives no benefits in relation to arranging Home Indemnity Insurance. The Contractor further confirms that Home Indemnity Insurance may be arranged with an insurer of the Owner's choice. Item 10 of the Schedule sets out the premium anticipated to be paid by the Contractor for Home Indemnity Insurance. If the Contractor is unable to obtain Home Indemnity Insurance, from an insurer nominated by the Owner on terms and conditions acceptable to the Contractor, the Contractor may terminate this Contract by notice in writing to the Owner and the Owner shall pay to the Contractor all direct costs

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paid or payable by the Contractor for the purpose of obtaining the building licence up to the time of termination. If the Contractor is unable to obtain Home Indemnity Insurance, where no insurer has been nominated by the Owner, on terms and conditions acceptable to the Contractor, then the Contractor may terminate this Contract by notice in writing to the Owner and the Contractor shall be liable for all direct costs paid or payable by the Contractor for the purpose of obtaining the building licence up to the time of termination.

2. OWNER'S WARRANTIES

The Owner warrants that he is entitled to build the Works and all permits and licences that are required for the performance of the Works by any relevant Statutory Authority have been obtained pursuant to all statutes, codes, ordinances, rules, regulations, proclamations or orders of any officer and/or body lawfully empowered to make or issue the same and the Owner agrees to provide a copy of all permits and licences relevant to the Works to the Contractor prior to commencement of the Works. The Owner authorizes the Contractor to apply for and take out Home Indemnity Insurance in respect of the Works.

3. THE CONTRACT PRICE

The Price for the Works shall be the amount set out in the Schedule which shall be subject to the adjustments herein provided for. The price so adjusted shall hereinafter be called the "Contract Price".

4. DEPOSIT & PROGRESS PAYMENTS

- (a) Provided that the requirements of Part 3A of the *Home Building Contracts Act 1991* have been complied with as necessary, the Owner shall pay to the Contractor the Deposit as indicated in the Schedule upon signing this Contract and the balance of the Contract Price as detailed in the Schedule at the stages set out in the Schedule.
- (b) If for any reason any progress payment or the final payment is not made within SEVEN (7) days of being payable the Contractor shall be entitled to charge interest thereon at the percentage rate per annum set forth in the Schedule as and from the date upon which the payment fell due until the date upon which the payment is made and the Contractor may in addition to any other remedy which he may have against the Owner suspend the Works pending payment.

5. SECURITY

- (a) The Owner charges the Site in favour of the Contractor to the value of any unpaid amounts due under this Contract and irrevocably authorizes and consents to the Contractor lodging an absolute caveat in respect of the Contractor's interest herein.
- (b) Title in any goods delivered to the Site under the Contractor's obligations pursuant to this Contract shall not pass to the Owner until the progress payment which incorporates such goods in the stage of completion referred to in the Schedule has been paid by the Owner. Upon receipt of such payment by the Contractor, title in such goods shall be deemed to have transferred to the Owner.

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- (c) Notwithstanding provisions to the contrary where the progress payment under the Schedule calls for a payment prior to the delivery to the Site of materials in a prefabricated form, receipt of such payment by the Contractor constitutes a transfer of title to the Owner for such materials and the Contractor shall ensure that such are clearly identifiable.

6. TIME FOR PERFORMANCE

- (a) Subject to this Contract the Contractor shall commence the Works within the number of working days specified in Item 7 (a) of the Schedule or as soon as thereafter as may be reasonably practicable, and shall proceed therewith with reasonable dispatch and diligence and complete the Works within the time specified in Item 7 (b) of the Schedule.
- (b) Notwithstanding provisions contained in this Contract the Contractor shall not be responsible for any delays in the Works caused by any matter or thing over which the Contractor shall have no control. The Contractor shall be entitled to an extension of the time for completion in accordance with Clause 9 (b).

7. ACCESS TO THE SITE

Forthwith upon the execution hereof and until completion the Contractor shall be entitled to reasonable access to the Site for the purpose of performance of the Works and all obligations imposed by the terms of this Contract.

