

Labour Only Building Contract

LOBC – 2019

To be read in conjunction with the Documents Pack for residential building contracts

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TO DO LIST

The Registered Master Builder should work through this list to ensure that this Contract has been properly entered into and that important forms have been used.

Before Signing the Contract (please tick box to confirm)

- ☐ Have the parties reached an understanding about the basis upon which any preliminary work is to be done (refer Documents Pack for an example of an *"Agreement for Preliminary Work"*)?
- ☐ Has the Checklist (as required by Building Act regulations) been provided (refer Documents Pack for an example of a *"Checklist"*)?
- ☐ Has the Disclosure Information (as required by Building Act regulations) been provided (refer Documents Pack for an example of a *"Disclosure Information"* form)?
- ☐ Have the parties resolved what insurances are required, and have they contacted their insurers?

When Signing the Contract (please tick box to confirm)

- ☐ Has an Expected Start Date been identified and entered (page 9)?
- ☐ Has an Expected Completion Date been identified and entered (page 9)?
- ☐ Have invoicing, payment and receipting arrangements been entered (page 9)?
- ☐ Have Owners signed the acknowledgment that they received the Checklist and Disclosure Information (page 11)?
- ☐ Have any Special Conditions been acknowledged (page 11) and inserted (page 23)?
- ☐ Are agreed insurance policies in place?
- ☐ If the Owner is a Company, has a written Personal Guarantee of Company Directors been provided and signed (refer Documents Pack for an example of a *"Personal Guarantee of Company Directors"* form)?
- ☐ Has an application for a Master Build Labour Only Guarantee been completed?

During the Contract (please tick box to confirm)

- ☐ Have all variation agreements been committed to writing (refer Documents Pack for an example of an *"Agreement for Variation to the Works"* form)?
- ☐ Has written notice been provided of any matter that impacts on the Expected Completion date (refer Documents Pack for an example of a *"Notice to Owner from Registered Master Builder of Postponement of Completion Date and/or Adjustment in Contract Price"* form)?
- ☐ Has written notice been provided of any matter that impacts on the Contract Price (refer Documents Pack for an example of a *"Notice to Owner from Registered Master Builder of Postponement of Completion Date and/or Adjustment in Contract Price"* form)?
- ☐ Has an application for a Master Build Labour Only Guarantee been sent in?

At Practical Completion (please tick box to confirm)

- ☐ Has a Notice of Practical Completion been completed (refer Documents Pack for an example of a *"Notice of Practical Completion"* form)?
- ☐ Has the Registered Master Builder provided the Owner with documentation setting out ongoing maintenance requirements?
- ☐ Has the Registered Master Builder provided the Owner with documentation setting out details of any insurance policies that remain applicable?

GENERAL INFORMATION

Use of Labour Only Building Contract

This Labour Only Contract should only be used where the Registered Master Builder is GST Registered, a limited liability company and acting under the instruction and direction of an Owner, Occupier or their Agent – referred to in this Contract as “the Owner”.

This Contract is designed for the situation where the Owner is responsible for the supply of materials and for the appointment and management of sub-trades. However, if the parties agree to make an exception to this whereby some materials are provided by the Registered Master Builder and/or some sub-trades are engaged by the Registered Master Builder, then the Registered Master Builder shall be entitled to on-charge the cost to the Owner and to add a margin to that cost (as prescribed by this Contract).

Where the Registered Master Builder is providing any project management services to the Owner then that should be recorded in Clause 3 of the Contract Agreement.

This Contract is designed for residential projects; but may (subject to legal advice) also be used for small commercial projects.

Master Build Guarantee Information

A Master Build Labour Only Guarantee is not provided automatically by engaging a Registered Master Builder. A separate Guarantee application must be completed and be signed by the Registered Master Builder and the Owner. It must then be accepted and signed by Master Build Services Limited (“MBS”).

Your Registered Master Builder is able to provide you with terms and conditions booklets for the Master Build Guarantees. The application form is contained in these booklets.

Your Registered Master Builder must offer you the opportunity to apply for a Master Build Guarantee on residential work with a Contract price of \$30,000.00 or more (including GST).

If the Owner has not been contacted by MBS within 14 days after signing a Master Build Guarantee application and paying the deposit they must immediately contact MBS on 0800 269 119.

Introductory Pages

Pages 1-4 of this document do not form part of the contract between the parties and are for information purposes only.

CONTRACT AGREEMENT

THIS AGREEMENT made on the _____ (day) _____ (month) 20 _____ (year).

Between **the Registered Master Builder** (full name)

Registered Master Builder's address

Registered Master Builder's address for service (if different from above)

Notices under this Contract may also be provided to the Registered Master Builder by emailing them to:

And **the Owner(s)**

Note: Where a trust is the contracting party, name the trust and trustees. Where a company is the contracting party, name the company.

Owners' address

Owners' address for service (if different from above)

Notices under this Contract may also be provided to the Owner by emailing them to:

Preliminary Conditions and Information

THE PARTIES ACKNOWLEDGE AND AGREE:

The Registered Master Builder's Works

1. The Owner is undertaking a building project (the "Project"), partly or wholly shown and described in the drawings and specifications and the Registered Master Builder's tender including pricing information (whether attached to this Contract or not) at the address below.

Address

Lot No. _____ on Deposited Plan No. _____

2. The Registered Master Builder is to undertake the following labour only work:

List the labour only work in detail which the Registered Master Builder is to undertake with reference to the plans and specification (eg "the carpentry items shown on drawing numbers XX to YY"; or "the work identified in section AA of the specification and on drawings BB to CC").

