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**HOME BUILDING CONTRACTS ACT 1991**

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**HOME BUILDING CONTRACTS  
AMENDMENT REGULATIONS 1994**



HOME BUILDING CONTRACTS ACT 1991

HOME BUILDING CONTRACTS AMENDMENT REGULATIONS 1994

Made by His Excellency the Governor in Executive Council.

**Citation**

1. These regulations may be cited as the *Home Building Contracts Amendment Regulations 1994*.

**Principal regulations**

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

[\* *Published in Gazette of 3 April 1993 at pp. 1465-8.*  
*For amendments to 8 February 1994 see 1992 Index to Legislation of Western Australia, Table 4, p. 133.*]

**Regulation 4 inserted**

3. After regulation 3 of the principal regulations the following regulation is inserted —

“

**Forms of contract prescribed**

4. (1) The forms of contract referred to in this regulation are, subject to this regulation, prescribed for the purposes of section 15 (5) of the Act, that is when used in accordance with this regulation they are to be taken to comply with all of the requirements of the Act.

(2) The form of contract set out in Schedule 2, prepared by the Housing Industry Association Limited, is prescribed for use for contracts for all kinds of home building work, but this subregulation does not affect copyright in that form of contract.

(3) The form of contract set out in Schedule 3, prepared by the Housing Industry Association Limited, is prescribed for use 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; and
- (c) in which the contract price does not exceed \$30 000,

but this subregulation does not affect copyright in that form of contract.

(4) The form of contract set out in Schedule 4, prepared by the Master Builders' Association of Western Australia (Union of Employers) Perth, is prescribed for use for contracts for all kinds of home building work, but this subregulation does not affect copyright in that form of contract.

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(5) The form of contract set out in Schedule 5, prepared by the Master Builders' Association of Western Australia (Union of Employers) Perth, is prescribed for use for contracts —

- (a) where the only work to be performed under the contract —
  - (i) is the construction or carrying out of "associated work" within the meaning in the Act; or
  - (ii) is home building work that is prescribed for the purposes of section 9 (5) of the Act;
- (b) in respect of which all licences and requirements referred to in section 9 (1) of the Act have been obtained or satisfied; and
- (c) in which the contract price does not exceed \$15 000,

but this subregulation does not affect copyright in that form of contract.

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**Schedules 2,3,4 and 5 inserted**

**4.** After Schedule 1 to the principal regulations the following Schedules are inserted —



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 execute 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, plans and specifications (inclusive of all addenda and colour schedules) agreed between the parties and annexed hereto and for the purpose of identification signed by each of them (which said drawings plans and specifications and colour schedules are hereinafter collectively referred to as the "Construction Documents") for the price and otherwise upon the terms and conditions herein appearing.
- (b) Where the Owner requires a lending institution to provide finance for the Works, the Owner shall use his best endeavours to obtain the finance more particularly defined in Item 4 of the Schedule. If the Owner is unable to obtain such finance within the period mentioned in Item 4 of the Schedule, then this Contract shall, unless the parties otherwise agree, be terminated.
- (c) Where a lending institution provides finance for the Works, the standard specifications (if any) as submitted to such lending institution by the Builder prior to commencement of the Works shall form part of the Construction Documents.

### 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 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;
  - (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 Authority 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 21.

### 3. OWNER'S WARRANTIES

- (a) The Owner warrants that:
  - (i) He is entitled to build upon 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.

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- (iv) Pegging of the Site adequately delineates the Site boundaries.
  - (v) The Site will support the Works.
  - (b) If the physical delineation of the Site is not precise or if the Builder has any reasonable doubt as to the accuracy or true position of the boundaries of the Site and considers that it is necessary to engage a qualified surveyor to survey and adequately peg or delineate the Site and the position of the Works thereon then this shall be dealt with in accordance with Clause 11(b) or (d) as the case may be.
  - (c) 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 forthwith by notice in writing given to the Owner within a further TEN (10) days unless such satisfaction is dependent on any of the Conditions stated in Clause 1(b) or 26.
  - (d) If, at any time, the Builder using reasonable skill and diligence becomes aware (based upon reasonable grounds) that the Site will not or may not support the Works the Builder shall give immediate notice in writing thereof to the Owner in which event either party may by notice in writing terminate this Contract provided that if the Builder has commenced the Works then the Builder shall also be entitled to be paid a reasonable sum for all work carried out and materials purchased by him and supplied to the Site up to the date of such termination. If the Owner shall dispute the Builder's opinion and/or the grounds thereof such dispute shall be determined in accordance with Clause 17.
  - (e) 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 (other than that specified in the Construction Documents) or other such unforeseen requirements shall be dealt with in accordance with Clause 11(b) or (d) as the case may be.
  - (f) Unless the Builder has prepared or caused to be prepared the Construction Documents the Owner warrants that 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.
  - (g)
    - (i) Where there is a difference or inconsistency between the Construction Documents and the terms of this Contract the latter shall prevail;
    - (ii) Any difference or inconsistency between scaled dimensions and figures in the Construction Documents shall be resolved by using and applying figures.
  - (h) Subject to sub-clause (f) hereof and where the Construction Documents have not been prepared or caused to be prepared by the Builder, any discrepancy or error in the Construction Documents shall be dealt with in accordance with Clause 11(b) or (d) as the case may be.
- 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 by-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 his agents
  - (c) If a variation of the Construction Documents or Works is necessary to enable the Builder to comply with Clause 4(a) & (b) it shall be dealt with in accordance with Clause 11(b) or (d) as the case may be.
- 5. THE 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 herein provided for. 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(c); 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 21 (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 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.
- 6. DEPOSIT & PROGRESS PAYMENTS**
- The Owner shall pay to the Builder the Contract Price in the following manner:
- (a) 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.
    - (ii) Where finance for the Works is being provided by a lending institution the Owner shall pay to the Builder the Contract Price by progress payments in accordance with the normal practice of or at the rate usually applied by the lending institution to and for this purpose shall forthwith upon the execution hereof authorise and direct such lending institution to make such payments and to notify the Builder of such practise and/or rate and of the stages at which inspections shall be required by the lending institution.

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- (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 17.
- (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.

### **7. 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 authorises and consents to the Builder lodging an absolute caveat in respect of the Site to protect the Builder's interests herein.

### **8. TIME FOR PERFORMANCE**

- (a) Subject to this Contract the Builder shall commence the Works by the time specified in Item 9 of the Schedule or as soon thereafter as may be reasonably practicable and shall proceed therewith with reasonable despatch and diligence and complete the Works within the time specified in Item 9 of the Schedule.

#### **PROVIDED THAT:**

- (i) The Owner shall have complied with the conditions referred to in Clause 2,
  - (ii) The Owner shall have complied with any notice given by the Builder pursuant to Clause 3(c) hereof,
  - (iii) The Builder is satisfied that the boundaries of the Site have been adequately delineated,
  - (iv) Provision has been made for adequate water supply to the Site, and
  - (v) The Builder has received approval to the Construction Documents from all relevant authorities.
- (b) Notwithstanding provisions to the contrary contained in this Contract the Builder shall not be responsible for any delays caused by any matter or thing over which the Builder shall have no control including (without limiting the generality thereof):-
    - (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 Construction Documents resulting in 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 14.
    - (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 Building Disputes Committee.
    - (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 11(b) or (d) as the case may be.

### **9. POSSESSION OF THE SITE**

Forthwith upon the execution hereof and until practical completion the Builder shall be entitled to exclusive possession of the Site for the purpose of performance of the Works and the Owner shall do all that is necessary to confer the same upon the Builder PROVIDED THAT the Owner or his duly appointed representative approved by the Builder in writing and any person appointed by the Owner's lending institution for the purpose of supervision of the Works shall have access to the Site and to the Works or any part thereof for the purpose of inspection and viewing the progress of the Works but only during the Builder's normal working hours and in such manner as shall not unreasonably impede or interfere with or prevent the Builder from carrying out the Works. After practical completion the Builder shall be entitled to reasonable access to the Site for the purpose of completing his obligations under Clause 13.

### **10. PROVISIONAL SUMS AND PRIME COST ITEMS**

- (a) The Contract Price includes such estimates of Provisional Sums as set forth in Item 10(a) of the Schedule or detailed in the Construction Documents. The final cost is calculated as the nett costs to the Builder for materials, subcontractor charges, delivery to the site and installation plus an additional amount as a percentage as set out in Item 11 of the Schedule of such nett costs to cover the Builder's overhead and supervision.  
Any variation between the Final cost and Provisional Sum estimate will be charged or credited as appropriate pursuant to Clause 10(c).
- (b) The Contract Price includes those Prime Cost items as are set forth in Item 10(b) of the Schedule or detailed in the Construction Documents. The sums set out exclude the costs of delivery to the Site, the cost of installation, fixing, supervision, overhead and profit which are included in the Agreed Price.  
In the event that the actual price of the Prime Cost item so specified varies to that specified such difference in price shall be charged or credited as appropriate pursuant to Clause 10(c).
- (c) Upon completion of the Work, the subject of a Provisional Sum or on installation of an item being a Prime Cost item or at the next progress payment notice the Builder shall provide the Owner with an itemised statement setting forth the final costs for the work or the items, calculated in accordance with the provisions of Clauses 10(a) and (b) hereof and the Contract Price shall be amended accordingly.
- (d) The Owner shall, within FIVE (5) working days of receiving a request from the Builder in this regard, furnish to

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the Builder in writing, all necessary directions regarding the supply of the works and/or goods comprised in any such items and sums.

