



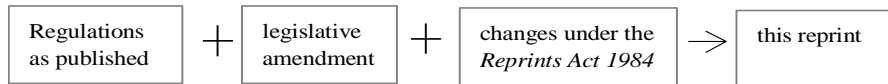
Western Australia

Home Building Contracts Regulations 1992

Reprinted as at 7 June 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

Home Building Contracts Regulations 1992

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Western Australia

Reprinted under the
Reprints Act 1984 as
at 7 June 2002

Home Building Contracts Act 1991

Home Building Contracts Regulations 1992

1. Citation

These regulations may be cited as the *Home Building Contracts Regulations 1992* ¹.

2. Commencement

These regulations come into operation on the day on which the *Home Building Contracts Act 1991* comes into operation ¹.

3. Form of notice prescribed

The form of notice set out in Schedule 1 is prescribed for the purpose of section 4(2) of the Act.

4. Forms of contract prescribed

- (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.
- (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.

- (6) The form of contract set out in Schedule 6, prepared by the Housing Industry Association Limited, is prescribed for use for contracts for the manufacture, supply and installation of built-in furniture and fixtures, but this subregulation does not affect copyright in that form of contract.
- (7) The form of contract set out in Schedule 7, prepared by the Housing Industry Association Limited, is prescribed for use for contracts for home building work involving alterations and additions to existing dwellings, but this subregulation does not affect copyright in that form of contract.

[Regulation 4 inserted in Gazette 22 Mar 1994 p. 1255-6; amended in Gazette 8 Nov 1996 p. 6251; 6 Feb 1998 p. 625.]

4A. Special condition for GST adjustments

- (1) This regulation applies in relation to contracts signed after this regulation comes into operation and before 1 July 2000.
- (2) When this regulation applies, the forms of contracts set out in Schedules 2 to 7 are taken to include a special condition in the form set out in Schedule 8.

[Regulation 4A inserted in Gazette 3 Mar 2000 p. 1012.]

5. Home indemnity insurance maximum excess

A policy of insurance under Part 3A of the Act may provide for an amount of \$500 or a lesser amount for which the insurer is not liable on a claim under the policy.

[Regulation 5 inserted in Gazette 24 Jan 1997 p. 544.]

6. Home indemnity insurance exemption

- (1) Subject to subregulation (2), residential building work carried out by or on behalf of the State Housing Commission which relates to a dwelling for letting or leasing is exempt from the requirements of Part 3A of the Act.

- (2) If, within 6 years from the day of practical completion of a dwelling referred to in subregulation (1), the State Housing Commission proposes to enter into a contract to sell or otherwise dispose of the dwelling or the land on which the dwelling is constructed it is to ensure that, prior to entering into the contract —
- (a) a policy of insurance that complies with subregulation (3) is in force in relation to the residential building work; and
 - (b) the purchaser is furnished with a certificate, in a form approved by the Minister, which evidences the taking out of that policy.
- (3) The policy of insurance referred to in subregulation (2) is to —
- (a) insure the purchaser and the purchaser's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* by reason of the insolvency or death of the builder who carried out the residential building work or by reason of the fact that, after due search and enquiry, that builder cannot be found;
 - (b) provide that claims may be made under it at any time before the expiration of a period of 6 years from the day of practical completion;
 - (c) provide for insurance cover of —
 - (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work, whichever is the lesser; and
 - (d) be issued by or on behalf of an insurer who is —
 - (i) authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.

- (4) Where the policy of insurance referred to in subregulation (2) relates to work described in paragraph (b) of the definition of “home building work” in section 3 of the Act, the cost of the building work for the purposes of subregulation (3)(c)(ii) is only the cost of —
- (a) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and
 - (b) any building work to the dwelling after placement.

- (5) In this regulation —
- “practical completion”** has the same meaning as in section 11 of the Act;

“State Housing Commission” means The State Housing Commission continued under the *Housing Act 1980*.

[Regulation 6 inserted in Gazette 24 Jan 1997 p. 545.]

6A. Prescribed form of preliminary notice under section 17(3)

For the purposes of section 17(3) of the Act, the form of a preliminary notice is Form 1 in Schedule 9.

[Regulation 6A inserted in Gazette 31 Jul 2001 p. 3947.]

7. Prescribed minimum amount for the purposes of section 25A

For the purposes of section 25A of the Act, the minimum amount is prescribed to be \$12 000.

[Regulation 7 inserted in Gazette 17 Jul 1998 p. 3762.]

8. Prescribed offences and modified penalties (section 31B(2) and (4))

- (1) For the purposes of section 31B(2) of the Act, an offence against a provision of the Act specified in column 2 of the Table to this regulation is an offence for which an infringement notice may be given.

- (2) For the purposes of section 31B(4) of the Act, the amount specified in column 3 of the Table to this regulation opposite a provision of the Act specified in column 2 of that Table is the modified penalty for an offence against that provision.

Table

Column 1 Item	Column 2 Provision of Act	Column 3 Modified penalty
1.	section 4(4)	\$400
2.	section 5(2)	\$100
3.	section 5(3)	\$1 000
4.	section 7(3)	\$100
5.	section 10(1)	\$1 000
6.	section 10(5)	\$1 000
7.	section 12(1)	\$1 000
8.	section 13(1)	\$1 000
9.	section 14(1)	\$1 000
10.	section 25C(1)	\$2 000
11.	section 25C(2)	\$500
12.	section 25F	\$2 000
13.	section 26(1)	\$200

[Regulation 8 inserted in Gazette 31 Jul 2001 p. 3947-8.]

9. Prescribed form of infringement notice (section 31B(3))

For the purposes of section 31B(3) of the Act, the form of an infringement notice is Form 2 in Schedule 9.

[Regulation 9 inserted in Gazette 31 Jul 2001 p. 3948.]

10. Prescribed form of notice withdrawing infringement notice (section 31B(7))

For the purposes of section 31B(7) of the Act, the form of a notice stating that an infringement notice has been withdrawn is Form 3 in Schedule 9.

[Regulation 10 inserted in Gazette 31 Jul 2001 p. 3948.]

Schedule 1

[reg. 3]

HOME BUILDING CONTRACTS ACT 1991

NOTICE FOR THE HOME OWNER

This Notice

A builder must give a copy of this notice to you, as the owner, before you sign a contract for home building work that is covered by the *Home Building Contracts Act 1991*.

This notice summarizes relevant provisions of that Act as required by section 4(2). The Act itself should be referred to for the exact text. A copy can be obtained from the State Law Publisher².

Who are “owners” and “builders”?

In this notice “owner” means the person for whom the home building work is to be done and “builder” means the person who, in the course of business, is to do the work or arrange for it to be done.

What the Act covers

The Act deals with contracts for home building work where the contract price is above \$6 000 and below \$200 000. The Act also applies to contracts, within that price range, for associated work (e.g. swimming pools, carports and landscaping) and for alterations. It makes some provisions that are implied in all contracts, and also states what is not allowed in any contract.

Under the Act a builder has a legal duty not to do anything in connection with a contract that is “unconscionable, harsh or oppressive”.

The Act deals with “cost plus” contracts only to the extent that special rules apply to them — see later in this notice.

A builder may be prosecuted and fined for not complying with some provisions of the Act.

Rights conferred by the Act cannot be taken away, diminished or waived and it is forbidden to make any agreement or arrangement to by-pass the Act.

Schedule 1

Building Disputes Committee

A Building Disputes Committee has been set up with power to deal with disputes between owners and builders about contracts that fall within the Act. There is a monetary limit on the Committee's powers. It cannot (unless the parties agree to it doing so) order work to be done exceeding \$100 000 in value, or order the making of a payment above that amount.

There is provision for regulations to be made which would allow certain powers of the Building Disputes Committee to be delegated to the registrar of the Committee.

Home Indemnity Insurance

It is compulsory for all home building work except associated work alone (e.g. swimming pools, carports, pergolas and landscaping), the cost of which is above \$12 000, to be covered by home indemnity insurance.

Home indemnity insurance is also compulsory for associated work if that work is performed under a contract which includes construction or renovation of a residence and the total cost of all the building work is above \$10 000.

Before commencing work or demanding any payment (including a deposit) from you the builder must take out insurance and give you a certificate confirming the existence of the insurance cover.

This insurance will protect you and successive owners for a period of 6 years from the day of practical completion of the building works against financial loss due to the insolvency, death or disappearance of the builder which results in —

- (a) loss of deposit (up to a limit of \$13 000);
- (b) the non-completion of the building work; or
- (c) the failure to rectify faulty or unsatisfactory building work.

[Note that claims under the insurance policy must be made within a period of 6 years from the day of practical completion.]

You should check with your builder to ensure that home indemnity insurance has been taken out or is not required.

Contract — steps to be followed

Everything agreed to between you and the builder must be set out in a written contract which must be dated and signed by both you and the builder or by your representatives. If this is not done you may terminate the contract — see later in this notice under “**Termination of contract**”.

You must be given a copy of the contract as soon as is practicable after it has been signed and before the building work starts.

It is the builder’s duty to see that all these steps are taken.

Special rules for cost plus contracts

A “cost plus” contract is one under which the builder is entitled to recover actual costs incurred plus an extra amount for profit. The following rules apply to these contracts —

- (a) the contract must be headed “cost plus contract”; and
- (b) it must contain a statement in which both you and the builder acknowledge that it is a cost plus contract and that the Act does not apply to it.

If not, the owner may terminate the contract — see later in this notice.

Provisions that are not allowed

Before work begins, the builder can require you to pay a deposit of no more than 6.5% of the contract price. *After* work begins, the builder can only require you to make progress payments for work done or goods supplied. Any payment other than these must be authorised by regulation.

The builder cannot include in a contract a requirement for you to make any payment other than as set out above. If any such provision is included you may terminate the contract — see later in this notice.

Where a contract refers to “**prime costs**” it means fittings or equipment which may vary in price e.g. bathroom tiles. The builder must estimate the cost of such items at or above the lowest amount that they could reasonably cost and the cost must not be understated in the contract. If it is, the builder may be prosecuted and fined. This also applies to estimates for “provisional sums” such as site works.

Schedule 1

The builder must not include in the contract provisions that are “unconscionable, harsh or oppressive”. If you think this has occurred, you may refer the matter to the Building Disputes Committee.

Contract price must be fixed

A contract must not contain a “rise and fall” clause i.e. one which allows the builder to pass on price increases for labour or materials that occur after the contract is signed.

However the builder can include a clause in the contract which allows for a price increase to cover an increase in actual costs —

- (a) if government taxes or charges increase after the contract is signed or if the builder has to comply with a State or Commonwealth law; or
- (b) if work does not start within 45 working days after the contract is signed and the delay is not caused by the builder.

If (b) applies and the price rise is more than 5% you may terminate the contract within 10 working days — see later in this notice. In any case you can apply to the Building Disputes Committee to assess whether the price rise is justified.

Varying the contract

1. *Steps to be followed*

All changes to a contract, including the cost of the change, must be put in writing which must be dated and signed by both you and the builder or your representatives.

A copy must be given to you as soon as is possible after both you and the builder have signed, and before the start of the work that results from the change.

The builder must ensure that these steps are taken.

2. *Exceptions*

Certain changes may be made without these steps being taken, namely —

- (a) changes resulting from directions given by a building surveyor or other person acting under a written law;
- (b) changes arising from unforeseen circumstances (but this does not include unforeseen labour or material cost increases).

Note also the changes by way of price increase that are referred to above under the heading “**Contract price must be fixed**” and below under the heading “**Where approvals are delayed**”.

3. *Protection that you have*

Where any change coming under paragraph (a) or (b) above occurs the builder must give you certain information in writing — see section 8(1), (2) and (3) of the Act. Note that if you and the builder have a dispute about “unforeseen circumstances” and you wish to apply to the Building Disputes Committee you must do so within 14 days.

Where approvals are delayed

A contract is conditional on a building licence and the Water Authority’s approval being obtained within 45 working days on conditions that both you and the builder accept. However contracts that are only for associated work (e.g. swimming pools, carports and landscaping) or for a type of work prescribed by regulations are not subject to this time limit.

Both you and the builder must do what you reasonably can to ensure that these conditions are met. If they are not met, the rights of the parties depend on whose fault prevented the condition being met within the 45 day period.

Builder at fault

Contract remains in force on the same terms and conditions unless you and the builder agree otherwise

Owner at fault or neither party or both parties at fault

Contract remains in force on the same terms and conditions until you and the builder agree otherwise or either party terminates the contract under section 19 **but** —

- (i) the builder may by notice increase the contract price;
- (ii) if the increase exceeds 5% you may terminate the contract within 10 working days — see below under “**Termination of contract**” — provided you compensate the builder for costs incurred;

Schedule 1

- (iii) you may apply, within 10 working days of the notice of increase, to have the increase reviewed by the Disputes Committee.

Making good defects

Any defect in work done or materials supplied under a contract must be made good by the builder if the builder is notified of the defect within 120 days of practical completion of the building work.