NOTE: It is important to clearly identify what work is to be undertaken by the Registered Master Builder.

(the items listed in the box above are hereafter referred to as the "Labour Only Works")

3. The Registered Master Builder is to undertake the following additional services:

List any other additional services in detail (eg Project Management – identify precisely what tasks this involves) which the Registered Master Builder is to undertake.

NOTE: It is important to clearly identify what work is to be undertaken by the Registered Master Builder.

SAMPLE

(the items listed in the box above are hereafter referred to as the “**Additional Services**”)

The Labour Only Works and the Additional Services (where undertaken) are hereafter together referred to as the “Registered Master Builder’s Works”

4. The Registered Master Builder has agreed to provide the Registered Master Builder’s Works for the Contract Price set out in this Contract upon and subject to the terms and conditions of this Contract.

The Contract Price

5. The Owner will pay the Registered Master Builder the CONTRACT PRICE being EITHER:

1. THE FIXED PRICE:

(words) _____

\$_____ GST Inclusive;

subject to adjustments provided for in clause 13 of the general conditions.

THE FIXED PRICE SHALL BE PAYABLE IN ACCORDANCE WITH CLAUSES 66 TO 70 OF THE GENERAL CONDITIONS OF CONTRACT AND:

(A) THE CONTRACT DEPOSIT (if applicable) SHALL BE:

Amount: \$ _____ GST inclusive

Due date: Payable on the date the Contract is executed; and

(B) THE BALANCE OF THE CONTRACT PRICE (BEING THE FIXED PRICE LESS THE DEPOSIT PLUS ANY ADJUSTMENTS UNDER CLAUSE 13) SHALL BE CLAIMED PROGRESSIVELY:

Claim Periods: As invoiced by the Registered Master Builder each (specify relevant period):

<p>_____</p> <p>_____</p> <p>_____</p>
--

Amount: The invoiced amount will relate to work carried out during the invoiced periods, GST inclusive; and may include claims for adjustments under clause 13 of the General Conditions of Contract.

(C) TOTAL

At Practical Completion of the Registered Master Builder's Works the total amount of the deposit and all invoiced claims will be the Contract Price for this Contract.

OR:

2. ON A CHARGE UP BASIS AT THE CONTRACT RATES:

Hourly charge-out rate per carpenter: \$ _____ GST inclusive

Rate for travel (per kilometre): \$ _____ GST inclusive

Hourly charge-out rate for travel: \$ _____ GST inclusive

Hourly charge-out rate for lost time: \$ _____ GST inclusive

Other: (please specify) \$ _____ GST inclusive

Note: If different rates apply for different staff and/or carpenters and/or labourers and/or for Additional Services provide details in Special Conditions or as an attachment

WHICH SHALL BE PAYABLE IN ACCORDANCE WITH CLAUSES 66 TO 70 OF THE GENERAL CONDITIONS OF CONTRACT AND:

(A) PAYMENT SHALL BE CLAIMED PROGRESSIVELY:

Claim Periods: As invoiced by the Registered Master Builder each (specify relevant period):

Amount: The invoiced amount will relate to the Registered Master Builder's Works carried out during the invoiced periods, GST inclusive; and may include claims for adjustments under clause 13 of the General Conditions of Contract.

[Delete either Option 1 or Option 2 above]

Margin Rate

6. A margin of % shall be added to costs incurred by the Registered Master Builder and passed on to the Owner (as provided in clause 15 of the General Conditions of Contract)

Expected Start Date

7. Subject to the terms of this Contract, the Expected Start Date for the Registered Master Builder's Works shall be _____

Expected Completion Date

8. Subject to the terms of this Contract, the Expected Completion Date for the Registered Master Builder's Works shall be _____

Invoicing and Receipts

9. The Registered Master Builder may (but is not required to) render claims for payment at the following intervals:

- ☐ weekly, or
☐ monthly, or
☐ Upon substantial completion of item in staged payment schedule where provided for in the Registered Master Builder's tender
☐ other (specify) _____

Payment is due (tick as applicable):

- ☐ 5 days after invoice issued
☐ 10 days after invoice issued
☐ other (specify) _____

Receipts will be provided as follows: _____

The rate of interest (Clause 71) is: _____

Details of the Registered Master Builder's Personnel:

10. The person carrying out the Registered Master Builder's Work will be

The person/s supervising the Registered Master Builder's Work will be (Note – if Owner is supervising, insert "Owner" here)

The Contract Documents

11. The Contract Documents (taken together the "Contract") are:

- a) Preliminary Conditions and Information;
- b) General Conditions of Contract,
- c) the Special Conditions (if any);
- d) Schedules or appendices attached (if any);
- e) Drawings and specifications;
- f) The Registered Master Builder's tender including pricing information;
- g) Other (specify) _____

Registered Master Builder's Insurance

12. Public Liability Insurance (refer clause 39 of the General Conditions of Contract)

Registered Master Builder's Insurer: _____

Total Sum Insured: \$ _____ GST inclusive

Start Date: _____

Expiry Date: _____

Owner's Insurance

13. Contract Works Insurance (refer clause 37 of the General Conditions of Contract)

Owner's Insurer: _____

Total Sum Insured: \$ _____ GST inclusive

Start Date: _____

Expiry Date: _____

Confirmation whether Contract Contains Special Conditions

14. This Contract:

- ☐ Does contain Special Conditions (inserted at schedule at end).
- ☐ Does NOT contain Special Conditions.