### **11. VARIATIONS**

- (a) If the Owner wishes to make any variation to the Works or the Construction Documents or the terms and conditions of this Contract he or his 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 his agent a variation document setting out the terms of, and the cost to be incurred on account of, the variation;
  - (ii) the Owner or his agent shall sign and return the variation document to the Builder;
  - (iii) the Builder or his agent shall sign and insert in the variation document the date that he signs it and forward a signed copy to the Owner or his 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, the Construction Documents and the terms and conditions of this Contract 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 11(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 11(b)(i).
- PROVIDED THAT Clause 11(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 11(b)(ii) and the Owner considers that the variation is not one to which Clause 11(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 11(b) to the Owner within FOURTEEN (14) days after the Builder:
- (i) received notice of the direction under Clause 11(b)(i); or
  - (ii) became aware or should reasonably have become aware, of the circumstances referred to in Clause 11(b)(ii) as the case may be.
- (d) If any variation to the Works or the Construction Documents or the terms and conditions of this Contract is required pursuant to Clause 3(b), 3(e), 3(h), 4(c) or 20 but not as a result of a direction under Clause 11(b)(i) or the circumstances referred to in Clause 11(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 11(a)(iii) and (iv) shall also apply to the variation.
  - (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 15(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 lending institution (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 forthwith by notice in writing given to the Owner within a further TEN (10) days.

### **12. INSURANCE**

- (a) The Builder shall in the joint names of himself and the Owner and the Owner's lending institution (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 the Builder shall rebuild or repair the Works and replace or repair the materials or goods destroyed within a reasonable time of such settlement.



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- (b) The Builder shall insure against any liability loss or damage claim demand and proceedings whatsoever arising out of 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 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 him or his 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.

### **13. DEFECTS LIABILITY PERIOD**

- (a) Subject to Clause 13(c) and (d) the Builder shall make good at the cost of the Builder defects in the Works notified in writing to the Builder within the period specified in Item 12 of the Schedule of Particulars commencing on the day of practical completion.
- (b) In Clause 13(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; "practical completion" has the same meaning as in Clause 18(a).
- (c) The Builder's liability under Clause 13(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.

### **14. EARLY TERMINATION OF CONTRACT**

- (a) In addition to their respective rights and remedies hereinbefore contained or in equity the Builder may terminate this Contract in any of the events mentioned in Clause 15 hereof and the Owner may terminate this Contract in any of the events mentioned in Clause 16 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 forthwith.
- (c) On such termination, subject to any agreement to the contrary or to any determination made pursuant to Clause 17, 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 him 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 14(b) and (c) do not apply to a termination of this Contract pursuant to Clauses 15(h) and 16(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.

### **15. 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.
- (c) If the Owner shall make any assignment for the benefit of or enter into any arrangement or composition with his 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 his 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 17 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 him by the Builder pursuant to Clause 11(d) within the period referred to in Clause 11(d).
- (h) If the circumstances specified in Clause 21(b) or (c) occur.

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### **16. 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 his 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 21(b), (c) or (d)(ii) occur.

### **17. DISPUTES**

- (a) In the event of any dispute or difference between the Owner and the Builder at any time whatsoever as to any matter or thing arising hereunder or in any way concerned or connected herewith or relating to the construction of this Contract then subject to the rights of either party to apply to the Registrar or the Disputes Committee or any other relevant Statutory Authority, either party may give to the other notice of such dispute, disagreement or difference and at expiration of FIVE (5) working days thereafter and in the absence of any settlement the same be referred to arbitration either by:-
  - (i) a single arbitrator appointed by mutual consent or
  - (ii) in the event that agreement of the appointee is not reached within FIVE (5) working days a single arbitrator shall be appointed by the President or his nominee of the Housing Industry Association Western Australian Division provided that such appointee shall be an Arbitrator approved by the Institute of Arbitrators Western Australian Chapter.At the time of application for such appointee the party applying shall deposit with the Housing Industry Association such sum as may then be required by way of security for costs of the arbitration proceedings and further sums so contributed whether by direction of the arbitrator or otherwise (but always in equal shares) shall be applied in accordance with the directions of arbitrator.
- (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.

### **18. 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 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 17 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 17 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 his obligations pursuant to Clause 13 and 18(c).
- (e) If the Owner shall take possession of the Site permit work outside this Contract or deliver goods or chattels to the site without prior written consent of the Builder, before practical completion or before paying all monies due and payable hereunder (whichever is the earlier), such action shall constitute a waiver release to the Builder and discharge absolutely on the part of the Owner of any and every claim which the Owner had or might otherwise have had against the Builder hereunder and the Builder shall thereupon be discharged, released and relieved absolutely from all his obligations and responsibilities under this Contract (other than his obligations pursuant to Clause 13) and all monies due and payable under this Contract shall immediately become due and payable together with interest thereon at the rate specified in Item 8 of the Schedule calculated from the date of taking such action.
- (f) The Works shall be at the risk of the Owner from the date the Owner takes or is entitled to take possession.

### **19. 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 forwarded to him by prepaid letter addressed to such party at his 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.

### **20. SUPPLY OF MATERIALS**

If the Builder shall be unable to obtain any specified materials as and when he shall require them, the Owner shall forthwith upon request from the Builder specify the use of 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. The specification of any alternative materials and any delay in obtaining the same shall be dealt with in accordance with Clause 11(b) or (d) as the case may be.

### **21. 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.

## Home Building Contracts Amendment Regulations 1994

- (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 15 or 16 as the case may be, but subject to the provisions of Clause 21(d).
  - (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 15 or 16 as the case may be, but subject to the provisions of Clause 21(d).
  - (d) Where Clause 21(b) or (c) or Clause 5(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 16 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 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 21(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 between the date of this Contract and the date of the notice under Clause 21(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.
- 22. ASSIGNMENT**
- (a) Each of the parties to the Contract hereby specifically agrees that he shall not assign his interest in this Contract without the prior written consent of the other.
  - (b) The Builder may at his option sub-contract the whole or any portion of the Works but any such sub-contracting shall not relieve the Builder from any of his responsibilities or obligations as set forth herein.
- 23. 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 vitiate 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.
- 24. 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 12 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 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 Construction Documents.
- 25. INTERPRETATION**
- In this Contract words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing persons shall include corporate bodies. A reference to "Owner" or "Builder" includes their and 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 modification thereof from time to time in force.
- 26. EFFECT OF EXECUTION AND AUTHORITY TO SIGN AS AGENT**
- Where this contract and/or any variation document relating to any of its terms, conditions and provisions or to any of the works to be performed pursuant to the contract is signed by a party named in Item 2 of the Schedule of Particulars both in his own right and also as agent acting for and on behalf of any other party named in Item 2 of the Schedule of Particulars then the party so signing hereby warrants that he is expressly authorised by the other party to do so and that the other party on whose behalf he has signed as agent will be bound by their agents signature.
- 27. SPECIAL CONDITIONS** .....
- .....
- .....
- .....

## SCHEDULE OF PARTICULARS

| Item No. | Details   | Item No. | Details   |
|----------|---|----------|---|
| 1        | Builder/s .....<br>Address .....<br>Builders Registration No. ....  | 10.      | (a) Provisional Sums Items (Clause 10) — refer to Addenda for details<br>.....<br>.....<br>(b) Prime Cost Items (Clause 10) — refer to Addenda for details<br>.....<br>.....  |
| 2        | Owner ..... Owner .....<br>Address ..... Address .....  | 11.      | Additional percentage allowed (Clause 10, 11) ..... %   |
| 3        | Works (clause 1(a)) .....<br>Site: Postal Address .....<br>Title Particulars: Portion of .....<br>Location ..... and being Lot .....<br>on Plan/Diagram ..... and being the whole of the land comprised in<br>Certificate of Title Volume ..... Folio ..... | 12.      | Period of Defects Liability (Clause 13) (not less than 120 days) .....  |
| 4        | Amount of finance required (Clause 1 (b)) \$ .....<br>Period for approval ..... days Lender .....   | 13.      | Receipt of Notice for Home Owner.<br>I/We hereby acknowledge receipt of the Notice for the Home Owner referred to in Section<br>4 (2) of the Home Building Contracts Act 1991 on the .....<br>day of ..... 19 .....<br>Prior to signing the Home Building Contract.<br>Signed by the Owner .....<br>Signed by the Owner ..... |
| 5        | Encumbrances on the Site (Clause 3 (a)(ii)) .....   | 14.      | Signing of Contract.<br>This contract is dated the ..... day of ..... 19 .....<br>Signed by the owner .....<br>Witness .....<br>Signed by the owner .....<br>Witness .....<br>Signed for and on behalf of the builder .....<br>Witness .....  |
| 6.       | Contract Price (Clause 5) \$ .....  | 15.      | Receipt of contract documents.<br>I/We acknowledge receipt of a copy of the Home Building Contract, Drawings, Plans and<br>Specifications referred to in Clause 1 (a) of the contract on the .....<br>day of ..... 19 .....<br>Signed by the owner .....<br>Signed by the owner .....   |
| 7.       | Deposit (not to exceed 6.5% of Contract Price) (Clause 6 (a)) \$ .....<br>Progress Payments as follows (Clause 6 (b)): 'A' 'B'<br>..... \$<br>..... \$<br>..... \$<br>..... \$<br>..... \$<br>..... \$<br>..... \$<br>..... \$<br>Total \$ .....            |          |   |
| 8.       | Interest on late payment (Clause 6 (b)(iv)) ..... %   |          |   |
| 9.       | Time to commence works (Clause 8) ..... working days<br>Time to complete works (Clause 8) ..... working days  |          |   |



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

The Contractor agrees to execute 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 drawings, specifications, addenda and colour schedules ("the Construction Documents") as agreed between the parties and for the purpose of identification signed by each of them, and all lawful directives and approvals of relevant Statutory Authorities for the price and otherwise upon the terms and conditions herein appearing.