However you and the builder may agree in the contract that particular defects are excluded from this provision.

Inspection

A builder must not prevent you or a person representing you or your lending institution from inspecting the building work as allowed by the contract or by regulations. A contract cannot restrict inspections except by limiting them to normal working hours or forbidding inspections that cause unreasonable interference.

Termination of contract

In various places above it is stated that you can terminate the contract for a particular reason. To do this you must give notice in writing to the builder before the building work is finished.

Where a contract is terminated, the Building Disputes Committee can make financial adjustments between you and the builder.

Disputes

Before you or the builder apply to the Building Disputes Committee, a notice must be given to the other outlining the complaint and asking that it be put right or that a settlement be agreed to.

A claim under the *Home Building Contracts Act* must be brought within 3 years of the time when it first arose.

Parties to proceedings before the Building Disputes Committee are not to be represented by legal practitioners except as set out in the Act.

Schedule 1

Note that disputes about building work may also be brought before the Building Disputes Committee under section 12A of the *Builders' Registration Act* within 6 years of practical completion of the work.

Advice on how a dispute may be placed before the Building Disputes Committee and related matters may be obtained from the Registrar of the Committee³.

[Schedule 1 amended in Gazette 24 Jan 1997 p. 546; 17 Jul 1998 p. 3762.]

Schedule 2

[reg. 4]



HOUSING INDUSTRY ASSOCIATION LIMITED

ACN 004 631752

LUMP SUM BUILDING CONTRACT



IMPORTANT NOTICE

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

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

1. AGREEMENT TO BUILD

- (a) The Builder agrees to build and complete for the Owner the building work described in Item 3 of the Schedule (“the Works”) upon the land and existing improvements described in Item 3 of the Schedule (“the Site”) in a proper and workmanlike manner and in accordance with this Contract and the Drawings and Specifications, inclusive of all attached Addenda to Specifications agreed between the parties and, for the purpose of identification, signed by each of them (the “Contract Documents”) for the Contract Price, terms and conditions herein. The Contract Documents signed by the parties shall constitute the entire Contract between the parties.
- (b) (i) Where there is a difference or inconsistency between the Contract Documents, they will be construed in the following order of precedence: Lump Sum Building Contract, Addenda to Specifications, Drawings, Specifications.

Copyright Housing Industry Association Limited **Form 16B**

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

Schedule 2

2. NECESSARY APPROVALS

- (a) Subject to clause 2(b), this Contract is conditional upon:
 - (i) a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* being issued in respect of the Works within FORTY FIVE (45) working days from the date of this Contract;
 - (ii) the Owner and the Builder acknowledging in writing within that period that each of them accepts any condition attached to the licence;
 - (iii) it becoming lawful under the Water Act (as defined in section 9(6) of the *Home Building Contracts Act 1991*; “the Water Act”) within FORTY FIVE (45) working days from the date of this Contract for the Works to be commenced; and
 - (iv) the Owner and the Builder acknowledging in writing within that period that each of them accepts any direction that may be given by the Water Corporation under the *Water Act* in connection with the carrying out of the Works.
- (b) A condition referred to in clause 2(a) does not apply to this Contract:
 - (i) to the extent that the subject matter of the condition was completed before this Contract was entered into; or
 - (ii) where the only work to be performed under this Contract is the construction or carrying out of associated work (as defined in section 3(1) of the *Home Building Contracts Act 1991*) or any other work prescribed for the purpose of section 9(5)(c) of that Act.
- (c) The Builder shall:
 - (i) do all things that are reasonably necessary to be done to ensure that any condition referred to in clause 2(a)(i) and (iii) applicable to this Contract is fulfilled; and

- (ii) not unreasonably decline to accept a condition or direction referred to in clause 2(a)(ii) or (iv) that applies to this Contract.
- (d) The Owner shall:
 - (i) do all such things as may be required to be done by the Owner to ensure that any condition referred to in clause 2(a)(i) and (iii) applicable to this Contract is fulfilled; and
 - (ii) not unreasonably decline to accept a condition or direction referred to in clause 2(a)(ii) or (iv) that applies to this Contract.
- (e) If a condition referred to in clause 2(a)(i) and (iii) applicable to this Contract is not fulfilled the consequences to, and the rights and remedies of, the parties are as set out in clause 22.

3. OWNER'S WARRANTIES

- (a) The Owner warrants that:
 - (i) The Owner has title and is entitled to build on the Site.
 - (ii) The Site is subject only to those encumbrances, restrictive covenants and easements detailed in Item 5 of the Schedule.
 - (iii) The Builder has access to the Site for the purposes of this Contract or will be given access not later than the date by which the Builder is required to start the Works in accordance with clause 9(a).
 - (iv) The existing pegs adequately delineate the Site boundaries.
 - (v) The Site will support the Works.
 - (vi) Power and water (under normal mains pressure) is available to the Site and the Works during construction at the Owner's expense.
 - (vii) The Owner authorises the Builder to apply for and take out Home Indemnity Insurance in respect of the Works.

Schedule 2

- (b) The Builder may at any time prior to the commencement of the Works, by notice in writing require the Owner to satisfy the Builder that the Owner has title to the Site and/or that the Owner is able to pay the Contract Price by production of evidence in writing and if the Owner shall fail to do so within TEN (10) working days of the receipt of such notice the Builder may terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) working days unless such satisfaction is dependent on any of the Conditions stated in clause 1(c) or 28.
- (c) Unless the Builder has prepared or caused to be prepared the Contract Documents, the Owner warrants the same are accurate, free of error and consistent in every respect and do not infringe copyright, letters patent or registered design and the Owner shall indemnify the Builder against any action, claim, costs or expenses arising from any breach of this warranty.
- (d) Subject to sub-clause (c) hereof and where the Contract Documents have not been prepared or caused to be prepared by the Builder, any discrepancy or error in the Contract Documents shall be dealt with in accordance with clause 12(b) or (d).

4. BUILDER'S DUTIES

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

5. SITE CONDITIONS

(a) Site Boundaries

If the Builder has any reasonable doubt as to the accuracy or true position of the boundaries of the Site and considers that it is necessary to engage a licensed surveyor to survey and adequately peg, re-peg or delineate the Site, then this shall be dealt with in accordance with clause 12(b) or (d).

(b) Structural Support

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

(c) Excessive Structural Costs

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

(d) Hard Digging or Other Unforeseen Requirements

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

(e) Power and Water Not Available

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

Schedule 2

6. THE CONTRACT PRICE

- (a) The price for the Works shall be the amount set out in Item 6 of the Schedule which shall be subject to the adjustments and variations provided for in this Contract. The price so adjusted shall hereinafter be called the "Contract Price".
- (b) If there is a delay in the commencement of the Works beyond the period of FORTY FIVE (45) working days after the date of this Contract being a delay:
 - (i) that is caused solely by the failure of the Owner to comply with a condition imposed on the Owner by this Contract, including the provisions of clause 3(b); or
 - (ii) that occurs without any failure on the part of either the Owner or the Builder to comply with his or her obligations under this Contract then the consequences to, and the rights and remedies of, the parties are as set out in clause 22(d) and (e).
- (c) If further costs are actually imposed on or incurred by the builder as a direct consequence of a written law of the State of Western Australia or the Commonwealth of Australia or on account of an increase in any tax, duty or other charge imposed under any such law after the date of this Contract then the Builder shall be entitled to increase the Contract Price to reflect such further costs. The Builder shall notify the Owner of such further costs and specify to the Owner when such further costs are payable.

7. DEPOSIT AND PROGRESS PAYMENTS

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

- (a) Provided that the requirements of Part 3A of the *Home Building Contracts Act 1991* have been complied with, upon the signing of this Contract the Owner shall pay to the Builder the deposit set out in Item 7 of the Schedule.
- (b) The Owner shall pay to the Builder the balance of the Contract Price by way of progress payments upon the following conditions:
 - (i) Within TEN (10) working days of the service upon the Owner of a notice by the Builder that any of the Works described in Column 'A' of Item 7 of the Schedule have

been completed the Owner shall pay to the Builder that portion of the Contract Price mentioned opposite those Works in Column 'B' of Item 7 having taken into account any adjustments in accordance with clauses 11 and 12.

- (ii) Where finance for the Works is being provided by a lender, the Owner shall immediately on signing this Contract authorise and direct the lender to make progress payments in accordance with clause 7(b)(i).
- (iii) Any dispute as to the value of the Works completed or the state of the Works at any particular time shall be determined in accordance with clause 18.
- (iv) If for any reason any progress payment or the final payment is not made within the times specified the Builder shall be entitled to charge interest thereon at the percentage rate per annum set forth in Item 8 of the Schedule as and from the date upon which the payment fell due until the date upon which the payment is made and the Builder may in addition to any other remedy which he may have against the Owner suspend the Works pending payment.

8. SECURITY

The Owner hereby charges the land constituting the Site with the due payments to the Builder of all the moneys 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.

9. TIME FOR PERFORMANCE

- (a) Subject to this Contract the Builder shall commence the Works within the number of working days specified in Item 9(a) of the Schedule or as soon thereafter as may be reasonably practicable calculated from the latest of the following dates:
 - (i) on which the Owner shall have complied with the conditions referred to in clause 2;
 - (ii) on which the Owner shall have complied with any notice given by the Builder pursuant to clause 3(b);

Schedule 2

- (iii) on which the Builder is satisfied that the boundaries of the Site have been adequately delineated;
 - (iv) on which provision has been made for adequate water supply to the Site; and
 - (v) on which the Builder has received approval from all relevant authorities.
- (b) Subject to this Contract the Builder shall complete the Works (bring the Works to Practical Completion — clause 19(a)) by the time specified in Item 9(b) of the Schedule. The time for completion of the Works may be extended in accordance with clause 9(c) in the event of delay caused by or resulting directly or indirectly from any of the following causes:
- (i) any of the following events which affect directly or indirectly access to or the condition of the Site or the Works or any person engaged on or material employed in or to be employed in or in relation to the Works, namely: acts of God, fire, explosion, earthquake, civil commotion, theft or acts of vandalism, flooding, inclement weather, strikes, industrial action, lockouts or holidays granted in accordance with industrial awards, fires, vehicle accidents, unavailability of labour, vehicles or equipment or permits required;
 - (ii) any alterations to the Works;
 - (iii) any instruction or delay of instruction by or any omission of the Owner;
 - (iv) any deliberate and substantial prevention of or interference with the Works or the progress thereof caused by the Owner;
 - (v) any delay in the supply of materials or transport;
 - (vi) any proceedings being taken or threatened by any disputes with adjoining or neighbouring owners concerning the continuation or variation of delivery to or completion of the Works upon the Site;
 - (vii) any cessation of work pursuant to clause 7(b)(iv);

- (viii) any delay in the commencement of or continuance with the Works, caused by or resulting from an order or directive of a relevant authority or proceedings before the Builders' Registration Board or the Disputes Committee, the Registrar, a mediator, an arbitrator or a Court;
 - (ix) any delay caused by proper investigation of any of the above by the Builder or the Owner.
- (c) Upon the happening of any of the events aforesaid the Builder shall be entitled to seek or make a variation by way of extension of the time for completion of the Works in accordance with the provisions of clause 12(b) or (d).

10. POSSESSION OF THE SITE

- (a) The Builder shall be given exclusive possession of the Site and shall be entitled to remain in possession until the Contract Price has been paid in full by the Owner.
- (b) The Owner or an "authorised person" as defined in section 26(3) of the *Home Building Contracts Act 1991* shall be given access to the Site to carry out the relevant inspections, provided that such inspections are made during the Builder's normal working hours and such inspections do not unreasonably impede or interfere with the Works.
- (c) Neither the Owner nor any person acting on the Owner's behalf shall give or be entitled to give at any time, directions to the Builder's tradespersons or sub-contractors on the Site or elsewhere relating to the Works.
- (d) After Practical Completion the Builder shall be entitled to reasonable access to the site to complete the Builder's obligations under clause 14.

11. PROVISIONAL SUMS AND PRIME COST ITEMS

- (a) Where Provisional Sums or Prime Cost Items are included in the Contract Price, the Owner shall, within FIVE (5) working days of receiving a request from the Builder, supply to the Builder in writing, all necessary directions and selections regarding the work and/or goods comprised in any Provisional Sums and Prime Cost Items.

Schedule 2

- (b) Provisional Sums stated in Item 10(a) of the Schedule or detailed in the Contract Documents include:
 - (i) the total cost to the Builder for materials, sub-contractor charges, delivery to the Site and installation; and
 - (ii) an additional amount calculated as the percentage set out in Item 11 of the Schedule of the cost in clause 11(b)(i) for the Builder's supervision, overhead and profit.
- (c) The Prime Cost Item amounts stated in Item 10(b) of the Schedule or detailed in the Contract Documents, exclude the costs of delivery to the Site, the cost of installation, fixing, supervision, overhead and profit which are included in the Contract Price.
- (d) Upon completion of the work the subject of a Provisional Sum or on installation of an item the subject of a Prime Cost Item, or at the next progress payment notice, the Builder shall provide the Owner with an itemised statement of the cost for the work or the items, calculated in accordance with the provisions of clauses 11(b) and (c) hereof, and the Contract Price shall be adjusted accordingly and paid in accordance with clause 7.