(Note: this section must be completed, for Master Build Guarantee purposes)

Confirmation Checklist and Disclosure Information Provided

15. The Owner/s hereby acknowledge that the Registered Master Builder has provided them with a copy and/or drawn their attention to the “Checklist” and the “Disclosure Information” documents (before signing this Contract) as referred to in the Building Act 2004.

SIGNED by the Owner: (if more than one Owner, each Owner must sign)



Execution of Contract

SIGNED by the Registered Master Builder



SIGNED by the Owner: (if more than one Owner, each Owner must sign)



NOTE: If the owner is a Company, the Registered Master Builder should request that at least one director signs the personal guarantee

GENERAL CONDITIONS OF CONTRACT

UNDERLYING OBLIGATIONS

Builder's warranties

1. The Registered Master Builder warrants that the Labour Only Works it is responsible for shall be carried out:
 - a. In a tradesmanlike manner.
 - b. in accordance with the drawings and specifications (as amended where applicable).
 - c. in accordance with building consent(s).
 - d. using materials that are fit for purpose.
 - e. using materials that are new (unless agreed otherwise).
 - f. in accordance with all laws and legal requirements.
2. The Registered Master Builder warrants that any Additional Services shall be provided using reasonable skill and care.
3. The Registered Master Builder shall provide all general tools of trade as required to complete the Registered Master Builder's Works.
4. The Registered Master Builder is responsible for all payments of taxes in respect of payments made by the Owner to the Registered Master Builder under this Contract.

Statutory Compliance

5. The Owner and the Registered Master Builder shall comply with the provisions of all statutes, regulations and bylaws of government, territorial and other public authorities that may be applicable to the Registered Master Builder's Works.
6. Where this Contract constitutes a residential building contract within the meaning of section 362B of the Building Act 2004 the implied warranties for building work in relation to household units under sections 362I, 362J and 362K of the Building Act 2004 apply to the Registered Master Builder's Works. The fact that the parties may have adopted forms and/or procedures that may have been designed to comply with the Building Act 2004 or regulations made thereunder does not amount to an acknowledgement or indication that this Contract is in fact a "Residential Building Contract" for the purposes of that Act and/or regulations.

Owner's title

7. The Owner undertakes that he/she/it has title or other legal entitlement to the land to allow the Registered Master Builder's Works to be carried out.

Owner's undertaking as to finance

8. The Owner undertakes that he/she/it has (or, prior to the Expected Start Date, will have) sufficient funds or finance to meet his/her/its financial obligations to the Registered Master Builder (as those obligations fall due). The Registered Master Builder may at any time, including prior to the Expected Start Date require the Owner to provide documentary proof that he/she/it has such sufficient funds or finance, and the Owner will with provide such proof within 5 working days.

DEPOSIT

Loss of Deposit

9. Immediately upon signing of this Contract, the Owner will pay the Registered Master Builder the Contract Deposit. The Registered Master Builder shall be under no obligation to perform any steps under this Contract until the Contract Deposit is paid.
10. If, whether prior to the Start Date or otherwise, the Owner decides not to proceed with the Registered Master Builder's Works (other than by reason of justified cancellation resulting from a breach of contract by the Registered Master Builder), any Contract Deposit paid by the Owner to the Registered Master Builder is not refundable.
11. If, prior to the Expected Start Date, the Owner decides not to proceed with the Registered Master Builder's Works, the Registered Master Builder's recoverable loss shall be deemed to be the greater of:
 - a. The Contract Deposit; or
 - b. Such loss as is quantifiable and provable by the Registered Master Builder including, but not limited to, loss of profit.

CONTRACT PRICE

Contract price

12. The Owner agrees to pay the Contract Price to the Registered Master Builder on the basis recorded in the Preliminary Conditions and Information in this Contract.
13. The Contract Price is subject to adjustments as a result of:
 - a. A variation; or
 - b. Additional work and/or a change to the drawings and/or specification necessitated by the terms or conditions of any building consent, resource consent or other approval; or
 - c. Cost fluctuations (if set out in the Special Conditions in this Contract); or
 - d. Any increase in costs to the Registered Master Builder resulting from a failure or delay on the part of the Owner in complying with his/her/its obligations under this Contract; or
 - e. Any other matter specifically provided for in this Contract.

Margins

14. If the parties agree to make an exception to the labour only nature of this Contract so that some materials are provided by the Registered Master Builder and/or some Sub-Trades are engaged by the Registered Master Builder (or other additional costs are incurred by the Registered Master Builder), then the Registered Master Builder shall be entitled to on-charge the cost to the Owner and to add a margin. Costs that may be subject to such margins shall include (but not be limited to):
 - a. Materials.
 - b. Sub-Trades, specialist contractors and contracted professionals and/or experts.
 - c. The costs of hiring plant and equipment.
 - d. Costs incurred in variations or additional work.
 - e. Travel and delivery costs.
 - f. Costs that are part of a variation or additional works (where there is no fixed price for the variation or additional works).
15. Subject to clause 16 below, when the Registered Master Builder on-charges the Owner for costs it incurs, that margin shall be as specified in the Preliminary Conditions and Information of this Contract (and, if no rate is specified, the margin shall be 15%).
16. The Registered Master Builder's margin is not required to be limited to the percent specified in the Preliminary Conditions and Information of this Contract (or to the 15% rate specified in clause 15 above) if that margin relates to costs that are:
 - a. Already included in the Contract Price.
 - b. As part of a variation or additional works (where there is a fixed price for the variation or additional works).
 - c. Already included in the hourly rates or costs specified in the Charge-up Schedule.
 - d. Rates for carpenters or labourers (or other workers) who are the Registered Master Builder's employees or who regularly work under contract for the Registered Master Builder (on a basis appearing similar to an employer and employee relationship).