#### 2. THE OWNER 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.

#### 3. THE 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) 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 authorises 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.
- (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) The Contractor shall commence the Works by the time specified in the Schedule or as soon thereafter as may be reasonably practicable and shall proceed therewith with reasonable dispatch and diligence and complete the Works within the time specified in 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) The Contract Price includes estimates of cost by way of Provisional Sums as set forth in the Schedule. These costs are calculated as the net costs to the Contractor for materials, subcontractor charges, delivery to the site and installation plus an additional percentage amount as set out in the Schedule of such net costs to cover the Contractor's overhead and supervision.

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## *Home Building Contracts Amendment Regulations 1994*

- (b) The Contract Price includes allowances by way of Prime Costs as are set forth in the Schedule. These costs exclude the costs of delivery to the Site, the cost of installation, fixing, supervision, overhead and profit.
- (c) In the event that the actual price of the Provisional Sum or Prime Cost item varies to that set out in the Schedule such difference in price shall be charged or credited as appropriate at the next Progress Payment due after the relevant work has been completed.

### **9. VARIATIONS**

- (a) If the Owner wishes to make any variation to the Works or the Construction Documents or the terms and conditions of this Contract, then;
  - (i) the Owner or his 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 his 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 construction 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 their 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 Construction 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 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) 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 employees, agents or sub-contractors.
  - (iii) any liability, loss or damage claim or proceedings whatsoever to or by any person employed by him or his 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 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 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 his 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.

## *Home Building Contracts Amendment Regulations 1994*

- (ii) If the Contractor shall make an assignment for the benefit of or enter into any composition with his 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 him 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 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**

In the event of any dispute between the Owner and the Contractor at any time whatsoever as to any matter or thing arising hereunder or in any way connected herewith or relating to the interpretation of the contract then, subject to the rights of either party to apply for relief and orders to the Registrar of the Builders Registration Board or the Building Disputes Committee or any other relevant Statutory Authority, either party may give to the other notice of such dispute and at expiration of SEVEN (7) days thereafter and in the absence of any settlement the same be referred to arbitration either by:-

- (i) a single arbitrator appointed by mutual consent; or
- (ii) a single arbitrator appointed by the President or his nominee of the Housing Industry Association Limited Western Australian Division provided that such appointee shall be an Arbitrator approved by the Institute of Arbitrators Western Australian Chapter and the conduct of the Arbitration shall be in accordance with the Commercial Arbitration Act 1985.

### **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 SEVEN (7) 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 his 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 forwarded to him by prepaid letter addressed to such party at his 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.

### **17. SUPPLY OF MATERIALS**

Should any materials detailed in the Construction Documents or Variation Documents not be available to the Contractor as and when they are required, the Owner shall forthwith upon request from the Contractor specify the use of alternative available materials or permit an extension of time to complete if insistent on the original materials. PROVIDED THAT such original materials are available within FOURTEEN (14) days of being required on site by the Contractor. The specification of any alternative materials and any delay in obtaining the same shall be dealt with as a Variation Document in accordance with Clause 9(a).

### **18. ASSIGNMENT**

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

### **19. INTERPRETATION**

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

### **20. SPECIAL CONDITIONS**

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

## SCHEDULE OF PARTICULARS

| Item No. | Details  | Item No. | Details   |
|----------|--|----------|---|
| 1.       | Contractor/s<br>Name .....<br>Address .....<br>Builders Registration No (if appl) .....  | 9.       | (a) Provisional Sums Items<br>.....<br>.....<br>.....<br>.....  |
| 2.       | Owner/s<br>Name ..... Name .....<br>Address ..... Address .....  |          | (b) Prime Cost Items<br>.....<br>.....<br>.....<br>.....  |
| 3.       | Works .....  |          |   |
| 4.       | Site: Postal Address .....   |          |   |
| 5.       | Deposit (not to exceed 6.5% of Contract Price) \$ .....<br>Progress Payments as follows:                      Stage                      Value<br>.....\$<br>.....\$<br>.....\$<br>Contract Price \$ ..... |          | Signed by the Owner/s who also hereby acknowledge:<br>1. The Notice for the Home Owner referred to in Section 4 (2) of the Home Building Contracts Act 1991 was received PRIOR to signing this contract; and<br>2. A signed copy of this Contract and the other Construction Documents referred to in Clause 1 was received.<br><br>Owner ..... Date .....<br>Witness ..... |
| 6.       | Interest on late payment .....%  |          | Owner ..... Date .....<br>Witness .....   |
| 7.       | Time to commence works .....days<br>Time to complete works .....days   |          | Signed for and on behalf of the Contractor:<br>Contractor ..... Date .....<br>Witness .....   |
| 8.       | Additional percentage allowed.....%  |          |   |



HBW 2.

# HOME BUILDING WORKS CONTRACT EDITION 2.

(for use in Works without an Architect)

Agreement and Conditions of Contract

between

.....

..... (Owner)

and

.....

..... (Builder)



**Home Building Works Contract  
Edition 2**

**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.

***Home Building Contracts Amendment Regulations 1994***

**HOME BUILDING CONTRACTS ACT - 1991**

**SECTION 6  
RECEIPT OF DOCUMENTS**

In accordance with Section 6 of the *Home Building Contracts Act 1991* the Owner acknowledges receipt of the following documents:-

1. A Notice of explanation of the relevant provisions of the *Home Building Contracts Act 1991* prescribed by Section 4(2) of the Act a copy of which is attached (see pages 2 and 3).
2. A signed copy of the Building Contract dated ..... 19..... prescribed by Section 4(1) of the Act.

Signed .....

.....  
(Owner)

Dated: ..... 19.....

# *Home Building Contracts Amendment Regulations 1994*

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### NOTES

These notes are for the assistance of the parties only and do not form part of the Contract.

1. Two complete copies of all Contract Documents shall be signed by the Owner/s and Builder and each party shall retain a completed set of documents. These should be filed away and not used as a working document.
2. The Particulars and the Appendices shall be completed in full. Each page of the Specification should be initialled and the Specification dated and signed where indicated. Each sheet of the Drawings should be signed and dated with the notation:-  
  
This is Sheet ..... of ..... Drawings referred to in  
  
the Contract dated ..... 19.....
3. The Agreement should be signed on page 4 and 8.
4. It is recommended that a Site Report form of the type obtainable from MBA should be used in assessing any Provisional Sum for site works.
5. It is recommended that the Preliminary Works Contract of the type obtainable from MBA be used in conjunction with this Building Contract.
6. One alternative in item 5 of Appendix I should be deleted.
7. Risks not covered by clause 18 should be insured against separately - eg. 18(g).
8. The Home Building Contracts Act 1991 specifies certain requirements which must be complied with in relation to a Home building Contract for works exceeding \$6,000 but less than \$200,000 in value.

These requirements are set out in the explanatory notice reproduced at pages 2 and 3 of this document which the Owner hereby acknowledges and has read prior to signing this Contract.

9. The Building Disputes Committee is located at:

18 Harvest Terrace  
West Perth WA 6005

### WARNING

It is preferable that the Conditions not be amended or altered. Any amendments, deletions or additions which are to be made to the wording of a clause should be initialled by both parties in the margin of the relevant clause. In any event, any amendments must remain within the requirements of the Home Building Contracts Act 1991.

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PARTICULARS OF CONTRACT

A. OWNER/S

.....  
.....  
of.....  
.....  
hereinafter referred to as the Owner.

B. BUILDER

.....  
.....  
of .....Registration No.....

C. WORKS

Description .....  
.....  
as described in the following Contract Documents:  
Specification prepared by  
.....  
and supplied by \*Owner/Builder  
Number of pages .....  
Date .....  
Drawings prepared by  
.....  
and supplied by \*Owner/Builder  
Number of sheets .....  
Drawing numbers .....  
Date .....