8. PROVISIONAL SUMS AND PRIME COST ITEMS

- (a) Where Provisional Sums or Prime Cost Items are included in the Contract Price, the Owner shall, within FIVE (5) working days of receiving a request from the Contractor, supply to the Contractor in writing, all necessary directions and selections regarding the work and/or goods comprised in any Provisional Sums and Prime Cost Items.
- (b) Provisional Sums stated in Item 9 (a) of the Schedule or detailed in the Contract Documents include:
 - (i) the total cost to the Contractor for material, sub-contractor charges, delivery to the Site and installation; and
 - (ii) an additional amount calculated as the percentage set out in Item 8 of the Schedule of the cost in Clause 8 (b) (i) for the Contractor's supervision, overhead and profit.
- (c) The Prime Cost Item amounts stated in Item 9 (b) of the Schedule or detailed in the Contract Documents, exclude the costs of delivery to the Site, the cost of installation, fixing, supervision, overhead and profit which are included in the Contract Price.
- (d) Upon completion of the work the subject of a Provisional Sum or on installation of an item the subject of a Prime Cost Item, or at the next progress payment notice, the Contractor shall provide the Owner with an itemised statement stating the cost for the work on the items, calculated in accordance with the provision of Clauses 8 (b) and (c) hereof, and the Contract Price shall be adjusted accordingly and paid in accordance with Clause 4.

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9. VARIATIONS

- (a) If the Owner wishes to make any variation to the Works and/or the Contract Documents, then:
- (i) the Owner or the Owner's agent shall give the Contractor a request for such variation;
 - (ii) the Contractor may decline to agree to the variation requested but in the event that the Contractor is prepared to agree to the variation,
 - (iii) the Contractor shall prepare and give to the Owner or the Owner's agent a Variation Document setting out the terms of, and the cost to be incurred on account of the variation;
 - (iv) once the Variation Document has been signed by the Owner or the Owner's agent and the Contractor and dated (the date of the Variation Document being the date on which the last signatory signed the document) the variation shall be carried out as if it were part of the Works under the Contract and the express conditions of all of the Contract Documents are deemed to be varied accordingly; and
 - (v) the Contractor shall give a copy of the Variation Document signed by the Contractor to the Owner or the Owner's agent as soon as reasonably practical and before the work to which the variation relates has commenced.
- (b) The Contractor shall be entitled to a variation in respect to time to complete and cost for circumstances that could not reasonably have been foreseen by the Contractor at the time when this Contract was entered into or additional work ordered by any written direction lawfully given by a building surveyor or other person acting under a written law.
- (i) The Contractor shall provide a statement setting out the reasons for and the cost to be incurred on account of the variation and a copy of any such direction to the Owner or their agent within FOURTEEN (14) days of the Contractor becoming aware or reasonably should have become aware of such circumstances or receiving such written direction.
 - (ii) The Contractor shall not be able to make any variation for an increase in the costs of labour (including related overhead expenses) or materials or both, to be incurred by the Contractor in performing the Works as detailed in the original Contract Documents.
 - (iii) Where the Owner has been given a statement under this Clause and does not consider that the variation is one to which Clause 9 (b) applies, the Owner can apply for relief to the Building Disputes Committee in accordance with Section 17 of the *Home Building Contracts Act 1991* within FOURTEEN (14) days after the statement was given to the Owner.
- (c) If further costs are actually imposed on or incurred by the Contractor as a direct consequence of a written law of the State of Western Australia or the Commonwealth of Australia or on account of an increase in any tax, duty or other charge imposed under any such law after the date of this Contract then the Contractor shall be entitled to

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increase the price to reflect such further costs. The Contractor shall notify the Owner of such costs and specify to the Owner when such costs are payable.

10. INSURANCE AND RISK

- (a) The Works and materials delivered to the Site under this Contract shall be at the risk of the Owner at all times except as provided for hereunder or detailed as a special condition to this Contract.
- (b) In addition to any insurance cover which the Contractor is obliged to obtain for the Works under Part 3A of the *Home Building Contracts Act 1991*, the Contractor shall insure against any liability loss or damage claim demand and proceedings whatsoever 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 Owner or any person for whom the Owner may be responsible.
 - (ii) any injury or damage whatsoever to any property real or personal 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 or her employees, agents or sub-contractors.
 - (iii) any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the person or his or her 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 Owner or its agents.