12. VARIATIONS

- (a) If the Owner wishes to make any variation to the Works and/or the Contract Documents the Owner or the Owner's agent shall give the Builder a written request for such variation. The Builder may decline to agree to the variation requested but in the event that the Builder is prepared to agree to the variation:
 - (i) the Builder shall prepare and give to the Owner or the Owner's agent a variation document setting out the terms of, and the cost to be incurred on account of, the variation;
 - (ii) the Owner or the Owner's agent shall sign and return the variation document to the Builder;
 - (iii) the Builder or the Builder's agent shall sign and insert in the variation document the date that he signs it and forward a signed copy to the Owner or the Owner's agent as soon as is reasonably practicable thereafter and before the work to which the variation relates is commenced; and
 - (iv) the variation shall be carried out as if it were part of the Works under the Contract.

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

Schedule 2

- (ii) if the Owner signs and returns the variation document to the Builder then the provisions of clause 12(a)(iii) and (iv) shall also apply to the variation;
 - (iii) if the Owner does not sign and return the variation document to the Builder within FIVE (5) working days of being given the variation document then the Builder shall be entitled to either carry out the work required but without any adjustment to the Contract Price or to terminate this Contract pursuant to clause 16(g).
- (e) The price of a “variation” shall unless previously agreed in writing be calculated as follows:
 - (i) If the amount is additional to the Contract Price it shall be equal to the cost of the labour and materials supplied together with other costs properly incurred as a consequence thereof plus that percentage of such additional costs as set forth in Item 11 of the Schedule and shall be added to the Contract Price, and unless previously paid, shall be added to the next progress payment due after the execution of such work.
 - (ii) If it shall result in a decrease in cost the amount of such decrease shall be deducted from the Contract Price and shall be equal to the costs of labour and materials and other costs properly saved, and any such decrease shall be deducted from the final payment hereunder.
- (f) The Owner shall obtain the consent of his or her lender (if any) prior to requesting or authorising the Builder to carry out extra work or to vary the Works in any way.
- (g) The Builder may, at any time prior to the commencement of any building work that is to be performed by way of a variation pursuant to the provisions of this Contract, by notice in writing require the Owner to satisfy the Builder that the Owner is able to pay the cost to be incurred on account of the variation by production of evidence in writing and if the Owner shall fail to do so within TEN (10) working days of the receipt of such notice the Builder may terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) days.

13. INSURANCE

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

- (a) The Builder shall in the joint names of the Builder and the Owner and the Owner's lender (if any) insure against loss and damage to the full value under this Contract (plus the requisite amount to cover architects, engineers, quantity surveyors and consultant's fees) all work executed and materials and goods upon the Site whether fixed or unfixed except for goods belonging to the Owner or a third party and shall keep such work, materials and goods insured until the Works are delivered up to the Owner upon Practical Completion and upon request deliver to the Owner evidence of such insurance and such insurance shall be against all liability, loss, action, claim or proceedings in respect of fire, explosion, earthquake, flood, lightning storm and tempest, rioting, civil commotion and the negligent or wilful act of any third party. Should the Builder fail to take out such insurance the Owner may insure the Works as aforesaid and the premiums paid by the Owner in relation thereto shall be deducted from the Contract Price. Upon settlement of any claim under a policy as aforesaid the Builder shall rebuild or repair the Works and replace or repair the materials or goods destroyed within a reasonable time of such settlement.
- (b) The Builder shall insure against any liability, loss or damage claim demand and proceedings whatsoever arising out of or connected with or in any way due to the following namely: —
 - (i) any personal injury to or death of any person arising out of or in connection with or in the course of the Works, other than due to the negligent act or omission by the Owner or any person for whom the Owner may be responsible;
 - (ii) any injury or damage whatsoever to any property real or personal which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Builder, his or her employees, agents or sub-contractors.
- (c) The Builder shall insure against any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the

Schedule 2

Builder or the Builder's sub-contractors in or about the Works arising at common law or by virtue of any statute relating to workers' compensation or employers' liability except where such liability, loss or damage claim or proceeding is caused by the negligence or other fault of the Owner or its agents.

- (d) The Owner is responsible for and undertakes to have any items supplied by the Owner adequately insured against damages, loss or theft until the Owner takes possession of the Works.

14. DEFECTS LIABILITY PERIOD

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

15. EARLY TERMINATION OF CONTRACT

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

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repayment of any consideration given by the Owner under this Contract or for payment to the Builder in respect of any materials supplied or any home building work or other services performed by the Builder under or in relation to this Contract.

16. EVENTS ALLOWING BUILDER TO TERMINATE

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

- (a) Substantial damage to or interference with the Works or delays to the Works or access thereto by any cause beyond the control of the Builder including (but without limiting in any way the generality thereof) water, flood, fire, storm, tempest, rioting, earthquake, civil commotion or industrial action.
- (b) Any substantial breach of the Contract by the Owner.
- (c) If the Owner shall make any assignment for the benefit of or enter into any arrangement or composition with the Owner's creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a Receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Owner's estate.
- (d) Any deliberate and substantial prevention of or interference with the Works or progress thereof caused by the Owner.
- (e) Any failure by the Owner for TEN (10) working days after the due date thereof to pay any part of the Contract Price subject to clause 18 of this Contract.
- (f) The entry into possession of the Works by the Owner prior to practical completion or without the Builder's consent.
- (g) If the Owner fails to sign and return a variation document to the Builder given to the Owner by the Builder pursuant to clause 12(d) within the period referred to in clause 12(d).
- (h) If the circumstances specified in clause 22(b) or (c) occur.

17. EVENTS ALLOWING OWNER TO TERMINATE

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

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

18. DISPUTES

- (a) In any dispute between the Owner and the Builder at any time relating to this Contract then subject to the rights of either party to apply to the Registrar or the Disputes Committee (or their successors) or any other relevant Statutory Authority, either party shall give to the other notice of such dispute, disagreement or difference and at the expiration of FIVE (5) working days thereafter and in the absence of any settlement the same shall be referred to:
 - (i) a single mediator appointed by mutual consent; or
 - (ii) a single arbitrator appointed by mutual consent; or
 - (iii) in the event that neither (i) nor (ii) are satisfied within FIVE (5) working days, or mediation is not successful, a single arbitrator shall be appointed by the President or his or her nominee of the Housing Industry Association (Western Australian Region) provided that such arbitrator shall be a graded Arbitrator approved by the Institute of Arbitrators Western Australian Chapter.
- (b) The conduct of the Arbitrator shall be in accordance with and subject to the provisions of the *Commercial Arbitration Act 1985*

Schedule 2

and the decision of the single arbitrator appointed shall be final. The rights and obligations of the parties under this Contract shall be modified only to the extent made necessary by such arbitration.

- (c) This Contract and the parties' rights and obligations under this Contract shall in all respects be governed by the laws of the State of Western Australia and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Courts of the said State.

19. PRACTICAL COMPLETION

- (a) Practical Completion of the Works means brought to the stage where the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for its intended purpose.
- (b) The Builder shall notify the Owner when the Builder considers that Practical Completion has occurred and within FIVE (5) working days the Owner and the Builder or his or her representative shall meet at the Works to carry out a pre-handover inspection. If said meeting does not occur the Contract shall be dealt with pursuant to clause 18 hereof.
- (c) During the pre-handover inspection the parties shall agree to a list of items which require completion or rectification or give notice to the other party within FIVE (5) working days under clause 18 hereof.
- (d) The final payment shall be due within TEN (10) working days after Practical Completion and upon payment thereof the Builder shall hand the keys of the Works to the Owner or to such persons as the Owner may direct and on acceptance of the keys the Owner shall be deemed to have entered into possession of the Works and to have acknowledged that they have been completed by the Builder in accordance with this Contract and the Builder shall thereupon be relieved and discharged from all responsibilities under this Contract other than the Builder's obligations pursuant to clauses 14 and 19(c).
- (e) If the owner takes possession of the Works, permits work outside this Contract, or delivery of goods or chattels to the Works,

without prior written consent of the Builder, when the Works are substantially complete but not necessarily at Practical Completion the Builder shall be discharged and relieved absolutely from all his or her obligations and responsibilities under this Contract and the unpaid balance of the Contract Price shall become due and payable immediately, together with interest thereon at the rate specified in Item 8 of the Schedule calculated from the date of taking such action until the date payment is made.

- (f) If the Owner denies access to the Builder or takes possession of the Works prior to the issue by the Builder of a Notice of Practical Completion and without prior written consent of the Builder, the Date of Practical Completion shall be the date such possession is taken.
- (g) The Works shall be at the risk of the Owner from the date the Owner takes or is entitled to take possession.

20. NOTICES

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

21. SUPPLY OF MATERIALS AND UNFIXED MATERIALS ON SITE

- (a) If the Builder is unable to obtain any materials or items selected by the Owner after the date of the Contract as and when he shall require them the Owner shall immediately, upon request from the Builder, select alternative available materials or insist on the original materials provided they are available with TEN (10) working days of being required on Site by the Builder. In either case, any delay and/or additional costs (including freight and transport insurance) in obtaining the same shall be dealt with in accordance with clause 12(b) or (d).

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- (b) Unless otherwise specified in the Contract Documents, all materials resulting from demolition and/or surplus materials supplied by the Builder in the course of carrying out of the Works, belong to the Builder who shall remove them from the Site before Practical Completion.
- (c) The Owner shall not supply any materials or do any work on the Site before Practical Completion, unless the Builder agrees in writing. If the Builder agrees in writing, and these materials or work need to be incorporated with the Builder's work, the owner shall supply the materials free of defects, or do the work, when required and, in any case, within FIVE (5) working days of the Builder's request. If the owner does not comply, the Builder may supply the materials or do the work, in accordance with clause 12(b) or (d). Materials and goods supplied by the Owner (or work done by the Owner) shall remain the responsibility of the Owner as to their suitability for their intended use.

22. CONSEQUENCES OF NON-FULFILMENT OF CONDITIONS

- (a) If any condition set out in clause 2(a) is not fulfilled solely because the Builder has failed to comply with the Builder's obligations under clause 2(c), this Contract is not affected but remains in force on the same terms and conditions except as otherwise agreed between the parties.
- (b) If any condition set out in clause 2(a) is not fulfilled solely because the Owner has failed to comply with the Owner's obligations under clause 2(d) this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates this Contract in accordance with clause 16 or 17 as the case may be, but subject to the provisions of clause 22(d).
- (c) If any condition set out in clause 2(a) is not fulfilled and both the Owner and the Builder have, or neither the Owner nor the Builder has, failed to comply with their respective obligations under clause 2(c) and (d), this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates the contract in accordance with clause 16 or 17 as the case may be, but subject to the provisions of clause 22(d).

- (d) Where clause 22(b) or (c) or clause 6(b) applies —
 - (i) the Builder may by notice in writing to the Owner —
 - (A) increase the Contract Price by an amount set out in the notice; and
 - (B) specify when any increased amount is payable, which must be either —
 - (1) not later than TEN (10) working days after the notice is given; or
 - (2) at the time of the next progress payment;
 - (ii) if the amount of an increase exceeds FIVE (5)% of the Contract Price, the Owner may terminate this Contract in accordance with clause 17 within TEN (10) working days after receipt of notice under paragraph (i) of this sub-clause; and
 - (iii) if the Owner so terminates this Contract, the Owner is liable to compensate the Builder for the reasonable costs inclusive of supervision, overhead and margin incurred by the Builder up to the date of termination.
- (e)
 - (i) If the Owner considers that the amount of a price increase notified under clause 22(d)(i) is excessive or unjustified the Owner may apply to the Disputes Committee, within TEN (10) working days after receipt of a notice under that clause, for a review of that amount;
 - (ii) On a review under this sub-clause the Builder is required to show that the price has been increased to reflect actual increases in costs inclusive of supervision, overhead and margin between the date of this Contract and the date of the notice under clause 22(d)(i);
 - (iii) On a review under this sub-clause the Disputes Committee may confirm, vary or disallow the amount of the price increase, and this Contract shall have effect in accordance with the Disputes Committee's decision.

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23. ASSIGNMENT

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

24. SEVERABILITY

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

25. EXTENT OF BUILDERS LIABILITY

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

26. INTERPRETATION

In this Contract words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting persons

shall include corporate bodies. A reference to “**Owner**” or “**Builder**” includes each of their respective heirs, successors and assigns.