D. LAND

Address.....  
.....  
Lot number .....Portion of .....  
Location .....Plan No/Diagram No.....  
Certificate of Title Volume .....Folio .....  
Local Authority .....

E. CONSTRUCTION  
PERIOD

The period of ..... calendar days from the date of  
commencement.

\*\* Delete as appropriate.

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**IT IS AGREED:**

- (i) The Builder will, subject to the Conditions of Contract complete the Works shown upon the Drawings and described by or referred to in the Specification and elsewhere in the Contract documents.
- (ii) The Owner will pay to the Builder the sum of .....  
.....(\$ ..... ) (the Contract Sum)  
as may be adjusted in accordance with the provisions of this Contract, at the times and in the manner specified in the Conditions.
- (iii) That prior to signing this Contract the Owner:
- (a) Has read and understood the terms and conditions, and,
- (b) Has read the notice giving explanation of the relevant provisions of the *Home Building Contracts Act - 1991*.

**IN WITNESS** the parties have signed this on the

.....day of .....19.....

**SIGNED by the Builder**  
**in the presence of :**

SIGNED by the Builder )  
in the presence of : ) ..... (Builder)  
)  
)  
)  
)  
)  
)  
..... )

**SIGNED by the Owner  
in the presence of :**

SIGNED by the Owner  
in the presence of :

\_\_\_\_\_

\_\_\_\_\_

(Owner)

# *Home Building Contracts Amendment Regulations 1994*

## **APPENDIX I**

|   |   |   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
|---|---|---|--|-----------------|----------|-----------------|--------------------------------|---|----|-------|-----------------|---|----|-------|----------------|---|----|-------|---|---|----|-------|---------------------------------------|---|----|-------|
| ( 1 )   | Percentage to be allowed for supervision, overheads and profit. If none provided, 15%<br>Clauses 4, 16                              | .....%  |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| ( 2 )   | Percentage to be added where expenditure is greater than amount allowed for provisional sums. If none provided, 15%<br>Clause 23(c) | .....%  |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| ( 3 )   | Labour rates (inclusive)<br>Clause 16(f)  | <table border="0"> <tr> <td>Tradesperson</td> <td>\$.....per hour</td> </tr> <tr> <td>Labourer</td> <td>\$.....per hour</td> </tr> </table> | Tradesperson   | \$.....per hour | Labourer | \$.....per hour |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| Tradesperson  | \$.....per hour   |   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| Labourer  | \$.....per hour   |   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| ( 4 )   | Period for payment of progress claims or final account. If none provided, 10 days.<br>Clause 22 (iii), 25                           | .....days   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| ( 5 )   | Method of payment<br>Clauses 14 , 25<br>(as applicable)   | <table border="0"> <tr> <td>Percentage of Contract Sum</td> <td>Amount<br/>\$</td> </tr> </table>   | Percentage of Contract Sum   | Amount<br>\$    |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| Percentage of Contract Sum  | Amount<br>\$  |   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| <p>'A' By progress of the work in stages</p> <table border="0"> <tr> <td>• Deposit upon signing of Contract. Not to exceed 6.5% of contract sum</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> <tr> <td>• Completion of slab on ground</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> <tr> <td>• Walls erected</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> <tr> <td>• Roof covered</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> <tr> <td>• Plastering, ceiling, cupboards, glazing</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> <tr> <td>• At Practical Completion of the work</td> <td>(</td> <td>%)</td> <td>.....</td> </tr> </table> |   |   | • Deposit upon signing of Contract. Not to exceed 6.5% of contract sum | (               | %)       | .....           | • Completion of slab on ground | ( | %) | ..... | • Walls erected | ( | %) | ..... | • Roof covered | ( | %) | ..... | • Plastering, ceiling, cupboards, glazing | ( | %) | ..... | • At Practical Completion of the work | ( | %) | ..... |
| • Deposit upon signing of Contract. Not to exceed 6.5% of contract sum  | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| • Completion of slab on ground  | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| • Walls erected   | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| • Roof covered  | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| • Plastering, ceiling, cupboards, glazing   | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| • At Practical Completion of the work   | (   | %)  | .....  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |
| Total Contract Sum  |   | \$.....   |  |                 |          |                 |                                |   |    |       |                 |   |    |       |                |   |    |       |   |   |    |       |                                       |   |    |       |



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( 5 ) continued...

'B' By percentage proportions of work  
completed by trade :

|                               | Proportion of<br>Contract Sum | % |
|-------------------------------|-------------------------------|---|
| • Preliminaries .....         | ( )                           |   |
| • Site works .....            | ( )                           |   |
| • Concrete .....              | ( )                           |   |
| • Brickwork .....             | ( )                           |   |
| • Carpentry and joinery ..... | ( )                           |   |
| • Plastering .....            | ( )                           |   |
| • Ceilings .....              | ( )                           |   |
| • Cabinets .....              | ( )                           |   |
| • Roof Plumbing/Roofing ..... | ( )                           |   |
| • Sanitary Plumbing .....     | ( )                           |   |
| • Electrical work .....       | ( )                           |   |
| • Tiling (Wall & Floor) ..... | ( )                           |   |
| • Painting/Glazing .....      | ( )                           |   |

TOTAL CONTRACT SUM                      \$ \_\_\_\_\_                      100%

Note: Except where the Lending Authority pursuant to clause 14(a) requires a different method of payment, the methods 'A' and 'B' above are alternatives.

One or the other should be deleted by striking through with two bold lines and marked "deleted" and the deletion initialled by both parties.

( 6 ) Annual interest rate applicable  
to late payments  
Clauses 25(e),27(b) .....per centum  
If non provided, 20%

( 7 ) Defects Liability Period  
Clause 28 .....weeks  
if non provided, 18 weeks  
(120 calendar days minimum)

( 8 ) Insurance - injury to persons or  
property Clause 18(a)                      Not less than \$.....

( 9 ) Owner's authorised  
representative (if any). Clause 12                      Name .....

**APPENDIX II**

**SPECIAL CONDITIONS OF CONTRACT**

-----  
**APPENDIX III**

**NOTICE OF PRACTICAL COMPLETION**  
**(Clause 26 (b))**

To: \_\_\_\_\_ (Owner)  
\_\_\_\_\_  
\_\_\_\_\_

Take notice that the works, the subject of our contract have been practically completed in terms of Clause 26 and you are required to inspect the works.

You should advise the builder within seven (7) days of any matters which you consider are required by this contract to be done for Practical Completion.

Dated .....19

Signed .....(Builder)

GENERAL CONDITIONS OF CONTRACT

1. RESPONSIBILITY OF BUILDER

- (a) The builder shall in a workmanlike manner and subject to these Conditions execute and complete the Works shown on the Contract Drawings and described in the Specification and shall ensure that the Works are adequately supervised for this purpose.

2. DISCREPANCIES AND AMBIGUITIES

- (a) Should the Builder find any discrepancy or ambiguity in the Drawings or between the Drawings and the Specification, he shall immediately refer the same to the Owner who shall, in writing, direct the Builder which course shall be followed. Should the Owner fail so to direct the Builder within FIVE (5) days of the reference for directions, then the Builder may exercise his own discretion in determining which course shall be followed.
- (b) Where the Builder exercises his own discretion he shall advise the Owner, in writing, of the course he has adopted.
- (c) Notwithstanding these provisions, in case of any difference between scaled dimensions and figures on the Drawing, the figures shall prevail. Drawings to a larger scale shall take precedence over those to a smaller scale.
- (d) Should there be any ambiguity in the contract documents the following order of precedence shall be employed to resolve the matter:
  - (i) The Agreement and these Conditions including any special Conditions
  - (ii) The Specification
  - (iii) The Drawings

3. SUPPLY OF DRAWINGS AND SPECIFICATION

- (a) If the Owner is to supply the Drawings and/or the Specification, then without cost to the Builder the Owner shall provide the Builder with SIX (6) copies of the Drawings and/or the Specification as the case may be to enable the Builder to perform the Works and obtain the consents, permits and authorities required.
- (b) In the case where the Owner provides the drawings and specifications, the Owner expressly warrants that the said drawings and specifications are accurate in each and every particular.
- (c) Where the Builder provides the drawings and specifications he shall similarly expressly warrant the accuracy of them.

4. SETOUT

- (a) The Owner shall be responsible for indicating to the Builder the boundaries or positions of the land and the starting point of work and shall accept responsibility for the correctness of the positions indicated, but if the Builder has any reasonable doubt as to the correctness of the boundaries so indicated he may in writing request the Owner to have the land surveyed, and upon the Owner failing to do so within a period of SEVEN (7) days from the making of such a request the Builder may cause the land to be surveyed and may charge the cost of such survey plus the percentum set out in Item 1 of Appendix I to the Owner.

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5. COPYRIGHT

Where the Builder -

- (a) does not prepare the Drawings; or
- (b) prepares the Drawings under the instruction, direction or supervision of the Owner, or from sketches supplied by the Owner, then the Owner indemnifies the Builder against all actions, proceedings, claims and demands for, or in respect of, any breach of copyright by the Builder.