11. DEFECTS LIABILITY PERIOD

- (a) The Contractor is liable to make good at the cost of the Contractor defects in the Works where the Contractor has failed:
 - (i) to perform the Works in a proper and workmanlike manner and in accordance with this Contract; or
 - (ii) to supply materials of a merchantable quality and reasonably fit for the purpose for which the Owner required the Works to be performed;
- (b) The Contractor is to be notified of such defects by the Owner within a period of ONE HUNDRED AND TWENTY (120) days commencing from the date of Practical Completion as defined hereunder.
- (c) The Contractor shall not be liable to remedy any damage or rectify any defects to the Works arising from any work carried out on the Site by the Owner or the Owner's servants and agents at any time.

12. REASONS FOR EARLY TERMINATION

- (a) The Contractor may terminate this Contract in accordance with Clause 13 in any one of the following events: —
 - (i) Substantial damage to or interference with the Works or access thereto or delays in construction by any

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cause beyond the control of the Contractor or non payment of the progress payments as they become due or any substantial breach of the Contract by the Owner.

- (ii) If the Owner shall make any assignment for the benefit of or enter into any arrangement or composition with his or her creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a Receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Owner's estate.
- (b) The Owner may terminate this Contract in accordance with Clause 13 in any of the following events: —
 - (i) Any substantial breach of this Contract by the Contractor.
 - (ii) If the Contractor shall make an assignment for the benefit of or enter into any composition with his or her creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or commit an act of bankruptcy or have a Receiver appointed or if a sequestration order is made against the Contractor's estate.
 - (iii) If the Contractor shall without reasonable cause wholly suspend the Works before completion.

13. EARLY TERMINATION OF CONTRACT

- (a) Except as provided in Clause 13 (c) neither party shall be at liberty to terminate this Contract or exercise or enforce any other right or remedy in relation hereto whether pursuant to this Contract or at law or in equity without first giving to the other party a notice in writing specifying the matter complained of and requesting that other party to remedy it within FOURTEEN (14) days of the service of such notice. If such notice is given and the other party fails within such period to remedy the matter complained of then the party giving such notice may terminate this Contract forthwith.
- (b) On such termination, subject to any agreement to the contrary or to any determination made pursuant to Clause 14, if the Contractor has commenced the Works then the Contractor shall be entitled to be paid for all work done and materials used or procured by the Contractor and properly chargeable to that date plus that percentage of all such costs as set forth in the Schedule but proper allowances shall be made for all payments on account of the Contract Price already made by the Owner to the Contractor. The Contractor may claim interest at the rate specified in the Schedule on the outstanding balance of monies found to be due and payable from and after the expiration of SEVEN (7) days from the date of such termination of contract until payment of the balance of monies is received by the Contractor.
- (c) The provisions of Clauses 13 (a) and (b) do not apply to termination of this Contract pursuant to the provisions of Sections 4 (5), 10 (3) or 14 (3) of the *Home Building Contracts Act 1991*. In such cases this Contract may be terminated in accordance with the provisions of Section 19 of that Act and the Owner or the Contractor may apply to

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the Building Disputes Committee for repayment of any consideration given by the Owner or for payment to the Contractor in respect of monies due under this Contract

14. DISPUTES

- (a) In any dispute between the Owner and the Contractor at any time relating to this Contract then subject to the rights of either party to apply to the Registrar or the Building Disputes Committee (or their successors) or any other relevant Statutory Authority, either party shall give to the other notice of such dispute, disagreement or difference and at the expiration of FIVE (5) working days thereafter and in the absence of any settlement the same shall be referred to:
- (i) a single mediator appointed by mutual consent; or
 - (ii) a single arbitrator appointed by mutual consent; or
 - (iii) in the event that neither (i) nor (ii) are satisfied within FIVE (5) working days, or mediation is not successful, a single arbitrator shall be appointed by the President or the President's nominee of the Housing Industry Association (Western Australian Region) provided that such arbitrator shall be a graded Arbitrator approved by the Institute of Arbitrators Western Australian Chapter.
- (b) The conduct of the Arbitrator shall be in accordance with and subject to the provisions of the *Commercial Arbitration Act 1985* and the decision of the single arbitrator appointed shall be final. The rights and obligations of the parties under this Contract shall be modified only to the extent made necessary by such arbitration.
- (c) The Contract and the parties' rights and obligations under this Contract shall in all respects be governed by the laws of the State of Western Australia and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Courts of the said State.

