

1 OUR OBLIGATIONS

1.1 *We* will:

- (a) make and/or supply the *product*; and
 - (b) install the *product* at the *site*; and
 - (c) carry out the *works*;
- according to this contract.

2 PAYMENT

- 2.1 *You* must pay *us* the *contract price* progressively at each stage.
- 2.2 *We* must give *you* a written claim for a progress payment at the completion of each stage.
- 2.3 *You* must pay a progress claim for a completed stage within 7 days of *us* giving *you* the claim.
- 2.4 *You* must pay *us* any other amount which is payable under this contract on demand after *we* have carried out the work or incurred the cost.

3 ACCESS AND USE OF FACILITIES

- 3.1 *You* must:
- (a) give *us* unrestricted access to the *site* during normal business hours to check measure, to deliver and install the *product* and, if necessary, to fix any defects;
 - (b) provide *us*, while *we* are at the *site*, with adequate access to available water, electricity, toilet and washing facilities;
 - (c) take necessary steps for the safekeeping, control and supervision of all domestic animals on *site*.
- 3.2 If *we* ask for access to deliver the *product* and *you* do not give that access within 7 days, then *we* can claim payment for the delivery stage or otherwise *you* must pay *us* for work performed and costs incurred up to the point of delivery.

4 CHECK MEASURING

- 4.1 *We* will attend the *site* and perform a check measure.
- 4.2 *We* may make minor modifications to the plans and specifications agreed to conform to the checked measurements. *We* will notify *you* of any modifications made.
- 4.3 Any additional work necessary to comply with the modified plans and specifications is a *variation* and Clause 11 applies.

5 OUR WARRANTY

- 5.1 In addition to *your* rights under law, *we* warrant that:
- (a) *our* work; and
 - (b) materials supplied by *us*, will, within industry accepted standards and tolerances, be free of defects at the time of completion of installation.
- 5.2 However, subject to law and the warranties set out in Clause 28, *we* do not have to fix:
- (a) any problem caused by misuse, abuse, wear and tear or normal shrinkage or movement; or
 - (b) appliances and fixtures and fittings made by others and which are outside of the manufacturer's guarantee or warranty period; or
 - (c) any defect in, or problem caused by work, materials or appliances supplied by *you*.

6 OUR RIGHT TO FIX

- 6.1 If at any time *you* claim the *product* is defective, *you* must notify *us* in writing, as soon as possible.
- 6.2 If *you* fail to notify *us* of a claim within a reasonable time of becoming aware of an alleged defect, *we* are not responsible for any damage that results from *your* delay in notification.
- 6.3 If *we* accept responsibility, *we* have the right to fix the defect, but *we* must do so within 28 days. Any defects that in *our* reasonable opinion may affect the safety of the *works* or may lead to it being damaged will be fixed as soon as practicable. *You* must give *us* access to do this in accordance with Clause 3.

7 COLOUR VARIATION

- 7.1 *You* acknowledge that the colour and grain of timber, granite and other natural materials can vary.
- 7.2 *We* will use *our* best efforts to match the colour or grain of the *product* to any sample selected or provided by *you*, but *we* have no liability if they are different.

8 SURPLUS MATERIALS

- 8.1 Unless *you* and *we* have different agreement elsewhere:
- (a) only suitable new materials or *your* reclaimed timber will be used;
 - (b) demolished materials remain *our* property; and
 - (c) materials *we* bring to the *site* which are surplus remain *our* property.

9 APPLIANCES

- 9.1 Unless agreed elsewhere, *we* are not responsible to supply or install any appliances, or to connect anything to any services.

10 DELAYS

- 10.1 *We* will do everything that is reasonably possible to ensure that the *works* are started as soon as it is reasonably possible and reach *practical completion* within the *completion period* /by the *practical completion date*.
- 10.2 *We* are not responsible for any delay caused by something beyond *our* control including any failure by *you* to:
- (a) make a selection;
 - (b) have the *site* ready for installation; or
 - (c) give *us* access to the *site*.
- 10.3 The *delivery date* will be put back and the *completion period/practical completion date* extended by whatever time is reasonable if *we* claim an extension of time by giving *you* written notice.
- 10.4 For every day the subject of an extension of time where *you* are responsible for the delay, *we* may charge *you* the total of the actual increase in cost to *us* to carry out the *works* plus another 20%.