6. EVIDENCE OF TITLE

- (a) Prior to the commencement of the Works the Owner shall produce to the Builder evidence of title to the land upon which the Works are to be executed.
- (b) Should the Owner fail to produce evidence of title to the said land within TEN (10) days after being requested so to do, in writing, the Builder may determine his employment as provided by clause 22.

7. EVIDENCE OF CAPACITY OF OWNER TO PAY CONTRACT SUM

- (a) Prior to the commencement of the Works the Owner shall produce to the Builder evidence of the capacity to pay the Builder the Contract sum at the times and in the manner specified in these Conditions.
- (b) Should the Owner fail to produce within TEN (10) days after being so requested, evidence of the capacity to pay the said sum, the Builder may determine his employment as provided by Clause 22.
- (c) While the Owner may meet the obligation created by sub-clause (a) above in some other manner, the following documents would be *prima facie* evidence of the capacity of the Owner to pay the Builder, the contract sum:
  - (i) A letter from an Officer of a Lending Institution undertaking to lend the necessary funds to the Owner upon terms and conditions customary for such Lending Institution, or
  - (ii) A statement of account or other document issued by a Bank or Financial Institution indicating that the Owner has on deposit with that Institution, funds sufficient to discharge the contract sum.

8. DELIVERY OF SITE

- (a) Unless otherwise agreed, the Owner shall, upon the execution of the Agreement, give immediate possession of the land to the Builder and the Builder shall be entitled to continue in possession until the Works are practically completed in accordance with Clause 26.

9. DATE FOR COMMENCEMENT AND TIME FOR COMPLETION

- (a) The Builder shall commence the Works within TEN (10) days of the issue of all necessary approvals by Authorities concerned or the date upon which the Owner delivers to the Builder evidence of title to the land as required by Clause 6 of these Conditions, whichever is the later. The Builder shall complete the Works within the number of days stated in the Particulars of Contract at item E.

10. BUILDING APPROVALS

- (a) Subject to paragraph (b), this Contract is conditional upon,
  - (i) a building licence under Part XV of the *Local Government Act 1960* being issued, in respect of the home building work included in this Contract, within 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;
  - (iii) it becoming lawful under the Water Act, within 45 working days from the date of this Contract, for the home building work 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 Authority under the Water Act in connection with the carrying out of the work.
- (b) A condition referred to in paragraph (a) does not apply to this Contract -
  - (i) To the extent that the subject matter of the condition was completed before the Contract was entered into;
  - (ii) Where the only work to be performed under the Contract is the construction or carrying out of associated work as defined in Section 3(1) of the *Home Building Contracts Act 1991*; and
  - (iii) For any other prescribed home building work that is prescribed for the purpose of Section 9(5) of the *Home Building Contracts Act 1991*.
- (c) The Builder will,
  - (i) do all things that are reasonably necessary to be done to ensure that any condition referred to in paragraph (a) (i) and (iii) applicable to this Contract is fulfilled; and
  - (ii) not unreasonably decline to accept a condition or direction referred to in paragraph (a) (ii) or (iv) that applies to this Contract;
- (d) If the Builder properly submits to the relevant authorities within 30 days after the date of the contract, all necessary applications required for the purpose of having conditions referred to in paragraph (a)(i) and (iii) fulfilled, the Builder is to be taken to have complied with the obligations contained in paragraph (c)(i).
- (e) The Owner will -
  - (i) do all such things as may be required to be done by the Owner to ensure that any condition referred to in paragraph (a) (i) and (iii) applicable to this Contract is fulfilled; and
  - (ii) not unreasonably decline to accept a condition or direction referred to in paragraph (a) (ii) or (iv) that applies to this Contract.

- (f) If a condition referred to in paragraph (a) and applicable to this Contract is not fulfilled, the respective consequences, rights and remedies of the parties are as set out in Clause 34.

11. COMPLIANCE WITH REQUIREMENTS OF LOCAL AND OTHER AUTHORITIES

- (a) The builder shall comply with and give all notices required by any Act of Parliament or by any regulations or by-laws of any local authority or of any authority which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected and he shall pay and indemnify the Owner against any fees or charges legally demandable under such Act of Parliament regulation or by-law in respect of the Works in force at the date of this contract.
- (b) If the amount paid by the Builder as fees and charges legally demandable by any authority in respect of building approvals and local and supply authority permits should vary from the rates existing on the date of this Contract, then the amount of the difference shall be added to or deducted from the Contract Sum as the case may require.

12. OWNER'S ACCESS TO LAND

- (a) The Owner or a duly appointed representative (if any) identified in item 9 of Appendix I and any authorised officer of the lending authority shall have access to the land for the purpose of inspecting and viewing the progress of the works, but only at such reasonable times and in such manner as shall not prevent the Builder from properly discharging his obligations under this Contract.
- (b) The Owner (or representative) shall not give or be entitled to give at any time, directions to the Builder's workmen or subcontractors on the site or elsewhere relating to the works.

13. AUTHORITY TO EXCLUDE UNAUTHORISED PERSONS FROM THE SITE

The Owner appoints the Builder or in the absence of the builder from the site at any time the senior employee of the Builder on site; his agent, for the period of this contract for the following purposes:-

- (a) To permit any persons to enter upon the site and/or premises;
- (b) To refuse any unauthorised persons the right to enter and to prevent any such persons from entering upon the site and/or premises;
- (c) To remove any unauthorised persons from the site and/or premises.

14. LENDING AUTHORITY

In respect only of that part of the Contract Sum for which finance is being provided to the Owner by a Lending Authority the following provisions shall apply :-

- (a) Progress payments shall be the rate that is customary for such Lending Authority to maintain.
- (b) The Owner shall, prior to commencement of the Works, irrevocably authorise and direct the Lending Authority in writing to pay to the Builder all monies which may become due to the Builder.

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- (c) The Owner shall furnish or cause to be furnished to the Builder, written notice of the various stages at which inspection of the Works will be required by the Lending Authority and the Builder shall notify the Lending Authority when such stages have been reached.
- (d) Where check or progress surveys are required by the Lending Authority, the Builder shall promptly inform the Owner when the Works reach the required stage and the Owner shall be responsible for having such survey carried out.
- (e) The Builder shall take such reasonable steps as may be required on his part to facilitate inspection of the Works on behalf of the Lending Authority in accordance with its regulations and procedures.
- (f) The Builder may also require that, prior to the execution of any variation, the Owner shall produce written consent of the Lending Authority to such variation.

**15. AVAILABILITY OF MATERIALS**

- (a) All materials, unless otherwise specified, shall be new and suitable for incorporation into the works. Should any material specified for use in the Works be not available in a time which will enable the Builder to fulfil the requirements of Clause 9 the Builder shall advise the Owner in writing as early as possible and request that substitute materials be selected and notified to the Builder in writing within FIVE (5) days of the Builders' notification.
- (b) Any change of cost arising from the substitution of materials shall be treated as a Variation and the contract sum adjusted in accordance with Clause 16.

**16. VARIATIONS**

- (a) This Contract may be varied at the request of the Owner by omissions from the Works or by the performance of extra work with the consent of the Builder; which consent shall not be unreasonably withheld. No variation shall vitiate the contract.
- (b) The Builder may decline to execute any variation required by the Owner unless the Owner has first given notice in writing of the requirements and has given evidence of the capacity to pay the Builder.
- (c) If the Builder agrees to undertake any variation then the details,
  - (i) must be in writing -
    - (A) setting out all of the terms of, and the cost of, the variation;
    - (B) showing the date of the variation;
  - (ii) must be signed by the Builder and the Owner or their respective agents.
  - (iii) The Owner or his agent must be given a copy of the signed variation -
    - (A) as soon as is reasonably practicable after it has been signed by both parties; and

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- (B) before the work to which the variation relates is commenced.

This clause does not apply to any variation arising by virtue of paragraph (d).

- (d) Where any variation to the contract or the drawings and specifications is necessary -
  - (i) to comply with any written direction lawfully given by a building surveyor or other person acting under a written law; or
  - (ii) by virtue of circumstances that could not reasonably have been foreseen by the builder at the time when the contract was entered into, then;

the Builder shall be entitled to such a variation provided that before carrying out the work relating to the variation, he gives to the Owner a statement setting out the reason for, and the cost to be incurred on account of the variation, together with a copy of any written direction referred to in sub-paragraph (i).

- (e) The Builder shall give the statement referred to in paragraph (d) to the Owner within 14 days after the Builder:
  - (i) received notice of the direction under sub-paragraph (i); or
  - (ii) became aware or should reasonably have become aware of the circumstances referred to in paragraph (d)(ii).
- (f) Where a statement is given to the Owner by the Builder for the purposes of paragraph (d)(ii) and the Owner considers the variation is not one to which that paragraph applies, the Owner may make an application to the Disputes Committee for relief under Section 17 of the *Home Building Contracts Act 1991* provided that such application is made within 14 days after the statement was given to the Owner.
- (g) Paragraph(d)(ii) does not enable the builder to make a 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.

**17. ASSIGNMENT AND SUBCONTRACTING**

- (a) Neither party to this contract shall assign the contract without written consent of the other which consent shall not be unreasonably withheld.
- (b) The Builder may sub-contract any portion of the Works, but such sub-contracting shall not relieve the Builder from being fully liable and responsible.