“**Working days**” means Monday to Friday but excluding any day that is a public holiday in the area of the Site or throughout the State of Western Australia. “**Registrar**” means the registrar appointed under the *Builders’ Registration Act 1939*. “**Disputes Committee**” means the Building Disputes Committee established by section 26 of the *Builders’ Registration Act 1939*. Headings in this Contract are deemed not to be part hereof and are not to be used in the interpretation or construction hereof. A reference to statutes or regulations includes any statutory re-enactment or amendment.

27. APPOINTMENT AND AUTHORITY OF OWNER’S AGENT

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

28. SPECIAL CONDITIONS

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

[Schedule 2 inserted in Gazette 11 Jul 1997 p. 3585-602.]

Schedule 3

[reg. 4]



HOUSING INDUSTRY ASSOCIATION LIMITED

ACN 004 631752

**LUMP SUM BUILDING CONTRACT
FOR MINOR WORKS**



To be used for contracts —

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

IMPORTANT NOTICE

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

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

1. AGREEMENT TO BUILD

- (a) The Contractor agrees to build and complete for the Owner the building work described in the Schedule (“the Works”) upon the land and existing improvements described in the Schedule (“the Site”) in a proper and workmanlike manner and in accordance with this Contract and all the Drawings and Specifications, inclusive of all attached Addenda to Specifications agreed between the parties and, for the purpose of identification, signed by each of them (the “Contract Documents”) and all lawful directives and approvals of relevant Statutory Authorities, for the Contract Price, terms and conditions herein. The Contract Documents signed by the parties shall constitute the entire Contract between the parties.
- (b) The Contractor shall not perform any of the Works nor make any demand for any payment under this Contract including any deposit until the Contractor has given the Owner a certificate in the

Schedule 3

approved form that evidences the taking out of a policy of insurance that complies with Part 3A of the *Home Building Contracts Act 1991* in respect of the Works (Home Indemnity Insurance). Except for the Contractor's interest in this Contract and the legal requirement for it to be arranged in respect of the Works, the Contractor receives no benefits in relation to arranging Home Indemnity Insurance. The Contractor further confirms that Home Indemnity Insurance may be arranged with an insurer of the Owner's choice. Item 10 of the Schedule sets out the premium anticipated to be paid by the Contractor for Home Indemnity Insurance. If the Contractor is unable to obtain Home Indemnity Insurance, from an insurer nominated by the Owner on terms and conditions acceptable to the Contractor, the Contractor may terminate this Contract by notice in writing to the Owner and the Owner shall pay to the Contractor all direct costs paid or payable by the Contractor for the purpose of obtaining the building licence up to the time of termination. If the Contractor is unable to obtain Home Indemnity Insurance, where no insurer has been nominated by the Owner, on terms and conditions acceptable to the Contractor, then the Contractor may terminate this Contract by notice in writing to the Owner and the Contractor shall be liable for all direct costs paid or payable by the Contractor for the purpose of obtaining the building licence up to the time of termination.

2. OWNER'S WARRANTIES

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

3. THE CONTRACT PRICE

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

4. DEPOSIT & PROGRESS PAYMENTS

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

5. SECURITY

- (a) The Owner charges the Site in favour of the Contractor to the value of any unpaid amounts due under this Contract and irrevocably 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) Subject to this Contract the Contractor shall commence the Works within the number of working days specified in Item 7(a) of the

Schedule 3

Schedule or as soon as thereafter as may be reasonably practicable, and shall proceed therewith with reasonable dispatch and diligence and complete the Works within the time specified in Item 7(b) of the Schedule.

- (b) Notwithstanding provisions contained in this Contract the Contractor shall not be responsible for any delays in the Works caused by any matter or thing over which the Contractor shall have no control. The Contractor shall be entitled to an extension of the time for completion in accordance with clause 9(b).

7. ACCESS TO THE SITE

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

8. PROVISIONAL SUMS AND PRIME COST ITEMS

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

next progress payment notice, the Contractor shall provide the Owner with an itemised statement stating the cost for the work on the items, calculated in accordance with the provision of clauses 8(b) and (c) hereof, and the Contract Price shall be adjusted accordingly and paid in accordance with clause 4.

9. VARIATIONS

- (a) If the Owner wishes to make any variation to the Works and/or the Contract Documents, then:
- (i) the Owner or the Owner's agent shall give the Contractor a request for such variation;
 - (ii) the Contractor may decline to agree to the variation requested but in the event that the Contractor is prepared to agree to the variation,
 - (iii) the Contractor shall prepare and give to the Owner or the Owner's agent a Variation Document setting out the terms of, and the cost to be incurred on account of the variation;
 - (iv) once the Variation Document has been signed by the Owner or the Owner's agent and the Contractor and dated (the date of the Variation Document being the date on which the last signatory signed the document) the variation shall be carried out as if it were part of the Works under the Contract and the express conditions of all of the Contract Documents are deemed to be varied accordingly; and
 - (v) the Contractor shall give a copy of the Variation Document signed by the Contractor to the Owner or the Owner's agent as soon as reasonably practical and before the work to which the variation relates has commenced.
- (b) The Contractor shall be entitled to a variation in respect to time to complete and cost for circumstances that could not reasonably have been foreseen by the Contractor at the time when this Contract was entered into or additional work ordered by any written direction lawfully given by a building surveyor or other person acting under a written law.

Schedule 3

- (i) The Contractor shall provide a statement setting out the reasons for and the cost to be incurred on account of the variation and a copy of any such direction to the Owner or their agent within FOURTEEN (14) days of the Contractor becoming aware or reasonably should have become aware of such circumstances or receiving such written direction.
 - (ii) The Contractor shall not be able to make any variation for an increase in the costs of labour (including related overhead expenses) or materials or both, to be incurred by the Contractor in performing the Works as detailed in the original Contract Documents.
 - (iii) Where the Owner has been given a statement under this clause and does not consider that the variation is one to which clause 9(b) applies, the Owner can apply for relief to the Building Disputes Committee in accordance with section 17 of the *Home Building Contracts Act 1991* within FOURTEEN (14) days after the statement was given to the Owner.
- (c) If further costs are actually imposed on or incurred by the Contractor as a direct consequence of a written law of the State of Western Australia or the Commonwealth of Australia or on account of an increase in any tax, duty or other charge imposed under any such law after the date of this Contract then the Contractor shall be entitled to increase the price to reflect such further costs. The Contractor shall notify the Owner of such costs and specify to the Owner when such costs are payable.

10. INSURANCE AND RISK

- (a) The Works and materials delivered to the Site under this Contract shall be at the risk of the Owner at all times except as provided for hereunder or detailed as a special condition to this Contract.
- (b) In addition to any insurance cover which the Contractor is obliged to obtain for the Works under Part 3A of the *Home Building Contracts Act 1991*, the Contractor shall insure against any liability loss or damage claim demand and proceedings whatsoever arising out of or connected with or in any way due to the following: —
 - (i) any personal injury to or death of any person arising out of or in connection with or in the course of the Works, other

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

- (ii) any injury or damage whatsoever to any property real or personal which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Contractor, his or her employees, agents or sub-contractors.
- (iii) any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the person or his or her sub-contractors in or about the Works arising at common law or by virtue of any statute relating to workers compensation or employers liability except where such liability, loss or damage claim or proceeding is caused by the negligence or other fault of the Owner or its agents.

11. DEFECTS LIABILITY PERIOD

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

12. REASONS FOR EARLY TERMINATION

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

Schedule 3

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

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

13. EARLY TERMINATION OF CONTRACT

- (a) Except as provided in clause 13(c) neither party shall be at liberty to terminate this Contract or exercise or enforce any other right or remedy in relation hereto whether pursuant to this Contract or at law or in equity without first giving to the other party a notice in writing specifying the matter complained of and requesting that other party to remedy it within FOURTEEN (14) days of the service of such notice. If such notice is given and the other party fails within such period to remedy the matter complained of then the party giving such notice may terminate this Contract forthwith.
- (b) On such termination, subject to any agreement to the contrary or to any determination made pursuant to clause 14, if the Contractor has commenced the Works then the Contractor shall be entitled to be paid for all work done and materials used or procured by the

Contractor and properly chargeable to that date plus that percentage of all such costs as set forth in the Schedule but proper allowances shall be made for all payments on account of the Contract Price already made by the Owner to the Contractor. The Contractor may claim interest at the rate specified in the Schedule on the outstanding balance of moneys 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 moneys 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 moneys due under this Contract.

14. DISPUTES

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

Schedule 3

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

15. PRACTICAL COMPLETION

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

16. NOTICES

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

17. SUPPLY OF MATERIALS AND UNFIXED MATERIALS ON SITE

- (a) If the Contractor is unable to obtain any materials or items selected by the Owner after the date of the Contract as and when the

Contractor shall require them the Owner shall forthwith, upon request from the Contractor, select alternative available materials or insist on the original materials provided they are available within TEN (10) working days of being required on Site by the Contractor. In either case, any delay and/or additional costs (including freight and transport insurance) in obtaining the same shall be dealt with in accordance with clause 9(a).

- (b) Unless otherwise specified in the Contract Documents, all materials resulting from demolition and/or surplus materials supplied by the Contractor in the course of carrying out of the Works, belong to the Contractor who shall remove them from the Site before Practical Completion.
- (c) The Owner shall not supply any materials or do any work on the Site before Practical Completion, unless the Contractor agrees in writing. If the Contractor agrees in writing, and these materials or work need to be incorporated with the Contractor's work, the Owner shall supply the materials free of defects, or do the work, when required and, in any case, within FIVE (5) working days of the Contractor's request. If the owner does not comply, the Contractor may supply the materials or do the work, in accordance with clause 9(a). Materials and goods supplied by the Owner (or work done by the Owner) shall remain the responsibility of the Owner as to their suitability for their intended use.

18. ASSIGNMENT

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

19. INTERPRETATION

In this Contract words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting persons

Schedule 3

shall include corporate bodies. A reference to “Owner” or “Contractor” includes each of their respective heirs, successors and assigns.

20. SPECIAL CONDITIONS

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

SCHEDULE OF PARTICULARS

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

[Schedule 3 inserted in Gazette 11 Jul 1997 p. 3603-11.]

Schedule 4

Schedule 4

[reg. 4]

H.B.W. 3

**HOME BUILDING
WORKS CONTRACT
EDITION 3**

(for use in Works without an Architect)

Agreement and Conditions of Contract

between

.....
.....(Owner)

and

.....
.....(Builder)



© Copyright

February 1997

**Home Building Works Contract
Edition 3**

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 ACT 1991

**SECTION 6
RECEIPT OF DOCUMENTS**

In accordance with sections 6 and 25C(2) 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.
3. A certificate providing evidence of a policy of Home Indemnity Insurance obtained by the Builder in relation to the Works complying with section 25D of the Act.

Signed

.....
(Owner)

Dated:19.....

Schedule 4

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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.

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- 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*.

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.

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*

Schedule 4

IN WITNESS the parties have signed this on the

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

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

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

APPENDIX I

(1)	Percentage to be allowed for supervision, overheads and profit. If none provided, 15% Clauses 4, 16%
(2)	Percentage to be added where expenditure is greater than amount allowed for provisional sums. If none provided, 15% Clause 23(c)%
(3)	Labour rates (inclusive) Clause 16(f)	
	Tradesperson	\$.....per hour
	Labourer	\$.....per hour
(4)	Period for payment of progress claims or final account. If none provided, 10 days. Clause 22(iii), 25days
(5)	Method of payment Clauses 14, 25 (as applicable)	
	Percentage of Contract Sum	Amount \$
	‘A’ By progress of the work in stages	
	• 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	\$ _____

Schedule 4

‘B’ By percentage proportions of work completed by trade:

	Proportion of 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)
 If none provided, 20%per centum
- (7) Defects Liability Period
 Clause 28
 if none provided, 18 weeks
 (120 calendar days minimum)weeks
- (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 7 days of any matters which you consider are required by this contract to be done for Practical Completion.

Dated.....19

Signed.....(Builder)

Schedule 4

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 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 Specification, the Owner expressly warrants that the said Drawings and Specification are accurate in each and every particular.
- (c) Where the Builder provides the Drawings and Specification he shall similarly expressly warrant the accuracy of them.

4. SET OUT

- (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 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 per centum set out in Item 1 of Appendix I to the Owner.

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 10 days after being requested so to do, in writing, the Builder may determine his employment as provided by clause 22.

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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 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 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 (Miscellaneous Provisions) 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* (as defined in section 9(6) of the *Home Building Contracts Act 1991*), 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* (as defined in section 9(6) of the *Home Building Contracts Act 1991*) 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

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- (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 sub-contractors 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; and
- (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 moneys 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
 - (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 Specification 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).

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- (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.
- (h) The value of all omissions from the Works less the allowance specified in Item 1 of Appendix 1 shall be deducted from the Contract Sum.
- (i) The value of all extra work shall be —
 - (i) added to the Contract Sum; and
 - (ii) added to the next progress payment due after the execution of that work.
- (j) Where practicable the following shall apply in calculating the price for extra work —
 - (i) the rates of labour shall be those set out in Item 3 of Appendix 1; and
 - (ii) the price for materials used in the work shall be the actual cost to the Builder plus the percentage stated in Item 1 of Appendix 1.