DRAWINGS AND SPECIFICATIONS

Discrepancies

17. In the event of any discrepancy between the Labour Only Works as described in the Registered Master Builder's tender and the Labour Only Works as described in the drawings and the specifications, then the Registered Master Builder's tender shall take precedence.
18. In the event of any discrepancy between the drawings and the specifications, the drawings shall take precedence. Figured dimensions shall take precedence over scaled dimensions.
19. Drawings and the specification are subject to building consent, resource consent and other approvals.

SITE

Survey pegs

20. Survey pegs required by the Registered Master Builder to define building site boundaries, unless already established, shall be provided by a surveyor employed by the Owner. If the Registered Master Builder so requires, survey pegs, offset pegs and datum pegs shall be shown to the Registered Master Builder, who shall record the position of such pegs. The Registered Master Builder shall take all reasonable steps to maintain and protect all boundary pegs. The Owner nevertheless agrees to indemnify the Registered Master Builder in respect of any expense, loss, action or claim whatsoever arising out of the position of pegs or mistakes as to the correct boundaries of the building site.

Utilities

21. The Owner shall advise of the specific location of underground utilities to the Registered Master Builder who shall record the position of such utilities. The Owner nevertheless agrees to indemnify the Registered Master Builder in respect of any expense, loss, action or claim whatsoever arising out of any damage to utilities or, if need be, the relocation of utilities.

Right of access

22. The Owner has access to the Project at all times and must ensure that it does not interfere with the progress of the Registered Master Builder's Works. The Registered Master Builder shall not be responsible for any damage done to the Registered Master Builder's Works by the Owner. The Owner must ensure that it complies with all requirements of Health and Safety legislation.

Unforeseen physical conditions

23. The Owner shall be responsible for any unforeseen physical conditions which could not have reasonably been foreseen by an experienced contractor at the time of tender. Unforeseen physical conditions include artificial obstructions and weather conditions at or away from the building site. The Registered Master Builder shall notify the Owner in writing as soon as practicable of any unforeseen physical condition. The Owner agrees to indemnify the Registered Master Builder in respect of any actual increase in the Registered Master Builder's time, cost or expense incurred resulting from unforeseen physical conditions.

Building site and Works to be kept clean and tidy

24. The Owner shall keep the Project site clean and tidy and regularly remove all rubbish and surplus materials.
25. The Registered Master Builder shall leave that part of the Project site which is the subject of the Labour Only Works clean and tidy upon Practical Completion of the Labour Only Works.

CONTRACT WORKS

Building and resource consents

26. The Owner shall obtain and pay for any building consent and resource consent and other necessary approvals required for the Registered Master Builder's Works, including any consents and approvals required after commencement of the Registered Master Builder's Works, and provide the Registered Master Builder with an approved copy of all consents and approvals issued for the Registered Master Builder's Works and where relevant, the Project.
27. The Registered Master Builder shall comply with the terms and conditions of the building and resource consents.
28. The Registered Master Builder will comply with the Owner's directions with regard to consultation or inspections of the Registered Master Builder's Works required by the Owner or any person or officer authorised by statute or by law, provided that the Registered Master Builder's time spent in relation to such consultation or inspection shall be charged as hours worked on the Registered Master Builder's Works.

Code Compliance Certificate

29. The Owner shall be responsible for applying for and obtaining the Code Compliance Certificate(s) for the Registered Master Builder's Works in their own right or as part of the Project.
30. The Registered Master Builder shall provide the Owner with all reasonably necessary information relating to the Registered Master Builder's Works so that the Owner may apply for a Code Compliance Certificate.

Care of the Works

31. The Owner shall be responsible for the Project incorporating the Registered Master Builder's Works during the time that the Registered Master Builder is carrying out the Registered Master Builder's Works.
32. The Registered Master Builder shall not be responsible for any loss or damage caused by: war; riot or civil commotion; the Owner's use, occupation or taking over of any part of the Registered Master Builder's Works; a defect in design other than by the Registered Master Builder; ionising radiations or contamination by radioactivity; pressure waves from an aircraft or aerial device; any operation of the forces of nature that an experienced contractor could not foresee or reasonably make provision for or insure against; and any act or omission of the Owner.

Subcontractors

33. The Registered Master Builder shall not without the written consent of the Owner assign or sublet the whole or any portion of the Registered Master Builder's Works.

Health and safety

34. The Owner and the Registered Master Builder will comply with all Health and Safety legislation. Whether or not the Owner is a PCBU as defined by section 17 of the Health and Safety at Work Act 2015, the Owner will take all reasonably practical steps to:
 - a. provide and maintain a safe working environment;
 - b. identify significant hazards; have proper procedures for dealing with emergencies that may arise;
 - c. maintain a register of accidents and serious harm;
 - d. identify the Project site with a builder's sign and display appropriate safety notices.

Land subsidence and earth fill

35. The Owner shall indemnify the Registered Master Builder against any claim against the Registered Master Builder by any person whatsoever for damages or expenses incurred by reason of inadequate earth fill or subsidence.