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18. INSURANCE

(a) Injury to Persons or Property

The Builder shall be solely liable for and shall indemnify the Owner in respect of and shall insure for the amount given in Appendix I (or if not provided for, \$5,000,000) in the joint names of himself and the Owner against any legal liability, loss, claim or proceedings whatsoever arising under any statute (other than as provided in the next sub-clause) or at Common Law in respect of personal injury to or death of any person whomsoever and in respect of any damage to any property real or personal arising out of or in the course of or caused by the execution of the Works unless due to any act or neglect of the Owner or of other persons for whom the Owner is responsible.

(b) Workers' Compensation

The Builder shall insure against any legal liability, loss, claim or proceedings whatsoever, whether arising at Common Law or by virtue of any statute relating to Workers' Compensation or Employer's liability by any person employed or engaged by him in or about the execution of the Works and shall procure that every sub-contractor shall be insured against any such liability in the case of employees of such sub-contractor.

- (c) Notwithstanding these provisions, should any portion of the Works be utilised by the Owner or tenant, or their employees during the progress of the Works the Builder shall not be liable for any injury to or the death of any person or loss or damage to property which may be occasioned by reason of such utilisation of such portion of the Works by any such person or persons.

(d) Contractor's Risk

The Builder shall in the joint names of himself and the Owner and, where applicable, the Lending Authority insure against any loss or damage including but not limited to fire and/or explosion and/or earthquake and/or lightning and/or storm and tempest and/or civil commotion and to the extent approved by the Owner from time to time as to adequacy for at least the full reinstatement value of all work executed and materials and goods upon the site, including any unfixed materials or goods, and shall keep such work, materials and goods insured until the Works are delivered up to the Owner.

The Builder upon request shall provide evidence of such insurance before the first progress payment.

The Builder shall, upon the written authorisation of the insurer or settlement of any claim under the policies, proceed with due diligence to rebuild or repair the Works and replace or repair the materials or goods destroyed or damaged. The Builder shall not be entitled to any payment in respect of the rebuilding or repair of the Works or the replacement or repair of the materials or goods destroyed or damaged other than the moneys received under the said policies.

- (e) Should the Builder make default, the Owner may insure and deduct the premium paid from any moneys due or to become due to the Builder.

(f) Alterations or Additions

If the Works comprise or include alterations or additions to an existing structure, then; notwithstanding the obligation of the builder to insure pursuant to these provisions, the Owner hereby agrees:-

- a. To provide and to maintain adequate insurances against the risk of any loss or damage to the existing structure together with all the contents thereof (excluding plant, machinery tools and equipment of the Builder).
- b. To take all reasonable precautions to protect any contents from damage and to safeguard persons from injury that might be sustained through the Builders normal and proper execution of the works in accordance with this Contract.

(g) Owner's Goods

Any goods of whatsoever nature prematurely supplied by the Owner (i.e. stove, light fittings etc.) shall, unless otherwise arranged in writing with the Builder, remain at the risk of the Owner in case of any loss or damage until they are required for the Works.

19. DELAYS AND EXTENSION OF TIME

- (a) Should the progress of the Works be delayed by any of the following causes or conditions resulting therefrom:
  - (i) on account of authorised variations or extras;
  - (ii) by a suspension of the Works under Clause 20;
  - (iii) by inclement weather or conditions resulting from inclement weather;
  - (iv) in consequence of proceedings being taken or threatened by, or disputes with, adjoining or neighbouring owners or residents;
  - (v) by reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works or affecting the manufacture or supply of materials for the Works;
  - (vi) any act, default or omission on the part of the Owner (including but not limited to any delay of the Owner in complying with the provisions of clauses 6, 7 or 15);
  - (vii) by any other matter, cause or thing whatsoever beyond the control of the builder;

THEN in any such case, the Builder shall be entitled to seek or make a variation by way of an extension of time for completion of the works in accordance with the provisions of Clauses 16(c) or (d) as the case may be.

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20. SUSPENSION OF WORKS

Should the Owner fail to pay or cause to be paid any progress payment as required by Clause 25 or commit any other breach of this Contract the Builder may, without prejudice to his right to determine his employment under this contract in pursuance of the provisions of Clause 22 give TEN (10) days notice of his intention to suspend the Works. If the Owner's default continues for TEN (10) days after such notice, then the Builder may suspend the Works. If he does so suspend the Works he shall promptly give notice of such suspension in writing to the Owner. The Builder shall lift the suspension within TWENTY (20) days of the progress payment being made or the breach being remedied and the Date for Practical Completion of the Works shall be extended by the period equivalent to the number of days during which the works were suspended and any consequential delays.

The builder shall be entitled to be paid his reasonable costs arising from any suspension of the works.

21. DETERMINATION BY OWNER

(a) If the Builder shall make default in any of the following respects, namely:

- (i) if the Builder has an execution levied against him or becomes bankrupt or makes an assignment of his estate for the benefit of his creditors or makes a composition or other arrangement with his creditors or if being a company it shall go into liquidation whether voluntary or compulsory (except for the purpose of reconstruction); or
- (ii) if the Builder fails to commence or proceed with the Works with due diligence or in a competent manner; or
- (iii) if the Builder without reasonable cause wholly suspends the carrying out of the Works before practical completion; or
- (iv) if the Builder refuses or persistently neglects -
  - (A) to comply with the requirements of Clause 11 of these conditions; or
  - (B) to remove or remedy defective work or improper materials, allowing the Works to become materially affected; or
- (v) if the Builder intimates that he is unable or unwilling to complete the Works or he abandons the Contract;

AND if in the case of any such default that is capable of remedy the Builder shall continue that default for TEN (10) days after notice in writing has been given to the Builder specifying the default and stating the Owner's intention of determining the Builder's employment, THEN the Owner may, without prejudice to any other rights or remedies, by notice by certified mail, determine the employment of the Builder under this Contract.

(b) In the event that the Owner determines the employment of the Builder in accordance with sub-clause (a) of this clause, the Owner may thereupon engage another builder to carry out the Works and the following shall apply:

- (i) If the reasonable cost of the Works exceeds that which would have been otherwise payable under this Contract, then the amount of that excess shall be a debt due and payable by the Builder to the Owner.

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- (ii) If the reasonable cost of the Works is less than that which would have been otherwise payable under this Contract, then the amount of that difference shall be a debt due and payable by the Owner to the Builder.
- (iii) Upon the determination of the Builder's employment pursuant to this clause the Owner shall be entitled to recover from the Builder all loss, damage and/or expenses caused to the Owner by reason of or arising out of the said determination.
- (c) The provisions of paragraphs (a) and (b) above do not apply to a termination of this Contract resulting from circumstances set out in Clause 34 or pursuant to the provisions of Sections 4(5), 10(4) or 14(3) of the Home Building Contracts Act in which case Section 19 of the Act applies and the Owner may give notice of termination to the Builder and the Contract is terminated when the notice is given.
- (d) A notice given by the Owner under paragraph (c) must be in writing signed by the Owner and must be given to the Builder before the completion of the home building work under the contract.
- (e) If the Contract is terminated under paragraph (c), the Disputes Committee may, upon application by the Owner or the Builder, make such orders as it thinks just providing for -
  - (i) The return or repayment of the whole or part of any consideration, or the value of any consideration, given by the Owner under or in relation to this Contract; or
  - (ii) 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.

22. DETERMINATION BY THE BUILDER

- (a) If the Owner shall make default in any of the following respects, namely:
  - (i) If the Owner fails to provide evidence of title satisfactory to the Builder as required by Clause 6; or
  - (ii) If the Owner fails to produce evidence of the capacity to pay the Contract Sum satisfactory to the Builder as required by Clause 7; or
  - (iii) If the Owner fails to pay the Builder any progress payment within TEN (10) days or the period provided in Appendix I item 4; or
  - (iv) If the Owner has an execution levied or commits an act of bankruptcy or executes a Deed of Assignment or Deed of Arrangement or enters into a composition or other arrangement with creditors.
  - (v) If the Owner or any tenant of his or their employees or agents take possession of the works or any part thereof without the written agreement of the Builder.

AND if in the case of any such default as aforesaid that is capable of remedy, the Owner shall continue such default for TEN (10) days after notice in writing specifying the same and stating the Builder's intention of determining his employment has been given to the Owner, THEN the Builder may without prejudice to any other rights or remedies, thereupon by notice by certified mail, determine his employment under this Contract.

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- (b) Upon the determination of the Builder's employment pursuant to this clause the Builder shall be entitled to recover from the Owner all loss, damage and/or expenses caused to the Builder by reason of or arising out of his performance of the Works and the said determination.
- (c) The provisions of paragraphs (a) and (b) above do not apply to a termination of this Contract resulting from circumstances set out in Clause 34 in which case Section 19 of the Act applies and the Builder may give notice of termination to the Owner and the Contract is terminated when the notice is given.
- (d) A notice given by the Builder under paragraph (c) must be in writing signed by the Builder and must be given to the Owner before the completion of the home building work under the contract.
- (e) If the Contract is terminated under paragraph (c), the Disputes Committee may, upon application by the Owner or the Builder, make such orders as it thinks just providing for -
  - (i) The return or repayment of the whole or part of any consideration, or the value of any consideration, given by the Owner under or in relation to this Contract; or
  - (ii) 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.