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

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

17. ASSIGNMENT AND SUB-CONTRACTING

- (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.

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

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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 unfixated 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.

(h) Home Indemnity Insurance

Where the total amount payable under the Contract exceeds \$12 000 the Builder shall obtain a policy of Home Indemnity Insurance with respect to the Works that complies with section 25D of the *Home Building Contracts Act 1991*.

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

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;

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- (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.

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 the Contract the Builder may, without prejudice to his right to determine his employment under the 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.
 - (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

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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 1991* 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 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.

- (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 *Home Building Contracts Act 1991* 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 the Contract; or

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- (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 the 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 1, 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.)
- (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 and 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 and 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 the 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 1.
- (b) A claim for payment submitted to the Owner by the Builder shall show:
 - (i) The accumulative per centum of the Contract Sum appropriate to the stage to which the Works have progressed in accordance with Item 5 of Appendix 1.
 - (ii) A schedule of variations in accordance with clause 16 and any adjustments occasioned by provisions of the 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-paragraph (i) and (ii).
 - (iv) A schedule of the amounts paid and received to date with a total for the schedule.

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- (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 1.
- (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 Sum 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).
- (e) The Works shall be at the risk of the Owner in all respects upon practical completion.

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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 moneys 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 1.
- (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 moneys remaining due under paragraph (a) and any interest accrued thereon has been made.
- (d) On payment of the said moneys 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 its 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 2 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 Disputes Committee, 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,

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- (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 clause.
- (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

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

Schedule 4

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 moneys 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.

“Disputes Committee” means the Building Disputes Committee established by section 26 of the *Builders’ Registration Act 1939*.

- (b) Words in the 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.

[Schedule 4 inserted in Gazette 22 Mar 1994 p. 1253-79; amended in Gazette 11 Jul 1997 p. 3612-16; 17 Jul 1998 p. 3762.]

Schedule 5

Schedule 5

[reg. 4]

FEBRUARY 1997



MINOR WORKS CONTRACT
(Copyright)
(For Contracts with Homeowners over \$6 000 value)
HOME BUILDING CONTRACTS ACT 1991

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

Schedule 5

CONDITIONS APPLYING TO THIS CONTRACT

1. INSURANCE

The Contractor will provide all statutory insurance to complete the described works including Home Indemnity Insurance, if required, where the contract price exceeds \$12 000. A policy for Home Indemnity Insurance shall comply with section 25D of the Act and be evidenced by a certificate furnished pursuant to section 25C of the Act.

2. EQUIPMENT

All necessary equipment be provided by contractor.

3. VARIATIONS

In the event of any agreement being reached which varies the contract, details of such agreement, the date of the variation and particulars regarding payment shall be set out in writing and signed by both parties. A copy of the signed variation shall be given to the Homeowner/s as soon as it is reasonably practicable and BEFORE the work to which the variation relates is commenced. Should the cost of any variation to the contract result in the contract sum exceeding \$12 000, then Home Indemnity Insurance may be required as in condition 1 above and must be taken into account.

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 workman like 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 or 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 homeowner’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.

[Schedule 5 inserted in Gazette 22 Mar 1994 p. 1253-4; amended in Gazette 11 Jul 1997 p. 3616-17; 17 Jul 1998 p. 3762.]

Schedule 6

[reg. 4]



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

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

Prepared by the Housing Industry Association Ltd
ACN 004 631 752

Copyright Housing Industry Association Ltd **Form 31B**

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

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 Client named in the Schedule and if more than one jointly and severally (“the Client”) as follows:

1. AGREEMENT

- (a) The Contractor agrees to manufacture, supply and install in a proper and workmanlike manner the built in furniture and fixtures described in the Schedule in accordance with this Agreement and all drawings, specifications addenda and schedules (“the Works”) as agreed between the parties and for the purpose of identification signed by each of them, for the price indicated in the Schedule as adjusted herein (“the Price”) upon the land and improvements indicated in the Schedule (the “Site”).
- (b) Where applicable and unless stated otherwise, the methods of construction and materials used will be as displayed in the Contractor’s showroom.
- (c) Unless otherwise stated the Works does not include supply and installation of electrical or gas appliances.
- (d) The Contractor reserves the right to use alternative materials of the same kind where improvements of specified materials are available.
- (e) Where the contractor suffers or incurs further cost as a direct consequence of a written law of the State or Commonwealth or as a result of an increase after the date of the contract in any tax, duty

Schedule 6

or charge imposed by such law then the contractor shall be entitled to an adjustment in the contract price.

2. CLIENT WARRANTIES

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

3. CONTRACTOR WARRANTIES

- (a) The Contractor shall be responsible for:
 - (i) A defects' liability period of 120 days from Practical Completion wherein the Contractor shall make good at their own cost defects in the Works (excluding appliances and proprietary brand accessories not supplied by the contractor under this agreement) where, not completed in accordance with this contract, materials of a merchantable quality not supplied, or the Works not completed in a proper and workmanlike manner.

PROVIDED THAT any claim is made in writing to the Contractor within 120 days from Practical Completion.
 - (ii) A warranty period of 5 years from Practical Completion in respect to a failure by the Contractor to manufacture or install the Works in a proper and workmanlike manner
PROVIDED THAT any claim is made within 5 years of Practical Completion and within 60 days of the Client becoming aware of the defect.

- (b) The Contractor shall not be liable to remedy any damage or rectify any defects to the Works arising from normal wear and tear or any work carried out by the Client or the Client's servants or agents at any time.
- (c) Notwithstanding any condition of this Agreement the Contractor shall not be responsible for any defects in proprietary brand accessories or products, and supplied appliances beyond warranties applied by the manufacturer or manufacturers agents.
- (d) The Contractor shall attend to their obligations pursuant to clauses 3(a) within 30 days of written advice being received from the Client or the matter shall be resolved in accordance with the disputes provisions hereunder.

4. ACCESS

- (a) The Client grants to the Contractor uninterrupted access to the Site for the purpose of performance of the Works and all obligations imposed by this contract from the time to commence work specified in the Schedule.
- (b) In the event that access is not available within 14 days the Contractor reserves the right of terminating the Agreement in accordance with the provisions set out hereunder.

5. CONSTRUCTION CONDITIONS

- (a) This Agreement and the plans and specifications referred to in clause 1 hereof comprise the complete extent of the agreement between the Client and the Contractor.
- (b) All materials shall be new unless specified otherwise.
- (c) Any inconsistency in the documents detailing the Works shall be resolved by applying the terms of this Agreement first. Written specifications quotations and schedules shall take precedence over plans and drawings. Inconsistency between figured dimensions and drawn dimensions shall be resolved by applying the figured dimensions. Larger scale drawings shall take precedence over smaller scale drawings.

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- (d) Full regard must be had by the Contractor to the Manufacturer's recommendations available to the Contractor and such shall take precedence over other plans and specifications.
- (e) Where indicated in the schedule the client shall be responsible for the adequate supply of mains single phase electricity for the Contractors use on Site.
- (f) Unless otherwise stated debris and materials removed from the Site prior to installation of the Works on Site remain the property of the Client to be used or disposed of as they consider appropriate.

6. TIME FOR PERFORMANCE

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

PROVIDED THAT:

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

7. DEPOSIT AND PROGRESS PAYMENTS

- (a) The Client shall jointly and severally agree to pay the Contractor the Deposit set out in the Schedule upon signing this Agreement and the balance of the contract price as detailed in the Schedule within 7 days of the Works reaching the stages set out in the schedule together with variations and adjustments.
- (b) If for any reason any progress payment is not made within said 7 days the Contractor shall be entitled, in addition to other rights under the contract, to charge interest on the full amount of the progress payment not received, charged daily at the rate set out in the schedule until the amount is received in full.

- (c) The Contractor shall be entitled to suspend the Works from the date a progress payment is claimed until payment is received in full.
- (d) Where amounts are outstanding for longer than 14 days from the date due for payment the Client accepts responsibility for debt collection costs incurred by the Contractor.

8. VARIATIONS

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

PROVIDED THAT:

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

Schedule 6

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

9. SUB-CONTRACTING

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

10. COPYRIGHT

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

11. SECURITY AND OWNERSHIP

- (a) Ownership in any goods under the Contractor's obligations pursuant to this Agreement shall not pass to the Client until the progress payment that incorporates such goods in the stage of completion referred to in the Schedule has been paid by the Client.

Upon receipt of such payment by the Contractor, title in such goods shall be deemed to have transferred to the Client.

- (b) Notwithstanding provisions to the contrary where the progress payment under the schedule calls for a payment of materials prior to the delivery to the Site, receipt of such payment by the contractor constitutes a transfer of title to the Client for such materials and the Contractor shall ensure that such are clearly identifiable.
- (c) The Client grants access to the Site for recovery of materials and manufactured items pursuant to the Works delivered to the Site and not belonging to the Client under clause 11(a).
- (d) Materials surplus to the Contractor's obligations under this contract remain the property of the Contractor to dispose of as they consider appropriate.

12. INSURANCE AND RISK

- (a) The Works and materials delivered to the Site under this Agreement shall be at the risk of the Client at all times except as provided hereunder.
- (b) The Contractor shall indemnify the Client against any loss arising out of or connected with or in any way due to the following;
 - i) any personal injury to or death of any person arising out of or in connection with or in the course of the Works, other than due to the negligent act or omission by the Client or any person for whom the Client may be responsible;
 - ii) any injury or damage whatsoever to any property or person which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Contractor, his employees, agents or sub-contractors;
 - iii) any liability, loss or damage claim or proceedings whatsoever to or by any person employed by the Contractor or their sub-contractors in or about the Works arising at common law or by virtue of any statute relating to workers' compensation or employers' liability except where such

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liability, loss or damage claim or proceeding is caused by the negligence or other fault of the Clients or their agents;

- iv) any damage what so ever arising out of or in connection with storage of materials off site or in transit to or from the site.

13. PRACTICAL COMPLETION AND COMPLETION PAYMENT

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

14. DISPUTES

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

15. NOTICES

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

16. SUPPLY OF MATERIALS

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

17. TERMINATION OF CONTRACT

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

18. SEVERABILITY

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

19. AUTHORITY OF AGENT

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

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SCHEDULE OF PARTICULARS

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

[Schedule 6 inserted in Gazette 8 Nov 1996 p. 6252-64; amended in Gazette 6 Feb 1998 p. 625-6.]

Schedule 7

[reg. 4]



HOUSING INDUSTRY ASSOCIATION LIMITED
ACN 004 631752



**LUMP SUM BUILDING CONTRACT
FOR
ALTERATIONS & ADDITIONS**

IMPORTANT NOTICE

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

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

1. AGREEMENT TO BUILD

- (a) The Builder agrees to build and complete for the Owner the Alterations and Additions building work (“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 attached Drawings and Specifications, inclusive of all attached Addenda to Specifications agreed between the parties and, for the purpose of identification, signed by each of them, (the “Contract Documents”) for the price, terms and conditions herein and ensure the Works are adequately supervised for this purpose. The Contract Documents signed by the parties shall constitute the entire Contract between the parties.
- (b) (i) Where there is a difference or inconsistency between the Contract Documents, they will be construed in the following order of precedence: Lump Sum Building Contract, Addenda to Specifications, Drawings, Specifications.

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- (ii) Any difference between scaled dimensions and figures on the Drawings shall be resolved by using and applying the figures. Drawings to a larger scale shall take precedence over drawings to a smaller scale.

- (c) Where the Owner requires a lender to provide finance for the Works, the Owner shall use his or her best efforts to obtain the finance as defined in Item 4 of the Schedule. If the Owner is unable to obtain such finance within the period stated in Item 4 of the Schedule, then this Contract shall, unless the parties otherwise agree, be terminated.

- (d) The Builder shall not perform any of the Works nor make any demand for any payment under this Contract including any deposit until the Builder has given the Owner a certificate in the approved form that evidences the taking out of a policy of insurance that complies with Part 3A of the *Home Building Contracts Act 1991* in respect of the Works (Home Indemnity Insurance). Except for the Builder's interest in this Contract and the legal requirement for it to be arranged in respect of the Works, the Builder receives no benefits in relation to arranging Home Indemnity Insurance. The Builder further confirms that Home Indemnity Insurance may be arranged with an insurer of the Owner's choice. Item 13 of the Schedule sets out the premium anticipated to be paid by the Builder for Home Indemnity Insurance. If the Builder is unable to obtain Home Indemnity Insurance, from an insurer nominated by the Owner on terms and conditions acceptable to the Builder, the Builder may terminate this Contract by notice in writing to the Owner and the Owner shall pay to the Builder all direct costs paid or payable by the Builder for the purpose of obtaining the building licence up to the time of termination. If the Builder is unable to obtain Home Indemnity Insurance, where no insurer has been nominated by the Owner, on terms and conditions acceptable to the Builder, then the Builder may terminate this Contract by notice in writing to the Owner and the Builder shall be liable for all direct costs paid or payable by the Builder for the purpose of obtaining the building licence up to the time of termination.