Additions or alterations

36. Where the Works involve additions or alterations to an existing building or structure then the following shall apply:
 - a. the Registered Master Builder shall not be liable for any loss or damage suffered by the Owner in relation to the Registered Master Builder's Works where such loss or damage results from the state or condition of the Owner's existing building or structure, and the effect of such state or condition on the Registered Master Builder's Works or the effect of the Registered Master Builder's Works on the existing building or structure could not reasonably have been foreseen by the Registered Master Builder.
 - b. the Registered Master Builder will use reasonable endeavours to match new materials to existing materials. However, the Owner agrees that it may not be possible to provide a 100% matching of materials and in such event there shall be no claim against the Registered Master Builder.
 - c. where as a result of opening up any part of the existing building or structure to carry out the Registered Master Builder's Works, any additional or altered work is required because of non-standard construction or any substandard timber or other materials or because of any material which is required to be replaced or removed to carry out the Registered Master Builder's Works, then the cost of any additional or altered work shall be borne by the Owner and treated as a variation and the Contract Price adjusted accordingly.

INSURANCE

37. The Owner shall arrange insurance cover either under a new policy or under the Owner's existing policy of insurance as an extension of such policy to cover:
 - a. the Registered Master Builder's Works against loss or damage for not less than the total of the Contract Price, plus the value of materials supplied by the Owner, removal of debris, professional fees, increased construction costs, and escalation of costs during the reinstatement period; and
 - b. full replacement value against loss or damage to the Owner's existing structure made available to enable performance of the Works or adjacent to the Works and against loss or damage to the Owner's contents.

38. Insurance cover under clause 37 shall be in the joint names of the Owner, the Registered Master Builder and the mortgagee (if any) and shall not be cancelled or materially changed by the Owner for the duration of the Registered Master Builder's Works.
39. The Registered Master Builder shall maintain a public liability insurance policy indemnifying the Registered Master Builder against claims in respect of loss or damage against property (other than property covered by the Owner's insurance of the Registered Master Builder's Works and existing structures) or injury or death or illness to any person arising out of the operations of the Registered Master Builder or any of its subcontractors in connection with the execution of the Registered Master Builder's Works.
40. Each party shall, prior to the commencement of the Registered Master Builder's Works, forward to the other party evidence that the relevant insurance cover has been obtained.

VARIATIONS

Variations

41. The Registered Master Builder shall carry out all reasonable variations ordered by the Owner provided that the Owner orders all variations in writing and the change to the Contract Price is agreed in writing.
42. Where additional or different work from that included within the Contract is required to complete the Registered Master Builder's Works then the Registered Master Builder may claim for that work as a variation. If the price cannot be agreed between the Owner and the Registered Master Builder then the Owner shall pay what it considers is due for the variation with the valuation of the claim to be resolved by the dispute procedure of the Contract.
43. The Registered Master Builder shall be entitled to recover the Registered Master Builder's time and expenses for assessing and pricing any variation, whether or not the variation goes ahead. The Owner shall pay a reasonable additional fee based on the Registered Master Builder's usual hourly rate plus expenses.
44. Unless agreed otherwise, variations shall be claimed for payment in the payment claim or invoice issued by the Registered Master Builder under Clause 67.

Additional work required by Territorial Authority

45. In the event that any additional or altered work to that specified in the plans and specifications is required by the territorial authority as a condition of the granting or retention of a building consent or otherwise, or for any part of the Registered Master Builder's Works to comply with the Building Code, then:
 - a. the Registered Master Builder and the Owner shall consult concerning the requirement for additional work. The Owner shall advise the Registered Master Builder whether it wishes the additional or altered work to be carried out as a variation, or whether it wishes some alternative, if any, which will avoid the need for the additional or altered work required by the territorial authority;
 - b. if the requirement by the territorial authority for additional or altered work is due to any discrepancy, error or defect in the plans or specifications supplied by the Owner, or is otherwise due to non-compliance in the plans or specifications with territorial authority, or legislative requirements (such as the Building Act 2004 or the Resource Management Act 1991), then the costs of such additional or altered work shall be borne by the Owner.
 - c. if the requirement by the territorial authority for additional or altered work is due to any error or defect caused by the Registered Master Builder then the costs of such additional or altered work shall be borne by the Registered Master Builder.

OWNER'S WORK AND OBLIGATIONS

46. The Owner shall supply and pay for all materials for the the Registered Master Builder's Works, and shall engage and pay for all other Sub-Trades for the Project, and be responsible for scheduling and supervising and for the quality of the workmanship of the other Sub-Trades.
47. The Owner shall supply to the site of the the Registered Master Builder's Works:
 - a. water, power and sanitation facilities.
 - b. any plant equipment, scaffolding, form or false work, that is required for the Labour Only Works.
 - c. all plant, equipment and materials required for the Registered Master Builder's Works in a timely manner so that the Registered Master Builder can proceed continuously with the Registered Master Builder's Works.