15. PRACTICAL COMPLETION

- (a) Practical Completion of the Works shall be deemed to have occurred when the Works are complete except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose.
- (b) The final payment shall be due within FIVE (5) working days from the date of Practical Completion and upon payment thereof the Owner shall acknowledge that the Works have been completed by the Contractor in accordance with this Contract and the Contractor shall thereupon be relieved and discharged from all responsibilities under this Contract other than the Contractor's obligations pursuant to Clause 11.

16. NOTICES

Any notice given to any party pursuant to the terms of this Contract shall be properly given if addressed to the party and served personally upon him or her or forwarded to him or her by prepaid letter or facsimile addressed to such party at the address given herein or such other address as may be notified in writing

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by such party to the other. Any notice so posted shall be deemed to have been served unless contrary is shown at the time when by the ordinary course of post the notice would be delivered.

17. SUPPLY OF MATERIALS AND UNFIXED MATERIALS ON SITE

- (a) If the Contractor is unable to obtain any materials or items selected by the Owner after the date of the Contract as and when the Contractor shall require them the Owner shall forthwith, upon request from the Contractor, select alternative available materials or insist on the original materials provided they are available within TEN (10) working days of being required on Site by the Contractor. In either case, any delay and/or additional costs (including freight and transport insurance) in obtaining the same shall be dealt with in accordance with Clause 9 (a).
- (b) Unless otherwise specified in the Contract Documents, all materials resulting from demolition and/or surplus materials supplied by the Contractor in the course of carrying out of the Works, belong to the Contractor who shall remove them from the Site before Practical Completion.
- (c) The Owner shall not supply any materials or do any work on the Site before Practical Completion, unless the Contractor agrees in writing. If the Contractor agrees in writing, and these materials or work need to be incorporated with the Contractor's work, the Owner shall supply the materials free of defects, or do the work, when required and, in any case, within FIVE (5) working days of the Contractor's request. If the owner does not comply, the Contractor may supply the materials or do the work, in accordance with Clause 9 (a). Materials and goods supplied by the Owner (or work done by the Owner) shall remain the responsibility of the Owner as to their suitability for their intended use.

18. ASSIGNMENT

- (a) Each of the parties to the Contract hereby specifically agrees not to assign their interest in this Contract without the prior written consent of the other.
- (b) The Contractor may at his or her option sub-contract the whole or any portion of the Works but any such sub-contracting shall not relieve the Contractor from any of the Contractor's responsibilities or obligations as set forth herein.

19. INTERPRETATION

In this Contract words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting persons shall include corporate bodies. A reference to "Owner" or "Contractor" includes each of their respective heirs, successors and assigns.

20. SPECIAL CONDITIONS

.....
.....
.....

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SCHEDULE OF PARTICULARS

Item No.	Details	Item No.	Details
1.	Contractor/s Name Facsimile No. Address Builders Registration No. (if applicable)	9.	(a) Provisional Sums (b) Prime Cost Items
2.	Owner/s Name Name Facsimile Facsimile Address Address	10.	Amount of Premium for Home Indemnity Insurance (included in the Contract Price) \$.....
3.	Works	11.	Signed by the Owner/s who also hereby acknowledge: 1. The "Notice for the Home Owner" referred to in Section 4 (2) of the <i>Home Building Contracts Act 1991</i> was received PRIOR to signing this contract; and 2. A signed copy of this Contract and the other Contract Documents referred to in Clause 1 were received. Owner. Date Witness Owner. Date Witness
4.	Site: Postal Address		Signed for and on behalf of the Contractor: Contractor Date Witness
5.	Deposit (not to exceed 6.5% of Contract Price) \$ Progress Payments as follows: Stage Value Contract Price		
6.	Interest on late payment %		
7.	(a) Time to commence works working days (b) Time to complete works working days from the date on which work commenced or should have commenced under Clause 6 (a).		
8.	Additional percentage allowed %		