2. NECESSARY APPROVALS

- (a) Subject to Clause 2(b), this Contract is conditional upon:
 - (i) a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* being issued in respect of the Works within FORTY FIVE (45) working days from the date of this Contract;
 - (ii) the Owner and the Builder acknowledging in writing within that period that each of them accepts any condition attached to the licence;
 - (iii) it becoming lawful under “the Water Act” (as defined in section 9(6) of the *Home Building Contracts Act 1991*) within FORTY FIVE (45) working days from the date of this Contract for the Works to be commenced; and
 - (iv) the Owner and the Builder acknowledging in writing within that period that each of them accepts any direction that may be given by the Water Corporation under “the Water Act” in connection with the carrying out of the Works.
- (b) A condition referred to in Clause 2(a) does not apply to this Contract:
 - (i) to the extent that the subject matter of the condition was completed before this Contract was entered into; or
 - (ii) where the only work to be performed under this Contract is the construction or carrying out of “associated work” (as defined in section 3(1) of the *Home Building Contracts Act 1991*) or any other work prescribed for the purpose of section 9(5)(c) of that Act.
- (c) The Builder shall:
 - (i) do all things that are reasonably necessary to be done to ensure that any condition referred to in Clause 2(a)(i) and (iii) applicable to this Contract is fulfilled; and
 - (ii) not unreasonably decline to accept a condition or direction referred to in Clause 2(a)(ii) or (iv) that applies to this Contract.

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- (d) The Owner shall:
 - (i) do all such things as may be required to be done by the Owner to ensure that any condition referred to in Clause 2(a)(i) and (iii) applicable to this Contract is fulfilled; and
 - (ii) not unreasonably decline to accept a condition or direction referred to in Clause 2(a)(ii) or (iv) that applies to this Contract.
- (e) If a condition referred to in Clause 2(a)(i) and (iii) applicable to this Contract is not fulfilled, the consequences to, and the rights and remedies of, the parties are as set out in Clause 22.

3. OWNER'S WARRANTIES

- (a) The Owner warrants that:
 - (i) The Owner has title to the land on which the work is to be undertaken and the Owner is lawfully entitled to build on the Site.
 - (ii) The Site is subject only to those encumbrances, restrictive covenants and easements detailed in Item 5 of the Schedule.
 - (iii) The Builder has access to the Site for the purposes of this Contract or will be given access not later than the date by which the Builder is required to commence the Works in accordance with Clause 9(a).
 - (iv) The existing fences on the Site adequately delineate the Site boundaries.
 - (v) The Site will support the Works.
 - (vi) Unless otherwise agreed, the Builder will have access free of charge to existing toilets and handwashing facilities, drinkable water (at normal mains pressure), power and gas.
 - (vii) The Owner authorises the Builder to apply for and take out Home Indemnity Insurance in respect of the Works.
- (b) The Owner warrants he or she is able to pay the Contract Price, and within TEN (10) days of receipt of a notice in writing by the Builder requiring it, shall evidence this capacity in writing. Failure

to do so entitles the Builder to terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) days, unless satisfaction is dependent on any of the Conditions stated in Clause 1(c) or 27.

- (c) Unless the Builder has prepared or caused to be prepared the Contract Documents, the Owner warrants the same are accurate, free of error and consistent in every respect and do not infringe copyright, letters patent or registered design and the Owner shall indemnify the Builder against any action, claim, costs or expenses arising from any breach of this warranty.
- (d) Subject to sub-Clause (c) hereof and where the Contract Documents have not been prepared or caused to be prepared by the Builder, any discrepancy or error in the Contract Documents shall be dealt with in accordance with Clause 12(b) or (d).

4. BUILDER'S DUTIES

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

5. CONSTRUCTION CONDITIONS

(a) **Record of Damage:**

Before the date of possession, the Owner shall inspect the Site together with the Builder, who shall prepare a record of visible defects to the site which shall be signed by both parties.

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(b) **Site Boundaries:**

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 licensed surveyor to survey and adequately peg, re-peg or delineate the Site and the position of the Works thereon, then this shall be dealt with as a variation in accordance with Clause 12(b) or (d).

(c) **Structural Support:**

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

(d) **Existing Hidden Structural Defects:**

The Builder has not allowed for the making good of any hidden structural defects that may only become evident as a consequence of the Works. When exposed, any such defects shall be dealt with as a variation in accordance with Clause 12(b) or (d).

(e) **Excessive Structural Costs:**

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

(f) **Materials or Workmanship Methods Dissimilar to Existing:**

Unless otherwise specified, as materials and workmanship methods readily available and/or applicable today may be dissimilar to those in the period the existing building was built, it is agreed the intention is not to replicate existing details exactly, but to build the Works in harmony with the existing building while complying with current building regulations and practice.

(g) **Hard Digging or Other Unforeseen Requirements:**

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

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

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

6. THE CONTRACT PRICE

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

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

- (i) that is caused solely by the failure of the Owner to comply with a condition imposed on the Owner by this Contract, including the provisions of Clause 3(b); or
- (ii) that occurs without any failure on the part of either the Owner or the Builder to comply with their obligations under this Contract

then the consequences to, and the rights and remedies of, the parties are as set out in Clause 22(d) and (e).

(c) If further costs are actually imposed on or incurred by the Builder as a direct consequence of a written law of the State of Western Australia or the Commonwealth of Australia or on account of an increase in any tax, duty or other charge imposed under any such law after the date of this Contract then the Builder shall be entitled

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to increase the Contract Price to reflect such further costs. The Builder shall notify the Owner of such further costs and specify to the Owner when such further costs are payable.

7. DEPOSIT AND PROGRESS PAYMENT

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

- (a) Provided that the requirements of Part 3A of the *Home Building Contracts Act 1991* have been complied with, upon the signing of this Contract the Owner shall pay to the Builder the deposit set out in Item 7 of the Schedule.
- (b) The Owner shall pay to the Builder the balance of the Contract Price by way of progress payments upon the following conditions:
 - (i) Within FIVE (5) working days of the service upon the Owner of a notice by the Builder that any of the Works described in Column 'A' of Item 7 of the Schedule have been completed the Owner shall pay to the Builder that portion of the Contract Price mentioned opposite those Works in Column 'B' of Item 7 having taken into account any adjustments in accordance with Clauses 11 and 12.
 - (ii) Where finance for the Works is being provided by a lender, the Owner shall immediately on signing this Contract authorise and direct the lender to make progress payments in accordance with Clause 7(b)(i).
 - (iii) Any dispute as to the value of the Works completed or the state of the Works at any particular time shall be determined in accordance with Clause 18.
 - (iv) If any progress payment or 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 or she may have against the Owner suspend the Works pending payment.

8. SECURITY

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

9. TIME FOR PERFORMANCE

- (a) Subject to this Contract the Builder shall commence the Works within the number of working days specified in Item 9(a) of the Schedule or as soon thereafter as may be reasonably practicable calculated from the latest of the following dates:
- (i) on which the Owner shall have complied with the conditions referred to in Clause 2;
 - (ii) on which the Owner shall have complied with any notice given by the Builder pursuant to Clause 3(b);
 - (iii) on which the Builder is satisfied that the boundaries of the Site have been adequately delineated;
 - (iv) on which provision has been made for adequate water supply to the Site, and
 - (v) on which the Builder has received approval from all relevant authorities.
- (b) Subject to this Contract the Builder shall complete the Works (bring the Works to Practical Completion — Clause 19(a)) by the time specified in Item 9(b) of the Schedule. The time for completion of the Works may be extended in accordance with Clause 9(c) in the event of delay caused by or resulting directly or indirectly from any of the following causes:
- (i) any of the following events which affect directly or indirectly access to or the condition of the Site or the Works or any person engaged on or material employed in or to be employed in or in relation to the Works, namely: acts of God, fire, explosion, earthquake, civil commotion, theft or acts of vandalism, flooding, inclement weather, strikes, industrial action, lockouts or holidays granted in accordance with

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- industrial awards, fires, vehicle accidents, unavailability of labour, vehicles or equipment or permits required.
- (ii) any alterations to the Works.
 - (iii) any instruction or delay of instruction by or any omission of the Owner.
 - (iv) any deliberate and substantial prevention of or interference with the Works or the progress thereof caused by the Owner.
 - (v) any delay in the supply of materials or transport.
 - (vi) any proceedings being taken or threatened by any disputes with adjoining or neighbouring owners concerning the continuation or variation of delivery to or completion of the Works upon the Site.
 - (vii) any cessation of work pursuant to Clause 7(b)(iv).
 - (viii) any delay in the commencement of or continuance with the Works, caused by or resulting from an order or directive of a relevant authority or proceedings before the Builders' Registration Board or the Disputes Committee, the Registrar, a mediator, an arbitrator or a Court.
 - (ix) any delay caused by proper investigation of any of the above by the Builder or the Owner.
- (c) Upon the happening of any of the events aforesaid the Builder shall be entitled to seek or make a variation by way of extension of the time for completion of the Works in accordance with the provisions of Clause 12(b) or (d).

10. POSSESSION OF THE SITE AND ACCESS TO THE WORKS

- (a) The Builder shall be given exclusive possession of the Site and shall be entitled to remain in possession until the Contract Price has been paid in full by the Owner.
- (b) Where it is agreed that the Owner shall remain in possession of part of the Site during the construction of the Works by the Builder, unless otherwise specified, the Owner shall:
 - (i) Ensure free and clear access to the Works is maintained for the Builder for all the Builder's normal working hours.

- (ii) Before the date of possession, remove all the carpets, furniture and moveable items from the building area, and any shed, tree, plant or garden in the way of the Works.
 - (iii) Ensure the Builder always has all-weather access to the Site including being able to move all vehicles, machinery, equipment and materials necessary for the Works freely over the Site.
 - (iv) Take whatever steps necessary for the safekeeping, control and supervision of all pets that are liable to prevent easy access to the Works by the Builder.
- (c) The Owner or an “authorised person” as defined in section 26(3) of the *Home Building Contracts Act 1991* shall be given access to the Site to carry out the relevant inspections, provided that such inspections are made during the Builder’s normal working hours and such inspections do not unreasonably impede or interfere with the Works.
- (d) Neither the Owner nor any person acting on the Owner’s behalf shall give or be entitled to give at any time, directions to the Builder’s tradespersons or subcontractors on the Site or elsewhere relating to the Works.
- (e) After Practical Completion the Builder shall be entitled to reasonable access to the Site to complete the Builder’s obligations under Clause 14.
- (f) If non-compliance with the requirements of this Clause by the Owner involves the Builder in loss or expense beyond that reasonably provided for by this Contract, the amount of such loss or expense shall be paid by the Owner to the Builder.

11. PROVISIONAL SUMS AND PRIME COST ITEMS

- (a) Where Provisional Sums or Prime Cost Items are included in the Contract Price, the Owner shall, within FIVE (5) working days of receiving a request from the Builder, supply to the Builder in writing, all necessary directions and selections regarding the work and/or goods comprised in any Provisional Sums and Prime Cost Items.

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

12. VARIATIONS

- (a) If the Owner wishes to make any variation to the Works and/or the Contract Documents the Owner or the Owner's agent shall give the Builder a written request for such variation. The Builder may decline to agree to the variation requested but in the event that the Builder is prepared to agree to the variation:
 - (i) the Builder shall prepare and give to the Owner or the Owner's agent a variation document setting out the terms of, and the cost to be incurred on account of, the variation;
 - (ii) the Owner or the Owner's agent shall sign and return the variation document to the Builder;
 - (iii) the Builder or the Builder's agent shall sign and insert in the variation document the date that the Builder signs it and forward a signed copy to the Owner or the Owner's agent as soon as is reasonably practicable thereafter and before the work to which the variation relates is commenced; and

- (iv) the variation shall be carried out as if it were part of the Works under the Contract.
- (b) The Builder shall be entitled to vary all or any of the Works and/or the Contract Documents made necessary by:
 - (i) any written direction lawfully given by a building surveyor or other person acting under a written law; or
 - (ii) circumstances that could not reasonably have been foreseen by the Builder at the time when this Contract was entered into if the Builder gives to the Owner, within the time specified in Clause 12(c), a statement setting out the reason for, and the cost to be incurred on account of, the variation and a copy of any direction referred to in Clause 12(b)(i)

PROVIDED THAT Clause 12(b)(ii) shall not enable the Builder to make any variation by reason only of an increase in the costs of labour (including related overhead expenses) or materials or both, to be incurred by the Builder.

PROVIDED ALSO THAT where an Owner is given a statement by the Builder for the purposes of Clause 12(b)(ii) and the Owner considers that the variation is not one to which Clause 12(b)(ii) applies then the Owner may make an application to the Disputes Committee for relief under section 17 of the *Home Building Contracts Act 1991* within FOURTEEN (14) days of being given the statement.