48. The Owner shall arrange for the storage and removal of all waste.
49. The Owner shall provide a timetable for the Project to the Registered Master Builder incorporating the Expected Start Date and the Expected Completion Date for the Registered Master Builder's Works as identified in clauses 7 and 8 of the Preliminary Conditions and Information of this Contract. The Owner shall ensure that the timetable is adhered to and that any impacts on the timetable are notified to the Registered Master Builder. The Owner shall ensure that all materials required by the Registered Master Builder are available on the Project site so that the Registered Master Builder can proceed continuously with the Registered Master Builder's Works.
50. The Owner shall arrange, employ and supervise any other Sub-Trades that may be necessary and shall make arrangements for such work to commence and be completed in accordance with the requirements of the Registered Master Builder so that the Registered Master Builder may continuously proceed with the Registered Master Builder's Works.
51. In the event of the Owner failing to comply with clause 49, the Registered Master Builder shall be entitled to rectify any such failure and charge the Owner any extra time, cost and expense incurred as a variation.
52. Where the Registered Master Builder incurs additional labour costs from the activity of the Owner which is not otherwise provided for in the Contract Price, then the cost effect of that activity shall be borne by the Owner and will be paid to the Registered Master Builder as a variation.
53. The Registered Master Builder shall not be liable for any loss or defect, maintenance, damage or delay howsoever caused as a result of any work performed or materials provided by the Owner or any other contractor. The provisions of clause 62 (Defects warranty) shall not apply in relation to any materials supplied or work carried out by the Owner or other contractor.
54. The Registered Master Builder shall not be required to provide tools, insurance or supervision for the use of any other Sub-Trade, nor accept responsibility or be liable for any claim caused by any act or omission of such Sub-Trades.

COMMENCEMENT AND COMPLETION

Commencement

55. Subject to the terms of this Contract, the Registered Master Builder shall commence the Registered Master Builder's Works on or about the Expected Start Date.

Completion

56. Subject to the terms of this Contract, the Registered Master Builder shall exercise reasonable diligence in seeking to achieve Practical Completion of the Registered Master Builder's Works on or about the Expected Completion Date.

Extension of time

57. For the avoidance of doubt and without limitation to the Registered Master Builder's other rights and remedies under this Contract, the Registered Master Builder shall not be liable for any delay to the Expected Start Date or to the Expected Completion Date caused by:
 - a. A failure or delay on the part of the Owner in complying with his/her/its obligations under this Contract, including but not limited to a delay in:
 - (i) Paying the Deposit.
 - (ii) Providing proof of finance.
 - (iii) Providing proof of insurance.
 - (iv) Obtaining sufficient title.
 - (v) Obtaining building consents, resources consents or other approvals.
 - (vi) Ensuring all necessary services are available at the Project site.
 - (vii) Providing the Registered Master Builder with access to and possession of the Project site for the purpose of carrying out the Registered Master Builder's Works.

- b. Delays on the part of a territorial authority.
 - c. Any other delays (or problems resulting in delays) in matters that the Owner is responsible for (including problems or delays caused by other persons contracted by the Owner).
 - d. Inclement weather.
 - e. Variations or additional work.
 - f. Unforeseen health and safety requirements.
 - g. Where Sub-Trades are unavailable.
 - h. Where materials have not been provided as needed or expected by the Owner or are otherwise unavailable.
 - i. Delays occasioned by the actions or inactions of any other contractors or sub-contractors.
 - j. Unforeseen physical conditions.
 - k. Unexpected conditions of any existing structure being built onto.
 - l. The invoking of Dispute Resolution procedures by either party in circumstances that (in the Registered Master Builder's reasonable opinion) make it impracticable for the Registered Master Builder to proceed as otherwise planned.
 - m. Any other matter outside the Registered Master Builder's reasonable control.
58. Where applicable the Registered Master Builder shall notify the Owner in writing if any extension of time is required to achieve Practical Completion of the Registered Master Builder's Works. The notice shall be given to the Owner as reasonably promptly after the delay becomes apparent.

Lost Time

59. Where the Registered Master Builder suffers lost time as a result of, but not limited to, a delay in supply of materials, on-site meetings, waiting for territorial authority inspections, notices of suspension, non-attendance or non-completion by Sub-Trades, or other persons, the Registered Master Builder shall charge for and the Owner shall pay the charge out rate for lost time (at the Registered Master Builder's usual charge out rate or rates).

Practical Completion

Notice of Practical Completion

60. Upon Practical Completion of the Registered Master Builder's Works the Registered Master Builder and the Owner must sign and date the annexed Notice of Practical Completion.

Note: When a Master Build Guarantee has been provided, this Notice of Practical Completion may also be used by the Owner as a Notice of Practical Completion in accordance with the provisions of the Guarantee.

12 Month Defects warranty

- 61. The Owner must notify the Registered Master Builder of any Defects in writing as soon as reasonably possible after the Defect becomes apparent.
- 62. Any such Defect that arises and that is notified to the Registered Master Builder within 12 months of Practical Completion shall be remediated by the Registered Master Builder within a reasonable time from notification.
- 63. The Owner is responsible for maintenance and fair wear and tear during the 12 month defect warranty period.
- 64. The Owner is responsible for ensuring gradual start up and shut down of heating systems in cold weather and for provision of adequate ventilation during hot weather in order to prevent excessive movement of the structure and cracks or other damage to the internal linings and finishes of the Registered Master Builder's Works. Any damage or problem resulting from a failure to meet these requirements is the Owner's responsibility.

INVOICING AND PAYMENTS

Reimbursable expenses

65. The Owner shall reimburse the Registered Master Builder for all reasonable expenses incurred by the Registered Master Builder in the performance of the Registered Master Builder's Works, which do not form part of the Contract Price, and which have first been approved by the Owner as a variation.

Invoices and/or Payment Claims

66. The Contract Price shall be determined and claimed in accordance with clause 9 of the Preliminary Conditions and Information and these clauses 66 to 70.
67. The Registered Master Builder is entitled to submit claims to the Owner at the intervals recorded in clause 5 of the Preliminary Conditions and Information. Claims may be submitted in the form of an invoice and/or as a payment claim in accordance with Part 2 of the Construction Contracts Act 2002.
68. Any variations claimed and any work claimed on a charge up basis shall be supported by sufficient supporting information to demonstrate the amounts claimed by the Registered Master Builder.
69. If the Owner wishes to dispute the amount of any payment claim, he or she must do so in accordance with Part 2 of the Construction Contracts Act 2002. Payment schedules under the Construction Contracts Act 2002 must be served on the Registered Master Builder within 5 working days of service of a payment claim under that Act.
70. Payment claims are due for payment within the period recorded in clause 9 of the Preliminary Conditions and Information.