*Home Building Contracts Amendment Regulations 1997***Schedule 4 amended**

4. Schedule 4 to the principal regulations is amended —
- (a) on the cover page of the contract —
 - (i) by deleting “HBW 2.” and substituting the following —
“ H.B.W. 3 ”;
 - (ii) by deleting “EDITION 2.” and substituting the following —
“ EDITION 3. ”; and
 - (iii) by deleting “Approved January 1994
Printed 1/94” and substituting the following —
“ February 1997 ”;
 - (b) on the page of the contract headed “Important Notice” by deleting “Edition 2” and substituting the following —
“ Edition 3 ”;
 - (c) in the document headed “SECTION 6, RECEIPT OF DOCUMENTS” —
 - (i) by deleting “with Section 6” and substituting the following —
“ with Sections 6 and 25C (2) ”;
 - (ii) by inserting after item 2 the following item —
“
3. A certificate providing evidence of a policy of Home Indemnity Insurance obtained by the Builder in relation to the Works complying with Section 25D of the Act.
”;
 - (d) in the Index to the Building Contract, in clause 3 by deleting “drawings” and substituting the following —
“ Drawings ”;
 - (e) in the Particulars of Contract, in item (iii) (b) by deleting “Contracts Act — 1991” and substituting the following —
“ Contracts Act 1991 ”;
 - (f) in Appendix 1, in items (6) and (7) by deleting “non provided” and substituting the following —
“ none provided ”;
 - (g) in the General Conditions of Contract —
 - (i) in clause 10 (a) (i) by inserting after “Government” the following —
“ (*Miscellaneous Provisions*) ”;

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- (ii) in clause 10 (a) (iii) and (iv) by inserting after “Act” the following —

“
(as defined in Section 9 (6) of the *Home Building Contracts Act 1991*)
”;

- (iii) in clause 12 (a) by deleting “lending authority” and substituting the following —

“ Lending Authority ”;

- (iv) in clause 13 by inserting after paragraph (b) the following —

“ and ”;

- (v) in clause 16 (c) (ii) by deleting “agents.” and substituting the following —

“ agents; ”;

- (vi) by inserting after clause 16 (g) the following paragraphs —

“
(h) The value of all omissions from the Works less the allowance specified in Item 1 of Appendix 1 shall be deducted from the Contract Sum.

- (i) The value of all extra work shall be —

- (i) added to the Contract Sum; and
(ii) added to the next progress payment due after the execution of that work.

- (j) Where practicable the following shall apply in calculating the price for extra work —

- (i) the rates of labour shall be those set out in Item 3 of Appendix 1; and
(ii) the price for materials used in the work shall be the actual cost to the Builder plus the percentage stated in Item 1 of Appendix 1.

The Builder shall not be entitled to any discount other than a discount for prompt payment.

- (k) Notwithstanding the previous provisions the Builder shall not be entitled to payment for any variations which are due to the default of the Builder.

”;

- (vii) by inserting after clause 18 (g) the following —

“
(h) Home Indemnity Insurance

Where the total amount payable under the Contract exceeds \$10,000 the Builder shall obtain a policy of Home Indemnity Insurance with respect to the Works that complies with Section 25D of the *Home Building Contracts Act 1991*.

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A certificate that evidences the taking out of such a policy shall be furnished to the Owner by the Builder prior to a demand for any payment under the Contract and before any Works are commenced.