11 VARIATIONS

- 11.1 If *you* request a *variation*, we will give *you* a written *variation* document detailing the work, the price, when the price is to be paid, estimated time to do it and the likely delay, if any.
- 11.2 If *we* request a *variation* we will state the reason for the *variation*.
- 11.3 If *you* accept the *variation*, by signing the *variation* document and returning the signed *variation* document to us, we will then undertake the *variation* in the time agreed.
- 11.4 *You* cannot unreasonably withhold consent to a *variation* that *we* request in accordance with Clause 4 (if the modification is of a minor nature only) and Clause 12.

12 UNFORESEEN CIRCUMSTANCES

- 12.1 If *we* become aware of *unforeseen circumstances* we must notify *you* in writing and *we* may stop work.
- 12.2 Any additional work necessary due to *unforeseen circumstances* is a *variation* and Clause 11 applies.
- 12.3 If a fixed price for a *variation* is not agreed, *you* agree that *you* are required to pay *our* actual cost plus another 20% for the work.

13 WORK BY YOU

- 13.1 If you are to provide plumbing and electrical services, or to supply and install appliances *you* must have the *site* ready and appliances available at least 24 hours before the time *we* state to install the *product*.
- 13.2 Any plumbing and electrical services that *you* provide must be carried out by appropriately licensed persons.

14 SUBCONTRACTING

- 14.1 *We* may sub-contract any of *our* obligations.
- 14.2 *You* must not give instructions to *our* subcontractors or workers on the *site*.

15 RISK

- 15.1 The *product* is at *your* risk once it is delivered to the *site*.
- 15.2 Any materials and goods supplied by *you* or any work carried out by *you*, *your* contractors or *your* agents is at *your* risk.

16 INSURANCE

- 16.1 *We* will have public liability insurance of at least \$5 million.
- 16.2 *You* will ensure that *you* are similarly insured.
- 16.3 If *you* tell us to insure the *product* against loss or damage occurring after it is delivered to the *site* or to similarly insure *your* property whilst the *product* is being installed on the *site*, *you* will be charged *our* actual cost of insuring plus another 20% for arranging this insurance.

17 WHOLE AGREEMENT

- 17.1 Subject to law, the *contract documents* comprise the whole agreement between *you* and *us*.

18 CONTRACT DOCUMENTS

- 18.1 These conditions, the plans and the specifications have precedence in that order if there is any inconsistency between them.

19 DEFAULT INTEREST

- 19.1 If *you* fail to make any payment under this contract on time, *we* will charge *you* interest at the interest rate payable on Supreme Court judgments from time to time on what is unpaid after then. Such failure to pay is a serious breach of *your* obligations.

20 DEBT COLLECTING COSTS

- 20.1 *You* must reimburse to *us* any debt collecting costs (and commissions) *we* pay to recover, or attempt to recover, any overdue payment.

21 RETENTION OF TITLE

- 21.1 Property in the *product* does not pass to *you* until it has been paid for in full, even if *we* have installed it.
- 21.2 To the extent allowed by law, if *you* fail to make a due payment, *we* may enter the *site* and take reasonable action to remove the *product* without *us* being liable to *you* for damage to the *site* or *product* caused by such removal.

22 CHARGE OVER LAND

- 22.1 *You* agree that the land on which the *site* is located *us* charged in *our* favor as equitable mortgagee to secure the payment of all amounts to be paid by *you* under this contract.

23 COPYRIGHT

- 23.1 *We* own all copyright created by *us* in the *product*, the plans, the specifications and the workshop drawings.
- 23.2 If *you* give *us* any sketch, plan or other document which infringes someone else's copyright, *you* indemnify *us* against all claims and costs.