23. PROVISIONAL SUMS

- (a) Where provisional sums are included in the contract documents the Owner shall furnish to the Builder all the necessary directions regarding the selection and supply of the work and/or goods represented by such sums in sufficient time to ensure that no delay is occasioned in the progress of the Works always provided that the Builder shall make any request for information pertaining to such sums within a reasonable time.
- (b) Any part of such sums not expended shall be deducted from the Contract Sum.
- (c) In the event that the total amount expended in respect of such sums exceeds the amount included in the Contract Sum, the excess amount, together with the percentage specified in Item 2 of Appendix I, shall be added to the Contract Sum.
- (d) All such items as cartage, fixing and profit relative to any provisional sum or a supply only item shall be considered to have been allowed for by the builder in the Contract sum and shall not be part of the expenditure on such items.
- (e) Normal trade discounts shall be allowed in favour of the Owner; but any cash discounts or special discounts allowed for bulk purchasing or personal reasons shall be allowed in favour of the Builder.
- (f) Until practical completion the Builder shall be responsible for any damage to or any loss of any goods supplied by him and which are on site prior to their being fixed in position.  
(See also Clause 18 - Insurance.)

## *Home Building Contracts Amendment Regulations 1994*

- (g) Where the Builder estimates the amount of a provisional sum he shall be required to exercise reasonable care in such estimation as demanded by section 12 of the *Home Building Contracts Act 1991*.

### 24. SUB-SURFACE WORKS

- (a) Where the drawings or the specification indicate the nature of the ground below the surface of the site and/or the depth to which excavations will have to be made to provide footings or foundations or services, then any extra work caused by conditions being other than those indicated in the drawings or specification or caused by the necessity to excavate to a greater extent than that so indicated shall be deemed to be a variation to which Section 8 of the *Home Building Contracts Act 1991* applies.
- (b) Should it appear in excavating for footings and/or services that the site will not support the Works as designed, then this contract may be terminated without liability on either side except that the Builder shall be entitled to be paid the actual cost to him of his work up to the date when it was ascertained that the site would not support the Works. Any dispute as to whether or not the site is capable of supporting the Works may be referred for resolution in pursuance of the provisions of Clause 31.

### 25. PAYMENT

- (a) The Contract Sum shall be paid to the Builder by payments made progressively during the execution of the Works. The method of payment shall be that specified in Item 5 of Appendix I.
- (b) A claim for payment submitted to the Owner by the Builder shall show:
  - (i) The accumulative percentum of the Contract Sum appropriate to the stage to which the Works have progressed in accordance with Item 5 of Appendix I.
  - (ii) A schedule of Variations in accordance with Clause 16 and any adjustments occasioned by provisions of this contract - each briefly described and quantified and with a total for the schedule.
  - (iii) The total value of the works executed being the total of sub-paragraphs (i) and (ii).
  - (iv) A schedule of the amounts paid and received to date with a total for the schedule.
  - (v) The amount now claimed being the difference between sub-paragraphs (iii) and (iv).
- (c) Payment of the progress claims shall be made by the Owner to the Builder within the period stated in Item 4 of Appendix I or, if not stated, within TEN (10) days of the date of submission to the Owner of the said claim or account.
- (d) The making of any payment to the Builder shall not be taken as proof or admission that any Works have been executed in accordance with the drawings and specification but shall be taken to be a payment on account.
- (e) Should the Builder not receive from the Owner any or part of any progress payment by the due date therefore the Builder shall be entitled to interest thereon at the rate specified in Item 6 of Appendix I.

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- (f) In the event that the Owner disputes the entitlement to any of the claims made by the Builder, the Owner shall be entitled to refer that dispute in accordance with Clause 31.
  - (g) The Contract sum shall be subject to adjustment to reflect further costs actually imposed on or incurred by the Builder.
    - (i) As a direct consequence of a written law of the State or the Commonwealth;
    - (ii) On account of an increase in any tax, duty or other charge imposed under any such law after the date of the contract; or
    - (iii) By reason of a delay in the commencement of home building work beyond 45 working days after the date of the contract being a delay -
      - (A) that is caused solely by the failure of the Owner to comply with a condition imposed on the Owner by the Contract, including a condition to the effect that the Owner produce satisfactory evidence of the Owner's ability to pay the Contract price or of the Owner's title to the land on which the work is to be performed; or
      - (B) that occurs without any failure on the part of either the Owner or the Builder to comply with his or her obligations under the Contract.
- In which case the consequences to, and the rights and remedies of, the parties are as set out in Clauses 34(d) and (e).
- (h) The provisions of this clause are to be read subject to the provisions of Clause 14.

26. PRACTICAL COMPLETION

- (a) Practical Completion is that stage when the Works are completed except for any omissions and/or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose by the Owner, and such testing or certification by any authority having jurisdiction has been complied with. For the purposes of this clause the phrase "the Works" does not include any labour or materials which are to be supplied and/or fixed by the Owner.
- (b) When, in the opinion of the Builder, the Works are practically completed, the Builder shall give to the Owner notice thereof in writing, in the form set out in Appendix III.
- (c) Within SEVEN (7) days after the service of such notice the Owner shall give to the Builder notice in writing, of those matters and things (if any) which the Owner considers are required by this Contract to be done for practical completion. The Builder shall forthwith do all such things (if any) as may be required by this Contract for the achievement of practical completion and shall give to the Owner further notice in writing when he has done all such things.
- (d) In the event that the Owner does not give any notice within the time specified in paragraph (c), the Works shall be deemed to have been practically completed at the date of service of the notice given by the Builder pursuant to the provisions of paragraph (b).

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- (e) The Works shall be at the risk of the Owner in all respects upon practical completion.

27. PAYMENT ON PRACTICAL COMPLETION

- (a) When the works are practically completed, the Builder shall be entitled to receive the unpaid balance of the contract sum, together with any other monies which are payable under the Contract.
- (b) Should the Builder not receive from the Owner any payment on Practical Completion by the due date the Builder shall be entitled to interest thereon at the rate specified in Item 6 of Appendix I.
- (c) The Owner shall not be entitled to take possession of the Works nor receive the keys of the dwelling house until payment to the Builder of all monies remaining due under paragraph (a) and any interest accrued thereon has been made.
- (d) On payment of the said monies the Builder shall hand all keys to the Works to the Owner or such other person as the Owner may authorise to receive them.

28. DEFECTS LIABILITY PERIOD

- (a) The Defects Liability Period shall commence upon practical completion of the Works and shall continue for the period stated in Item 7 of Appendix I which period, shall be not less than 120 days or if no period is so stated, for EIGHTEEN (18) weeks.
- (b) Prior to the expiration of the Defects Liability Period, the Owner shall provide to the Builder a written list of any defects and the Builder shall within TWENTY (20) days of the expiry of the said period make good such defects during normal business hours at his own cost.
- (c) Where the Builder has failed to make good any defects the Owner may at the expiration of TEN (10) days after service of notification in writing of the intention so to do and specifying such defects, engage or employ others to amend or make good such defects to the extent that the Builder has not made good the same and recover the cost from the Builder.

29. COMPLETION OF WORKS

- (a) The expiration of the Defects Liability Period or the completion of work notified to be amended and made good in accordance with Clause 28, whichever is later, shall, save in cases of fraud, dishonesty, deliberate concealment or of defects which a reasonable inspection would not have disclosed, be evidence as to the sufficiency of the said Works and materials to comply with the requirements of this Contract.

30. NOTICES

- (a) Except where otherwise expressly required, any notice necessary or required to be given under this Contract, shall be deemed to be sufficiently given if delivered by hand or sent by prepaid post addressed to the person to whom it is necessary or required to be given or left at the address appearing in the Particulars of Contract, or at his place of abode and shall, in the case of posting, be deemed to have been received at the expiry of two clear days of posting.



31 SETTLEMENT OF DISPUTES

Subject also to the provisions of Section 17 of the *Home Building Contracts Act 1991*, should any dispute or difference arise between the Owner and the Builder in connection with this contract then:

- (a) Either party shall give written Notice to the other of the existence of any such dispute or difference.
- (b) Such Notice must provide sufficient detail to identify the cause and nature of the dispute or difference
- (c) At the expiration of SEVEN (7) days following the giving of such Notice, unless it shall have been otherwise settled, such dispute or difference may then be submitted for resolution by one of the following procedures.
  - (i) By reference, in writing to the Building Disputes Committee, established by Section 26 of the *Builders Registration Act 1939*, or,
  - (ii) By reference to Arbitration in accordance with the provisions of the *Commercial Arbitration Act 1985*.

The Arbitrator shall be a person mutually agreed upon by the parties or, in the event that they fail to agree upon a choice within SEVEN (7) days of it being requested, then the Arbitrator shall be either:

- (A) The Chairman for the time being of the Institute of Arbitrators Australia, WA Chapter, or his nominee, or,
- (B) The President for the time being of the Master Builders Association of WA, or his nominee.