- (c) The Builder shall give the statement referred to in Clause 12(b) to the Owner within FOURTEEN (14) days after the Builder:
 - (i) received notice of the direction under Clause 12(b)(i); or
 - (ii) became aware or should reasonably have become aware, of the circumstances referred to in Clause 12(b)(ii), as the case may be.
- (d) If any variation to the Works and/or the Contract Documents is required pursuant to Clause 3(d), 4(c), 5(a)-(h) or 21 but not as a result of a direction under Clause 12(b)(i) or the circumstances referred to in Clause 12(b)(ii) then:
 - (i) the Builder shall prepare and give to the Owner a variation document setting out the terms of and the cost to be incurred on account of the variation so required.

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- (ii) if the Owner signs and returns the variation document to the Builder then the provisions of Clause 12(a)(iii) and (iv) shall also apply to the variation.
 - (iii) if the Owner does not sign and return the variation document to the Builder within FIVE (5) working days of being given the variation document then the Builder shall be entitled to either carry out the work required but without any adjustment to the Contract Price or to terminate this Contract pursuant to Clause 16(g).
- (e) The price of a “variation” shall, unless previously agreed in writing, be calculated as follows:
 - (i) If the amount is additional to the Contract Price it shall be equal to the cost of the labour and materials supplied together with other costs properly incurred as a consequence thereof plus that percentage of such additional costs as set forth in Item 11(c) 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 work is done.
 - (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 cost 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 the Owner’s lender (if any) prior to requesting or authorising the Builder to carry out extra work or to vary the Works in any way.
- (g) The Builder may, at any time prior to the commencement of any building work that is to be performed by way of a variation pursuant to the provisions of this Contract, by notice in writing require the Owner to satisfy the Builder that the Owner is able to pay the cost to be incurred on account of the variation by production of evidence in writing and if the Owner shall fail to do so within TEN (10) working days of the receipt of such notice the Builder may terminate this Contract immediately by notice in writing given to the Owner within a further TEN (10) days.

13. INSURANCE

NOTE: Warning to Owner

- (i) Most building and/or contents insurance policies will not cover the Owner for damage occurring to the existing improvements and contents during construction of alterations and additions.
- (ii) Either the Owner or the Builder should take out specific insurance cover for this, as nominated in Item 10 of the Schedule.
- (iii) It is the Owner's responsibility to have any items supplied by the Owner adequately insured.

INSURANCE OF EXISTING IMPROVEMENTS AND CONTENTS

(a) (i) **RESPONSIBILITY OF THE OWNER**

Where indicated in the Schedule, the Owner shall insure in the joint names of the Owner and the Builder against any loss or damage to existing improvements and contents for their full replacement value, whilst the Works are being done. The Owner shall, upon request, deliver to the Builder evidence of such insurance.

Should the Owner fail to take out such insurance or, upon request, fail to deliver to the Builder evidence of such insurance, the Builder may take out the insurance and the cost shall be added to the Contract Price in accordance with Clause 12(e).

(ii) **RESPONSIBILITY OF THE BUILDER**

Where indicated in the Schedule, the Builder shall insure in the joint names of the Owner and the Builder against any loss or damage to existing improvements and contents for their full replacement value, whilst the Works are being done.

Should the Builder fail to take out such insurance or, upon request, fail to deliver to the Owner evidence of such

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insurance, the Owner may take out the insurance and deduct the premium from the Contract Price.

- (iii) Should the parties fail to nominate the Owner or Builder in Item 10 of the Schedule, then Clause (a)(i) above shall apply.

(b) INSURANCE OF THE WORKS

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

- (i) The Builder shall in the joint names of the Builder and the Owner and the Owner's lender (if any) insure against damage, loss or theft to the full value under this Contract (plus the requisite amount to cover additional costs of demolition and removal of debris, architects, engineers, quantity surveyors and consultant's fees) all work done 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.
- (ii) 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.

(c) INJURY TO PERSONS

The Builder shall insure against any legal liability, loss, damage, claim, demand, or proceedings due to personal injury or death of

any person arising out of or in the course of the Works, other than due to the negligent act or omission by the Owner or of any person for whom the Owner may be responsible.

(d) **INJURY TO PROPERTY**

The Builder shall insure against any liability, loss, damage, claim, demand, or proceedings in respect of any injury or damage to any property which may arise out of building the Works, except injury or damage arising out of a negligent act or omission of the Owner or any person for whom the Owner may be responsible, except as already insured in Clause (a) above.

(e) **WORKERS COMPENSATION AND SUBCONTRACTOR LIABILITY**

The Builder shall insure against any liability, loss, damage, claim or proceedings whatsoever to or by any person employed by the Builder or the Builder's subcontractors 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, damage, claim or proceeding is caused by the negligence act or omission of the Owner or any person for whom the Owner may be responsible.

(f) **INSURANCE FOR OWNER SUPPLIED ITEMS**

The Owner is responsible for and undertakes to have any items supplied by the Owner adequately insured against damage, loss or theft until the Owner takes possession of the Works.

14. DEFECTS LIABILITY PERIOD

(a) Except where the Owner has taken possession of the Works without the consent of the Builder and subject to Clause 14(c) and (d), the Builder shall make good at the cost of the Builder as soon as reasonably practicable defects in the Works notified in writing to the Builder within the period specified in Item 12 of the Schedule.

(b) In Clause 14(a): "defect" means a failure —

(i) to perform the Works in a proper and workmanlike manner and in accordance with this Contract; or

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- (ii) to supply materials that are of merchantable quality and reasonably fit for the purpose for which the Owner required the Works to be performed, not being a failure for which the Builder is specifically declared by this Contract to be not liable.
- (c) The Builder's liability under Clause 14(a) shall be reduced to the extent of any exemptions prescribed from time to time for the purpose of section 11(3) of the *Home Building Contracts Act 1991*.
- (d) The Builder shall not be liable to remedy any damage or rectify any defects to the Works arising from any work carried out on the Site by the Owner or the Owner's servants and agents at any time.
- (e) In Item 12 of the Schedule of Particulars "practical completion" has the same meaning as in Clause 19(a).

15. EARLY TERMINATION OF CONTRACT

- (a) In addition to their respective rights and remedies herein before contained or in equity the Builder may terminate this Contract in any of the events mentioned in Clause 16 hereof and the Owner may terminate this Contract in any of the events mentioned in Clause 17 hereof.
- (b)
 - (i) 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.
 - (ii) If such notice is given and the other party fails within such period to remedy the matter complained of then the party giving such notice may terminate this Contract immediately.
- (c)
 - (i) On termination, subject to any agreement to the contrary or to any determination made pursuant to Clause 18, if the Builder has begun the Works then the Builder shall be entitled to be paid for all work done and materials used or acquired by the Builder and properly chargeable to that date.

- (ii) The amount to be paid shall be the cost of the labour for all work done and materials used and acquired and all costs incurred by the Builder plus that percentage of all such costs as set forth in Item 11(c) 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.
- (iii) 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 termination of this contract until payment of balance of monies is received by the Builder.
- (d) The provisions of Clauses 15(b) and (c) do not apply to a termination of this Contract pursuant to Clauses 16(h) and 17(d) or pursuant to the provisions of sections 4(5), 10(4) or 14(3) of the *Home Building Contracts Act 1991*. In such cases this Contract may be terminated in accordance with the provisions of section 19 of that Act and the Owner or the Builder may apply to the Disputes Committee pursuant to the provisions of section 20 of that Act for repayment of any consideration given by the Owner under this Contract or for payment to the Builder in respect of any materials supplied or any home building work or other services performed by the Builder under or in relation to this Contract.

16. EVENTS ALLOWING BUILDER TO TERMINATE

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

- (a) Substantial damage to or interference with the Works or delays to the Works or access thereto by any cause beyond the control of the Builder including (but without limiting in any way the generality thereof) water, flood, fire, storm, tempest, rioting, earthquake, civil commotion or industrial action.
- (b) Any substantial breach of the Contract by the Owner.
- (c) If the Owner shall make any assignment for the benefit of or enter into any arrangement or composition with the Owner's creditors or go into liquidation (whether voluntary or compulsory except for

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the purpose of reconstruction or amalgamation) or have a Receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Owner's estate.

- (d) Any deliberate and substantial prevention of or interference with the Works or progress thereof caused by the Owner.
- (e) Any failure by the Owner for TEN (10) working days after the due date thereof to pay any part of the Contract Price subject to Clause 18 of this Contract.
- (f) The entry into possession of the Works by the Owner prior to Practical Completion or without the Builder's written consent.
- (g) If the Owner fails to sign and return a variation document to the Builder given to the Owner by the Builder pursuant to Clause 12(d) within the period referred to in Clause 12(d).
- (h) If the circumstances specified in Clause 22(b) or (c) occur.

17. EVENTS ALLOWING OWNER TO TERMINATE

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

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

18. DISPUTES

- (a) In any dispute between the Owner and the Builder at any time relating to this Contract then subject to the rights of either party to apply to the Registrar or the Disputes Committee (or their successors) or any other relevant Statutory Authority, either party

shall give to the other notice of such dispute, disagreement or difference and at the expiration of FIVE (5) working days thereafter and in the absence of any settlement the same shall be referred to:

- (i) a single mediator appointed by mutual consent, or
 - (ii) a single arbitrator appointed by mutual consent, or
 - (iii) in the event that neither (i) nor (ii) are satisfied within FIVE (5) working days or mediation is not successful, a single arbitrator shall be appointed by the President or the President's nominee of the Housing Industry Association Western Australian Region, provided that such arbitrator shall be a graded Arbitrator approved by the Institute of Arbitrators Western Australian Chapter.
- (b) The conduct of the Arbitrator shall be in accordance with and subject to the provisions of the *Commercial Arbitration Act 1985* and the decision of the single arbitrator appointed shall be final. The rights and obligations of the parties under this Contract shall be modified only to the extent made necessary by such arbitration.
 - (c) This Contract and the parties' rights and obligations under this Contract shall in all respects be governed by the laws of the State of Western Australia and the parties hereto irrevocably submit themselves to the exclusive jurisdiction of the Courts of Western Australia.

19. PRACTICAL COMPLETION

- (a) Practical Completion of the Works means brought to the stage where the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for its intended purpose.
- (b) The Builder shall notify the Owner when the Builder considers that Practical Completion has occurred and provide a detailed final account for payment which shall be paid within FIVE (5) working days of the date on which notice of Practical Completion was provided by the Builder.

Schedule 7

- (c) Within FIVE (5) working days the Owner and the Builder or the Builder's representative shall meet at the Works to carry out a pre-handover inspection. During the pre-handover inspection the parties shall agree to a list of items which require completion or rectification. If agreement is not reached, or the said meeting does not occur, the dispute shall be dealt with pursuant to Clause 18 of this Contract.
- (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 14 and 19(c).
- (e) If the Owner takes possession of the Works, permits work outside this Contract, or delivery of goods or chattels to the Works, without prior written consent of the Builder, when the Works are substantially complete but not necessarily at Practical Completion the Builder shall be discharged and relieved absolutely from all his or her obligations and responsibilities under this Contract and the unpaid balance of the Contract Price shall become due and payable immediately, together with interest thereon at the rate specified in Item 8 of the Schedule calculated from the date of taking such action until the date payment is made.
- (f) If the Owner denies access to the Builder or takes possession of the Works prior to the issue by the Builder of a Notice of Practical Completion and without prior written consent of the Builder, the Date of Practical Completion shall be the date such possession is taken.
- (g) The Works shall be at the risk of the Owner from the date the Owner takes or is entitled to take possession.

20. NOTICES

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

21. SUPPLY OF MATERIALS AND UNFIXED MATERIALS ON SITE

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

Materials and goods supplied (or work done) by the Owner shall remain the responsibility of the Owner as to their suitability for their intended use.

Schedule 7

- (d) If any item or material selected by the Owner is not available when the Builder requires, the Builder reserves the right to claim payment for the Works to date, and charge the Owner separately for such item or material when it is available.