Interest on default

71. The Owner shall pay the Registered Master Builder interest compounding monthly on all monies due and payable and remaining unpaid after the expiry of the time provided for payment from the date of default until actual payment. The right to interest shall be additional to any other remedy to which the Registered Master Builder may be entitled at law. The rate of interest shall be the rate recorded in clause 9 of the Preliminary Conditions and Information of this Contract (compounding monthly). If no rate is recorded, the rate of interest shall be 15% (compounding monthly).

Costs

72. The Registered Master Builder shall be entitled to recover from the Owner, on an indemnity basis, all costs and expenses (including legal costs on a client/solicitor basis) incurred in connection with the recovery of any amount due and payable by the Owner under this Contract including, without limitation, all costs and expenses incurred:
- a. repossession and/or selling any goods or materials;
 - b. in relation to any court or other dispute proceedings or actions.

DEFAULT

Default by the Owner

73. If the Owner defaults in the observance or performance of any of the Owner's obligations under this Contract or if the Owner becomes bankrupt or goes into liquidation (other than for the purpose of amalgamation or reconstruction) or has a receiver or statutory manager appointed, then the Registered Master Builder, without prejudice to its other remedies, may exercise all or any of the following remedies:
- a. cancel this Contract;
 - b. suspend the carrying out of the Registered Master Builder's Works until such default has been remedied;
 - c. whether the Registered Master Builder's Works have been suspended or not, take such action as the Registered Master Builder shall deem expedient in any Court of competent jurisdiction.
74. The Registered Master Builder shall notify the Owner in writing and give the Owner five (5) Working Days to remedy the default before exercising any of the remedies under clause 73.

75. Where the Registered Master Builder lawfully cancels this Contract, any Master Build Guarantee provided shall also terminate and be rendered null and void.

Default by the Registered Master Builder

76. If the Registered Master Builder becomes bankrupt or goes into liquidation (other than for the purposes of amalgamation or reconstruction) or has a receiver or a statutory manager appointed and the assignee, liquidator, receiver or statutory manager fails within ten (10) Working Days to make arrangements satisfactory to the Owner for the execution of the Registered Master Builder's Works, or the Registered Master Builder has failed to proceed with the Registered Master Builder's Works with reasonable diligence or is persistently, flagrantly or willfully neglecting to carry out its obligations under the Contract, and the Registered Master Builder has not remedied the default within ten (10) Working Days of receiving written notice of the default, then the Owner, without prejudice to its other remedies, may cancel this Contract.
77. Where the Owner cancels this Contract any Master Build Guarantee provided shall also terminate and be rendered null and void, subject to the Master Build Guarantee provisions for termination.

Note: To avoid rendering the Master Build Guarantee null and void the Owner must adhere to the consent provisions set out in the Master Build Guarantee.

SUSPENSION OF WORK FOR NON-PAYMENT

Suspension of work for non-payment

78. Where the Owner fails to pay any invoiced amount in full by the due date for its payment the Registered Master Builder may suspend work under this Contract provided written notice is served on the Owner. If the Owner has not paid the invoiced amount within five (5) Working Days after the date of service of the notice to suspend the Registered Master Builder may immediately suspend work.
79. The right to suspend work under clause 78 of this Contract ceases when the Owner pays the amount in full. The Registered Master Builder may at any time lift the suspension, even if the amount has not been paid.
80. The Registered Master Builder is entitled to recover any costs incurred as a consequence of the suspension of work, or extension of time. The Registered Master Builder is not liable for any loss or damage suffered by the Owner, or by any person claiming through the Owner.
81. The Registered Master Builder is entitled to an extension of time to complete the Registered Master Builder's Works where work has been suspended under this part of this Contract, and retains all rights under this contract, including any right to terminate this Contract.
82. Where the Registered Master Builder exercises the right conferred by clause 78, the exercise of that right does not:
- affect any rights that would otherwise have been available to the Registered Master Builder under the Contract and Commercial Law Act 2017; or
 - enable the Owner to exercise any rights that may otherwise have been available to the Owner under the Contract and Commercial Law Act 2017 as a direct consequence of the Registered Master Builder exercising the right to suspend the work conferred by clause 78.

DISPUTE RESOLUTION

83. If any dispute or difference between the Owner and the Registered Master Builder arises out of or in connection with this Contract or the Registered Master Builder's Works (the Dispute), a party to this Contract wishing to invoke these dispute resolution procedures shall give written notice to the other party to this Contract specifying the nature of the Dispute.

Negotiation

84. On receipt of the notice by the other party, the parties must endeavour, in good faith and expeditiously, to resolve the Dispute by negotiation between them.

Mediation

85. The parties may refer the matter to Mediation if they are unable to resolve the Dispute by negotiation between them within five Working Days (or before that, if the circumstances involve urgency). Mediation may be:
- A formal mediation through a professional mediator agreed by the parties; or
 - An informal mediation through an agreed third party (e.g. an industry representative).

Litigation

86. Nothing in these Dispute Resolution provisions limits any right the parties may have to bring a claim before the District Court or the High Court or the Disputes Tribunal.