In seeking such nomination, the party who served Notice under paragraph (a) shall deposit with the Institute of Arbitrators Australia WA Chapter, or the Master Builders Association of WA, as the case may be, the sum of \$300 by way of security for the costs of the Arbitrator.

Such security shall be applied in accordance with the directions from time to time of the Arbitrator.

32. MONEYS ADVANCED ON SECURITY OF LAND

- (a) The Owner agrees that all moneys (if any) which may be advanced after the date hereof on the security of Land which includes that on which the Works are to be erected will be paid to the Builder direct by the Mortgagee from time to time until the total amount that may become payable under this contract shall be satisfied. AND the Owner agrees that he will execute and give any authority and/or direction that may be necessary or expedient to carry into effect the provisions of this Condition.
- (b) Moneys received by the Builder by virtue of this condition shall be in satisfaction or in reduction of moneys that may be due or may thereafter become due to the Builder by virtue of the provisions of Clause 25.

33. SECURITY

- (a) The Owner hereby charges the parcel of land on which or on part of which the Works are to be erected with due payment to the Builder of all moneys that may become payable to the Builder by virtue of this Contract or otherwise from the carrying out of the works.

**34. CONSEQUENCES OF NON-FULFILMENT OF CONDITIONS**

- (a) If any condition set out in Clause 10(a) is not fulfilled solely because the Builder has failed to comply with the Builder's obligations under Clause 10(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 10(a) is not fulfilled solely because the Owner has failed to comply with the Owner's obligations under Clause 10(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 Clauses 21 or 22 as the case may be, but subject to the provisions of Clause 34(d).
- (c) If any condition set out in Clause 10(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 Clauses 10(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 Clauses 21 or 22 as the case may be, but subject to the provisions of clause 34(d).
- (d) Where paragraph (b) or (c) or Clause 25(g)(iii) applies -
  - (i) The Builder may be notice in writing to the Owner -
    - (A) increase the price stipulated in the Contract by an amount set out in the notice; and
    - (B) specify when any increased amount is payable, which must be either -
      - (I) not later than TEN (10) working days after the notice is given; or
      - (II) at the time of a progress payment;
  - (ii) if the amount of an increase exceeds 5% of the price stipulated in this Contract, the Owner may terminate the Contract in accordance with Clause 21 within TEN (10) working days after receipt of notice under paragraph (d) (i), and,
  - (iii) if the Owner so terminates the Contract, the Owner is liable to compensate the Builder for the reasonable costs 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 paragraph (d) (i) is excessive or unjustified the Owner may apply to the Disputes Committee, within 10 working days after receipt of a notice under that clause, for a review of that amount.
  - (ii) On a review under this Clause, the Builder is required to show that the price has been increased to reflect actual increases in costs between the date of the Contract and the date of the notice under paragraph (d) (i).
  - (iii) On a review under this clause the Disputes Committee may confirm, vary or disallow the amount of the price increase, and the Contract shall have effect in accordance with the Disputes Committee's decision.

35. DEFINITIONS

- (a) Whenever the following words or phrases occur in these conditions or in the relevant drawings, specifications or any other document having reference to the Works, they shall, unless the context otherwise indicates, be deemed to mean as follows:

"Contract Documents" shall mean this Agreement, these Conditions and any special conditions, the Particulars of Contract the Appendices and Drawings and Specification and any incorporated documents.

"Days" means calendar days.

"Working days" means Monday to Friday but excluding in respect of home building work to be carried out in any area a day that is a public holiday in that area or throughout the State.

"Drawings and Specification" shall mean the drawings and specification referred to in the Particulars of Contract.

"Practical Completion" means brought to the state where the home building work is completed except for any omissions or defects which do not prevent the home building work from being reasonably capable of being used for its intended purpose.

"Defect" means a failure -

- (a) to perform the home building work in a proper and workmanlike manner and in accordance with the contract; or
- (b) to supply materials that are of merchantable quality and reasonably fit for the purpose for which the owner required the home building work to be performed,

not being a failure for which the builder is specifically declared by the contract to be not liable.

"Works" shall mean the works to be carried out by the Builder described in the Contract Documents.

"Lending Authority" refers to a person or body corporate which has agreed or agrees to make a loan to the Owner to enable the Owner to pay any monies which may become payable to the Builder under this contract or in relation to the Works.

"The Builder" and "The Owner" shall mean respectively anyone acting by their authority or on their behalf and when the contract so admits, includes their respective heirs, executors, administrators, assigns or transferees.

- (b) Words in this contract importing the singular shall be deemed to include the plural and vice versa where the text so requires, and words importing persons shall be deemed to include companies and bodies corporate and/or bodies incorporate.

This contract was prepared by the Master Builders' Association for the use of members of the Association but may be used by persons who are not members of the Association.

Home Building Contracts Amendment Regulations 1994

SCHEDULE 5

[reg. 4]



January 1994

MINOR WORKS CONTRACT

(Copyright)

(For Contracts with Homeowners over \$6,000 Value)

To be used for contracts -

(a) Where the only work to be performed under the contract -

- (i) is the construction or carrying out of "associated work" within the meaning in the Act; or
- (ii) is home building work that is prescribed for the purposes of Section 9(5) of the Act;

(b) in respect of which all licences and requirements referred to in Section 9(1) of the Act have been obtained or satisfied; and

(c) in which the contract price does not exceed \$15,000.

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.

CONTRACTOR: .....

ADDRESS: .....

PHONE NO: .....

TO: (Homeowner's Name and Address)

.....

LOCATION OF WORKS:

.....

SPECIFICATION OF WORKS:

.....

.....

.....

COMPLETION OF WORKS: ..... calendar days from date of signing contract.

QUOTATION

This quotation is valid until ..... 19.....

SIGNED (Contractor) ..... DATE ..... 19.....

I/we ..... (Homeowner/s) make the following declarations:

- (1) I/we acknowledge receipt of the "NOTICE TO THE HOMEOWNER" accompanying this document before signing the contract, pursuant to Section 4(2) of the *Home Building Contracts Act 1991*.

SIGNED .....  
HOMEOWNER/S

- (2) I/we accept this quotation and acknowledge that by signing and dating this form I/we shall on that date be entering into a legally binding contract.

DATE ..... 19..... SIGNED .....  
HOMEOWNER/S

- (3) I/we acknowledge receiving a copy of this contract on the ..... day of ..... 19.....

SIGNED .....  
HOMEOWNER/S

SEE CONDITIONS APPLYING TO THIS CONTRACT ON REVERSE SIDE

WHITE COPY: Contractor BLUE COPY: Homeowner GREEN COPY: File

## Home Building Contracts Amendment Regulations 1994

### CONDITIONS APPLYING TO THIS CONTRACT

#### 1. INSURANCE

The contractor will provide all statutory insurance to complete the described works.

#### 2. EQUIPMENT

All necessary equipment be provided by contractor.

#### 3. VARIATIONS

This contract relates only to work specified herein. In the event of agreement being reached for the performance of any additional work, details of such agreement, the cost of the variation, the date of the variation and any particulars regarding payment shall be set out in writing and signed by both the contractor and the homeowner before the additional work is started. A copy of the signed variation shall be given to the client as soon as it is reasonably practicable and in any event BEFORE the work to which the variation relates is commenced.

#### 4. METHOD OF PAYMENT

To be made in the following stages:

Deposit on signing of contract

(not to exceed 6.5% of contract sum)

\$.....

##### \* Progress Payments

Payments 1 .....(     %) \$.....

2 .....(     %) \$.....

3 .....(     %) \$.....

TOTAL CONTRACT SUM \$.....

\* Property of materials used in completed work passes to the owner once the progress payment is made

5. Both parties should check that all sections on the form have been completed, signed, and therefore adequately reflects the work to be done.

6. (a) The contractor shall make good at his own cost defects in the work notified in writing to the contractor within the period of 120 days commencing on the day of practical completion of the work.

(b) "Defect" means a failure -

- (i) to perform the work in a proper and workmanlike manner and in accordance with the contract; or
- (ii) to supply materials that are of a merchantable quality and reasonably fit for the purpose for which the owner required the work to be performed,

not being a failure for which the contractor is specifically declared by this contract to be not liable.

(c) The expression "practical completion" for the purpose of this condition, means brought to the stage where the work is completed except for any omissions of defects which do not prevent the work from being reasonably capable of being used for its intended purpose.

(d) The contractors liability under this condition shall be subject to any exemptions made from time to time for the purpose of Section 11(3) of the *Home Building Contracts Act 1991*.

(e) The contractor shall not be liable to rectify any defects to the works to be performed under this contract arising from any work carried out by the home owner or the home owner's servants and agents at any time.

This contract was prepared by the Master Builders' Association for the use of members of the Association but may be used by persons who are not members of the Association.

The "Notice to the Homeowner" is prescribed by regulation and is available from the metropolitan and country branches of the Master Builders' Association.

By His Excellency's Command,

D. G. BLIGHT, Clerk of the Council.