”;

- (viii) in clause 21 (c) by inserting after “Act” the following —
“ 1991 ”;
- (ix) in clause 22 (c) by deleting “Act” and substituting the following —
“ *Home Building Contracts Act 1991* ”;
- (x) in clause 24 (a) —
(I) by deleting “drawings or the specification” and substituting the following —
“ Drawings and Specification ”; and
(II) by deleting “drawings or specification” and substituting the following —
“ Drawings and Specification ”;
- (xi) in clause 25 (b) (ii) by deleting “Variations” and substituting the following —
“ variations ”;
- (xii) in clause 25 (d) by deleting “drawings and specification” and substituting the following —
“ Drawings and Specification ”;
- (xiii) in clause 25 (g) (iii) (A) by deleting “Contract price” and substituting the following —
“ Contract Sum ”;
- (xiv) in clause 31 (b) by deleting “difference” and substituting the following —
“ difference. ”;
- (xv) by deleting clause 31 (c) (i) and substituting the following subparagraph —
“ (i) By reference, in writing, to the Disputes Committee, or, ”;
- (xvi) in clause 32 (a) by deleting “Condition” and substituting the following —
“ Clause ”;
- (xvii) in clause 33 by deleting the paragraph designation “(a)”;
(xviii) in clause 35 (a) by inserting after the definition of “The Builder” and “The Owner” the following definition —
“
“Disputes Committee” means the Building Disputes Committee established by section 26 of the *Builders’ Registration Act 1939*.
”;

”;

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- (xix) in the provisions referred to in the Table to this paragraph by deleting “drawings and specifications” and substituting the following —

“ Drawings and Specification ”

Table

Clause 3 (b) (twice) and (c)
Clause 16 (d);

- (xx) in the provisions referred to in the Table to this paragraph by deleting “contract” and substituting the following —

“ Contract ”

Table

Clause 10 (d)
Clause 16 (a), (d) and (d) (ii)
Clause 22 (d)
Clause 23 (a)
Clause 25 (g) (ii) and (iii)
Clause 35 (Definition of “Defect”, twice);

- (xxi) in the provisions referred to in the Table to this paragraph by deleting “builder” and substituting the following —

“ Builder ”

Table

Clause 11 (a)
Clause 16 (d) (ii)
Clause 19 (a) (vii)
Clause 20
Clause 35 (Definition of “Defect”);

- (xxii) in the provisions referred to in the Table to this paragraph by deleting “contract sum” or “Contract sum” and substituting the following —

“ Contract Sum ”

Table

Clause 15 (b)
Clause 23 (d)
Clause 25 (g)
Clause 27 (a); and

- (xxiii) in the provisions referred to in the Table to this paragraph by deleting “this contract” or “this Contract” and substituting the following —

“ the Contract ”

Table

Clause 20 (twice)
Clause 22 (e) (ii)
Clause 24 (b)
Clause 25 (b) (ii)
Clause 35 (b);

and

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- (h) in the places referred to in the Table to this paragraph by deleting “works” and substituting the following —

“ Works ”

Table

Appendix III (twice)
 General Conditions of Contract —
 Clause 12 (a) and (b)
 Clause 15 (a)
 Clause 19
 Clause 20 (twice)
 Clause 22 (a) (v)
 Clause 27 (a)
 Clause 33.

Schedule 5 amended

5. Schedule 5 to the principal regulations is amended —

- (a) by deleting “January 1994” and substituting the following —

“ FEBRUARY 1997 ”;

- (b) by inserting after the heading “(For Contracts with Homeowners over \$6,000 value) the following heading —

“ HOME BUILDING CONTRACTS ACT 1991 ”;

- (c) by deleting condition 1 and substituting the following —

“
1. INSURANCE

The Contractor will provide all statutory insurance to complete the described works including Home Indemnity Insurance, if required, where the contract price exceeds \$10,000. A policy for Home Indemnity Insurance shall comply with Section 25D of the Act and be evidenced by a certificate furnished pursuant to Section 25C of the Act.

”;

- (d) by deleting condition 3 and substituting the following —

“
3. VARIATIONS

In the event of any agreement being reached which varies the contract, details of such agreement, the date of the variation and particulars regarding payment shall be set out in writing and signed by both parties. A copy of the signed variation shall be given to the Homeowner/s as soon as it is reasonably practicable and BEFORE the work to which the variation relates is commenced. Should the cost of any variation to the contract result in the contract sum exceeding \$10,000, then Home Indemnity Insurance may be required as in condition 1 above and must be taken into account.

”;

and

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- (e) in condition 6 (c) by deleting “omissions of” and substituting the following —

“ omissions or ”.

By Command of the Governor,

J. PRITCHARD, Clerk of the Executive Council.