Adjudication

87. Nothing in these Dispute Resolution provisions limits any right the parties may have to refer a dispute to adjudication under the Construction Contracts Act 2002.

MISCELLANEOUS

Notices

88. Every notice or claim to be given under this Contract shall be sufficiently given if served at the address for service recorded in this Contract (including being emailed to the parties' email address, as recorded in this Contract).

Privacy

89. The Owner consents to the Registered Master Builder providing to Master Build Services Limited and/or to Registered Master Builders Association of New Zealand Incorporated any information about the Owner relating to and for the purposes of this Contract which comes into the possession or control of the Registered Master Builder. Such information may be stored electronically by Master Build Services Limited and/or Registered Master Builders Association of New Zealand Incorporated. The Owner has the right to access and correct any personal information.

Definitions

90. For the purposes of this contract, the following terms have the following meanings:

Additional Services: has the meaning provided in clause 3 of the Preliminary Conditions and Information.

Claim: means a written request or demand for payment and, unless the context indicates otherwise, can include a Payment Claim issued under the Construction Contracts Act 2002 or an ordinary invoice not issued Construction Contracts Act 2002.

Completion Date: means the date on which Practical Completion of the Registered Master Builder's Works is achieved.

Contract: has the meaning set out in clause 11 of the Preliminary Conditions and Information.

Contract Price: has the meaning provided in clause 5 of the Preliminary Conditions and Information.

Defect: means a fault or flaw in the workmanship or materials provided by the Registered Master Builder or its agents; that is:

- Workmanship that has not been carried out in a competent tradesmanlike manner.
- Materials supplied by the Registered Master Builder that are not fit for purpose.
- Unauthorised use of second-hand materials.
- A significant, adverse and unauthorised departure from what was prescribed by the drawings and specifications.
- In matters not specifically prescribed by the drawings and specifications, a material and unauthorized departure from industry or manufacturer's tolerances (and, in the event of inconsistent industry tolerance schedules, any tolerance schedule published RMBA shall be definitive for the purposes of this contract)

For the avoidance of doubt, the following do not constitute a “Defect”:

- Fair wear and tear.
- Damage not caused by the Registered Master Builder or the Registered Master Builder’s agents (e.g. damage caused by the Owner).
- Defective workmanship or materials not supplied by the Registered Master Builder or the Registered Master Builder’s agents.
- Problems or damage resulting from the Owner’s failure to carry out normal or reasonable or prescribed maintenance.
- Problems or damage resulting from the Owner’s failure to follow the Registered Master Builder’s reasonable instructions (e.g. adequate ventilation for new works).
- Further problems or damage resulting from the Owner’s failure to remediate or failure to advise the Registered Master Builder once a defect became apparent.
- Any matter that the builder is deemed to not be responsible pursuant to the provision of the Building Act 2004 or its amendments or other legislation.

Expected Completion Date: means that date at which the Registered Master Builder genuinely and reasonably believes that Practical Completion will be achieved.

Expected Start Date: means that date at which the Registered Master Builder genuinely and reasonably believes that permanent physical work will commence on site.

Labour Only Works: has the meaning provided in clause 2 of the Preliminary Conditions and Information.

Project: has the meaning provided in clause 1 of the Preliminary Conditions and Information.

Practical Completion: means when the Registered Master Builder’s Works have been completed except for minor defects and minor omissions, which do not prevent it from being used for its intended purpose and which can be remedied in the defects period or at such other agreed time without causing unnecessary inconvenience to the Owner.

Note: It may be possible that Practical Completion of the Registered Master Builder’s Works is achieved notwithstanding that Practical Completion of the Project has not been achieved.

Registered Master Builder’s Works: has the meaning provided in clause 3 of the Preliminary Conditions and Information.

Start Date: Means the date at which permanent physical work commences on site.

Sub-Trades: Means workers such as plumbers, electricians, flooring contractors, tilers, and other contractors who are contracted from time to time by the Owner or by the Registered Master Builder; but does not include carpenters or labourers who are contracted by the Registered Master Builder on substantially a full-time basis for the duration of the Registered Master Builder’s Works (or the substantial portion thereof).

Working Day: means a day that is not a Saturday or a Sunday or a public holiday (and that is not otherwise outside the definition of “Working Day” as provided by the Construction Contracts Act 2002).

SPECIAL CONDITIONS

This Contract is subject to the following special condition/s (please initial this page):Name of Owner:

SAMPLE

NOTICE OF PRACTICAL COMPLETION

(refer clause 60 of the General Conditions of Contract)

Name of Owner: _____

Name of Registered Master Builder: _____

PRACTICAL COMPLETION

Practical Completion is achieved when the Works and any agreed variations to the Works are completed except for minor defects and minor omissions which can be remedied in the defects period or at such other agreed time by the Registered Master Builder without causing unnecessary inconvenience to the Employer.

DEFECTS PERIOD (refer clause 60 of the General Conditions of Contract)

The defect period begins from the date of execution of this Notice of Practical Completion.

EXECUTION OF PRACTICAL COMPLETION

The Owner certifies that it has inspected the Works and accepts possession of the Works and further certifies that the Works have been completed in accordance with the Building Contract.

DETAILS

Location of the Works:

DATES

Actual date of Practical Completion: _____

Proposed date of final payment or possession: _____

SIGNATURES

Signature of Owner: _____

Date: _____

Signature of Registered Master Builder: _____

Date: _____



Registered Master Builders Association

masterbuilder.org.nz