24 YOUR JOINT AND SEVERAL LIABILITY

- 24.1 If there is more than one of *you* then:
- (a) all *your* obligations are joint and several;
 - (b) *we* only have to give notices to one of *you*; and
 - (c) only one of *you* need accept a quote or sign a notice, and then all are bound.

25 TERMINATION

- 25.1 If either party is in serious breach of this contract, the party not in breach, may give the other party a written request to remedy that breach. If the breach is not remedied within 14 days, the party not in breach may end this contract by giving further written notice to that effect.

26 EFFECT OF ENDING THIS CONTRACT

- 26.1 If this contract is ended *you* must, without prejudice to any right or remedy, pay *us* the actual cost of providing the *work* carried out to the day this contract is ended.

27 INSOLVENCY

- 27.1 Should either party become *insolvent*, then the other party may, by giving a written notice, terminate this contract.
- 27.2 To be *insolvent* means:
- (a) any act of bankruptcy under the Bankruptcy Act by a natural person;
 - (b) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager or the entering into of a deed of arrangement if a corporation; or
 - (c) any act of insolvency.

28 STATUTORY WARRANTIES

- 28.1 To the extent required by the Home Building Act 1989, we warrant that:
- (a) the *works* will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in this contract;
 - (b) all materials supplied by *us* will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
 - (c) the *works* will be done in accordance, and will comply with, the Home Building Act 1989 or any other law;
 - (d) the *works* will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within a reasonable time;
 - (e) if the *works* consists of the construction of a dwelling, the making of or alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling the *works* will result, to the extent of the work conducted in a dwelling that is reasonably fit for occupation as a dwelling; and
 - (f) the *works* and any materials used in doing the *works* will be reasonably fit for the specified purpose or result, if *you* expressly make known to *us* or any other person with express or apparent authority to enter into or vary the contractual arrangements on *our* behalf, the particular purpose for which the *works* are required or the result that *you* desire the work to achieve, so as to show that *you* rely on *our* skill and judgment.

29 GST

- 29.1 Where a price is not agreed for an additional charge or omission from the *works*, the amount of Goods and Services Tax attributable to the value for that supply is to be added to the price calculated under the terms of this contract.

30 MANDATORY CONDITIONS

- 30.1 To the extent required by the Home Building Act 1989 and subject to this Clause, the *works* will comply with:
- (a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law; and
 - (c) the conditions of any relevant development consent or complying development certificate.
- 30.2 *We* are not liable if the *works* do not comply with the above requirements if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of *you* (but not by or on *our* behalf);
 - (b) a design or specification required by *you*, if *we* have advised *you* in writing that the design or specification contravenes the above requirements.
- 30.3 To the extent required by the Home Building Act 1989:
- (a) all plans and specifications for the *works* including any *variations* to those plans and specifications form part of this contract;

- (b) any agreement to vary this contract, or to vary the plans and specifications for the *works*, must be in writing and signed by the parties.

31 MEANINGS

In this contract (and where appearing in italics):

- "*completion period*" means the period of time after the *delivery date* to install the *product* and reach *practical completion*;
- "*contract documents*" means the conditions of this contract, the plans, the specifications and any other documents stated
- "*contract price*" means the total price stated on contract;
- "*delivery date*" means the date product will be delivered to site;
- "practical completion date" means when the *works* are complete except for minor omissions and defects that do not prevent the *works* from being reasonably capable of being used for their usual purpose;
- "*product*" means the cabinets, built-ins and other products detailed in the *contract documents* ;
- "*site*" means the address where the *works* are to be carried out as detailed in the *contract documents* ;
- "*unforeseen circumstances*" means any hidden problems which *you* did not tell *us* about or are only revealed when installing the *product* ;
- "*variation*" means any change in the *product* or the work in installing the *product* ;
- "*we*" and "*our*" and "*us*" means the contractor named in the *contract documents* ;
- "*you*" and "*your*" means the owner named in the *contract documents*.
- "*work*" means the whole of the works as provided for in the *contract documents*, including the check measure, supply and installation of the *product* and any *variation*.