22. CONSEQUENCES OF NON-FULFILMENT OF CONDITIONS

- (a) If any condition set out in Clause 2(a) is not fulfilled solely because the Builder has failed to comply with the Builder's obligations under Clause 2(c), this Contract is not affected but remains in force on the same terms and conditions except as otherwise agreed between the parties.
- (b) If any condition set out in Clause 2(a) is not fulfilled solely because the Owner has failed to comply with the Owner's obligations under Clause 2(d) this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates this Contract in accordance with Clause 16 or 17 as the case may be, but subject to the provisions of Clause 22(d).
- (c) If any condition set out in Clause 2(a) is not fulfilled and both the Owner and the Builder have, or neither the Owner nor the Builder has, failed to comply with their respective obligations under Clause 2(c) and (d), this Contract remains in force on the same terms and conditions until the parties agree otherwise or either party terminates the contract in accordance with Clause 16 or 17 as the case may be, but subject to the provisions of Clause 22(d).
- (d) Where Clause 22(b) or (c) or Clause 6(b) applies —
 - (i) the Builder may by notice in writing to the Owner —
 - (A) increase the Contract Price by an amount set out in the notice; and
 - (B) specify when any increased amount is payable, which must be either —
 - (1) not later than TEN (10) working days after the notice is given; or
 - (2) at the time of the next progress payment;

- (ii) if the amount of an increase exceeds FIVE (5)% of the Contract Price, the Owner may terminate this Contract in accordance with Clause 17 within TEN (10) working days after receipt of notice under paragraph (i) of this sub-Clause; and
 - (iii) if the Owner so terminates this Contract, the Owner is liable to compensate the Builder for the reasonable costs inclusive of supervision, overhead and margin incurred by the Builder up to the date of termination.
- (e)
- (i) If the Owner considers that the amount of a price increase notified under Clause 22(d)(i) is excessive or unjustified the Owner may apply to the Disputes Committee, within TEN (10) working days after receipt of a notice under that Clause, for a review of that amount.
 - (ii) On a review under this sub-Clause the Builder is required to show that the price has been increased to reflect actual increases in costs between the date of this Contract and the date of the notice under Clause 22(d)(i).
 - (iii) On a review under this sub-Clause the Disputes Committee may confirm, vary or disallow the amount of the price increase, and this Contract shall have effect in accordance with the Disputes Committee's decision.

23. ASSIGNMENT

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

24. SEVERABILITY

- (a) If, in consequence of an item in the Schedule not being completed, any Clause contained herein is held by a Court to be uncertain and

Schedule 7

thus void, that Clause shall be deemed to have been severed from this Contract and shall not invalidate the Contract.

- (b) To the extent that any one or more of the provisions contained in this Contract is prohibited by or is void pursuant to any applicable law, that provision or each of them shall to that extent be ineffective without invalidating or modifying the remaining provisions of this Contract which shall continue in full force and effect as if each provision so prohibited had not been included in this Contract as from its commencement.

25. INTERPRETATION

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

26. APPOINTMENT AND AUTHORITY OF OWNER'S AGENT

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

28. SPECIAL CONDITIONS

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Schedule 7

SCHEDULE OF PARTICULARS

Item No.	Details	Item No.	Details
1.	Builder Address Builders Registration No. Facsimile No.	9.	(a) Time to commence Works (Clause 9(a)).....working days (b) Time to complete Works (Clause 9(b))..... working days from the date on which work commenced or should have commenced under Clause 9(a).
2.	Owner Address Facsimile No. Owner's Agent (Clause 26)	10.	Insurance (Clause 13(a)) of the existing improvements and contents shall be the responsibility of (Owner or Builder)
3.	Site Postal Address: (Clause 1(a)) Title Particulars: Portion of Location and being Lot on Plan/Diagram and being the whole of the land comprised in Certificate of Title Volume Folio	11.	(a) Provisional Sums (Clause 11) – refer to Addenda to Specifications for details (b) Prime Cost Items (Clause 11) – refer to Addenda to Specifications for details (c) Additional percentage allowed (Clauses 11, 12)%
4.	Amount of finance required (Clause 1(c)) \$	12.	Defects Liability Period (Clause 14) (not less than 120 days from the date of Practical Completion)
5.	Encumbrances on the Site (Clause 3(a)(iii))	13.	Amount of Premium for Home Indemnity Insurance (included in Contract Price) \$
6.	Contract Price (Clause 6) \$	14.	Signing of Lump Sum Building Contract. This Contract is dated the day of 19..... Signed by the Owner Witness Signed by the Owner Witness Signed for and on behalf of the Builder Witness
7.	Deposit (not to exceed 6.5% of Contract Price) (Clause 7(a)) \$ Progress Payments as follows (Clause 7(b)): 'A' \$ 'B' \$ Total \$	15.	Proof of Receipt of Documents In accordance with Section 6 of the <i>Home Building Contracts Act 1991</i> the Owner acknowledges receipt of the "Notice for the Home Owner" before signing the Building Contract prescribed by Section 4(2) and a signed copy of the Contract Documents (referred to in Clause 1(a)) of the Contract on the day of 19..... Signed by the Owner Signed by the Owner
8.	Interest on late payment (Clause 7(b)(iv))%		

[Schedule 7 inserted in Gazette 6 Feb 1998 p. 626-41.]

Schedule 8 — Special conditions for GST adjustments

[r. 4A]

- (a) This special condition will apply if:
 - (i) this Contract is signed before 1 July 2000 and a supply is made under this Contract on or after 1 July 2000;
 - (ii) the Builder is registered or required to be registered for the purposes of the GST Act and has incurred further costs or had further costs imposed as a direct consequence of the introduction of the GST Act; and
 - (iii) the Builder has sought to claim the amount of GST payable on any supply made under this Contract as an adjustment to the Contract Price.
- (b) The Contract Price is to be adjusted for the amount of GST payable on each supply made under this Contract on or after 1 July 2000 and any reduction in the price of goods or materials to reflect the full effect of the repeal of wholesale sales tax.
- (c) If the Builder claims an adjustment to the Contract Price pursuant to this Special Condition the Builder must give the Owner a notice setting out details of the adjustment including the way in which the price adjustment has been calculated and must state that the adjustment is solely the result of the introduction of the GST Act.
- (d) Each adjustment to the Contract Price because of the amount of the GST payable on the supply or the repeal of wholesale sales tax is to be made by the Builder claiming or allowing a change to the price of the Works in a progress or final claim. Where the cost of a supply which is covered by a progress claim has both increased and decreased the net result of the change is to be claimed or allowed.
- (e) The Builder is not entitled to claim the amount of GST payable on any supply made under this Contract on or after 1 July 2000 as an adjustment to the Contract Price unless:
 - (i) the value of all work and materials permanently incorporated in or affixed to the Site as at 1 July 2000 has been

Schedule 8 Special conditions for GST adjustments

determined in accordance with the requirements of Section 19 of the Transition Act;

- (ii) the supply to which the claim for payment of GST relates has been made under this Contract at the time of the claim; and
 - (iii) the valuation required by this Special Condition is the obligation of the Builder and is at the Builder's cost.
- (f) In this special condition:

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;

“Transition Act” means *A New Tax System (Goods and Services Tax Transition) Act 1999* of the Commonwealth;

“GST” and **“supply”** have the meanings given to those terms in the GST Act.

[Schedule 8 inserted in Gazette 3 Mar 2000 p. 1012-13.]

Schedule 9 — Prescribed forms

[r. 6A, 9, 10]

Form 1

Home Building Contracts Act 1991

Home Building Contracts Regulations 1992

PRELIMINARY NOTICE UNDER SECTION 17(3)

[If you intend to make an application to the Disputes Tribunal under section 17(1) of the Home Building Contracts Act 1991, the application cannot be made until this preliminary notice has been completed and given to the other party. A copy of this notice must also be given to the Disputes Tribunal at the time the application is made to the Disputes Tribunal.]

PART A	<p>Who is making the application (the “applicant”)?</p> <p>Name of applicant:</p> <p>Address of applicant:</p> <p>Who is the other party (“the respondent”) in relation to the matters complained of in the application?</p> <p>Name of respondent</p> <p>Address of respondent</p>
PART B	<p>What are the matters the respondent is called on to rectify or attempt to settle?</p> <p><i>[Set out here the matters that you are calling on the respondent to rectify/attempt to settle and indicate what remedy or settlement you are seeking. You may attach further written details to this notice if there is not enough space to include all relevant matters.]</i></p> <p>Signed (by applicant):</p> <p>Date:</p>
<p>TAKE NOTICE that the applicant calls on the respondent to rectify the matters, or to attempt to settle the matters that are in dispute, as set out in Part B above.</p>	

5.	<p>Payment may be made by either —</p> <ul style="list-style-type: none">(a) posting this form and a cheque or money order, made payable to the Builders' Registration Board for the amount of the modified penalty stated in item 2, to the Corporate Services Manager, Builders' Registration Board, 18 Harvest Terrace, West Perth WA 6005; or(b) delivering this form, and paying the amount of the modified penalty stated in item 2, to an authorised person* at the Builders' Registration Board, 18 Harvest Terrace, West Perth WA 6005. <p>[*Authorised persons for the purposes of paragraph (b) are the Registrar, the Deputy Registrar and the Corporate Services Manager of the Builders' Registration Board.]</p>
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Form 3

Home Building Contracts Act 1991

Home Building Contracts Regulations 1992

WITHDRAWAL OF INFRINGEMENT NOTICE

No. of notice:

Date of service:

To: (name)		
of (address)		
Infringement notice no. served on you on the day of for the offence described below has been withdrawn.		
The modified penalty: * has been paid and a refund is enclosed. * has been not been paid and should not be paid. [* Delete as appropriate.]		
Name and title of authorised person giving this notice:		
Signature:		
Section of Act	Description of offence	Modified penalty

[Schedule 9 inserted in Gazette 31 Jul 2001 p. 3948-51.]



Notes

- ¹ This reprint is a compilation as at 7 June 2002 of the *Home Building Contracts Regulations 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any previous reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Home Building Contracts Regulations 1992</i>	3 Apr 1992 p. 1465-8	4 Apr 1992 (see r. 2 and <i>Gazette</i> 3 Apr 1992 p. 1461)
<i>Home Building Contracts Amendment Regulations 1994</i>	22 Mar 1994 p. 1253-96	22 Mar 1994
<i>Home Building Contracts Amendment Regulations 1996</i>	8 Nov 1996 p. 6249-64	8 Nov 1996
<i>Home Building Contracts Amendment Regulations 1997</i>	24 Jan 1997 p. 544-6	1 Feb 1997 (see r. 2)
<i>Home Building Contracts Amendment Regulations 1997</i>	11 Jul 1997 p. 3583-617	11 Jul 1997
Reprint of the <i>Home Building Contracts Regulations 1992</i> as at 17 Oct 1997 (includes amendments listed above)		
<i>Home Building Contracts Amendment Regulations 1998</i>	6 Feb 1998 p. 625-41	6 Feb 1998
<i>Home Building Contracts Amendment Regulations (No. 2) 1998</i>	17 Jul 1998 p. 3761-2	17 Jul 1998
<i>Home Building Contracts Amendment Regulations 2000</i>	3 Mar 2000 p. 1011-13	3 Mar 2000
<i>Home Building Contracts Amendment Regulations 2001</i>	31 Jul 2001 p. 3947-51	1 Aug 2001 (see r. 2 and <i>Gazette</i> 31 Jul 2001 p. 3907)

- ² Address at time of printing: 10 William Street Perth 6000
Tel. No. 9321 7688

- ³ Address at time of printing: 18 Harvest Terrace West Perth 6005
Tel. No. 9321 6891

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
builder	Sch. 1, Sch. 2 it. 26, Sch. 7 it. 25
Contract Documents	Sch. 2 it. 1(a), Sch. 3 it. 1(a), Sch. 4 it. 35(a), Sch. 7 it. 1(a)
Contract Price	Sch. 2 it. 6(a), Sch. 3 it. 3, Sch. 7 it. 6(a)
Days	Sch. 4 it. 35(a)
defect	Sch. 2 it. 14(b), Sch. 4 it. 35(a), Sch. 5 it. 6(b), Sch. 7 it. 14(b)
Disputes Committee	Sch. 2 it. 26, Sch. 4 it. 35(a), Sch. 7 it. 25
Drawings and Specification	Sch. 4 it. 35(a)
GST	Sch. 8(f)
GST Act	Sch. 8(f)
Lending Authority	Sch. 4 it. 35(a)
owner	Sch. 1, Sch. 2 it. 26, Sch. 7 it. 25
practical completion	r. 6(5), Sch. 2 it. 14(e), Sch. 4 it. 35(a), Sch. 5 it. 6(c), Sch. 7 it. 14(e)
prime costs	Sch. 1
Registrar	Sch. 2 it. 26, Sch. 7 it. 25
rise and fall	Sch. 1
Site	Sch. 6 it. 1(a)
State Housing Commission	r. 6(5)
supply	Sch. 8(f)
The Builder	Sch. 2, Sch. 4 it. 35(a), Sch. 7
the Client	Sch. 6
the Contractor	Sch. 3, Sch. 6
the Owner	Sch. 2, Sch. 3, Sch. 4 it. 35(a), Sch. 7
the Price	Sch. 6 it. 1(a)
the Site	Sch. 2 it. 1(a), Sch. 3 it. 1(a), Sch. 6 it. 1(a), Sch. 7 it. 1(a)
the Works	Sch. 2 it. 1(a), Sch. 3 it. 1(a), Sch. 4 it. 26(a), Sch. 6 it. 1(a), Sch. 7 it. 1(a)
Transition Act	Sch. 8(f)
Working days	Sch. 2 it. 26, Sch. 4 it. 35(a), Sch. 7 it. 25
Works	Sch. 4 it. 35(a)