

New Zealand
Certified
Builders
Association



Sample

Small Works & Alterations

Building Contract

Shortform Contract for Small Works & Alterations

This Shortform Contract is intended for use where the building work is expected to be of such short duration that the Builder will only need to invoice the Owner once. Where multiple invoices and payments are contemplated a more comprehensive contract is recommended.

Quote #

Date

("the Builder")

(Builder's legal name)

(The name of the legal entity that carries on the building business. If a company, insert the full company name. If a partnership, all of the partners should be named. If a trading trust, all of the trustees should be named. If an individual, insert that individual's name.)

(Builder's trading name)

(Builder's representative)

NZCB No

(Postal address)

(Physical address if different from above)

(Phone)

(Mobile)

(Email)

("the Owner")

Legal name(s) of Owner(s)

(The owner or owners of the land on which the Building Work is to be carried out. Where the owners own the land as trustees, all of the trustees should be named. Where the land is owned by a partnership, all of the partners should be named. Where the land is owned by a company or other legal entity, the name of that entity should be used.)

(Owner's representative)

(Postal Address)

(Physical address if different from above)

(Phone)

(Mobile)

(Email)

Scope of this Contract

Address:

(Street address of the Property)

Description of Work:

Brief Description of the Building Work to be performed by the Builder. Where the Building Work is more fully described on any other document such as a plan, drawing, specification or quotation that document may be listed here and attached to this Contract.

Personnel: List the person or persons who will be carrying out the Building Work

Supervisors: List any person or persons who will be supervising the Building Work (if appropriate)

Materials: List the materials or products to be used in carrying out the Building Work (if known)

Contract Documents: List below the documents which contain the detailed descriptions, diagrams and instructions relating to the performance of the Building Work, such as quotes, plans, drawings, or specifications.

Provisional Sums: (not relevant for a Cost & Margin Project) - See Parts 1 & 4 of the General Terms & Conditions on the back.

	\$
	\$
	\$
Total	\$

Exclusions: No allowance has been made for the following, which if required shall be a Variation or otherwise at the Owner's cost.

Expected start date of the Building Work*

(Day)

(Month)

(Year)

Expected completion date of the Building Work**

(Day)

(Month)

(Year)

*Or the date referred to in clause 8.1, whichever is the later

**Subject to clause 8.4

Method of Calculation of Contract Price (select one)
☐
Fixed Price+

The Builder agrees to supply labour and materials and to engage subcontractors as necessary to carry out the Building Work and the Owner agrees to pay the Original Contract Price shown below, adjusted for any Provisional Sums and Variations.

☐
Cost & Margin

The Builder agrees to supply labour and materials, and to engage subcontractors as necessary to carry out the Building Work and the Owner agrees to pay the Builder for the labour and materials provided by the Builder and the Builder's subcontractors, plus the Agreed Margin.

Fixed Price* Option

The Original Contract Price is shown below and is subject to adjustments for Provisional Sums and Variations:

Total Excluding GST	\$
Plus GST	\$
Total Including GST	\$

OR

Cost & Margin Option

The following rates apply to labour provided by the Builder or the Builder's employees. Rates are subject to adjustment for extended working hours and for work on any day other than a Working Day.

Owner/Operator	\$ per hour inc GST	Apprentice	\$ per hour inc GST
Carpenter	\$ per hour inc GST	Labourer	\$ per hour inc GST

Agreed Builder's Margins**Estimate provided**

Materials	%	If the estimate provided is intended to be a guaranteed fixed price for the Building Work, please use the Fixed Price* option instead
Labour	%	
Subcontractors	%	

\$ inc GST

Deposit (applies to both options)

Deposit	\$ inc GST
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Insurance (See Part 11 of this Contract for more guidance on the parties' insurance obligations.)

Type of Insurance:	Contract Works	Public Liability
Party Responsible:	Owner <input type="checkbox"/> Builder <input type="checkbox"/> (tick one)*	Builder
Total sum insured*:	\$	\$ (Minimum \$1,000,000)

*The total sum insured under the Contract Works policy must be based on a reasonable estimate of the Final Contract Price, plus a reasonable allowance for the following:

Owner supplied Materials					\$
Expediting Expenses	5%	or	%	=	\$
Removal of Debris	10%	or	%	=	\$
Professional Fees	5%	or	%	=	\$
Increased Costs During Construction	5%	or	%	=	\$
Increased Costs During Re-construction	5%	or	%	=	\$
Materials in Storage (off Project site)					\$

Guarantee

Is this a residential building contract? *(tick one)*

Yes

☐

No

☐

**(If in doubt, see the definition of residential building contract in section 362B of the Building Act 2004)*

Is the Original Contract Price (for Fixed Price+ option), or Estimate provided (if any, for Cost & Margin option) more than \$30,000 incl GST? *(tick one)*

Yes

☐

No

☐

If the answer to the above two questions is "Yes", the Builder will apply for a Guarantee in relation to the Building Work.

If the Original Contract Price, or Estimate provided, is \$30,000 incl. GST or less, will the Builder apply for a Guarantee regardless? *(tick one)*

Yes

☐

No

☐

Signatures (Signed for and on behalf of the Owner and the Builder by their duly authorised signatories)

Validity: Unless the Owner has signed this Contract within 30 days after it was completed by the Builder it may be withdrawn or amended at the sole discretion of the Builder.

Important: By signing this Contract the Owner agrees to pay the Final Contract Price inclusive of all Variations and to be bound by this Contract and the General Terms and Conditions on the back. If Part 4A of the Building Act 2004 applies to this Contract, the Owner acknowledges that the Builder has supplied, and the Owner has received, the disclosure information and checklist prescribed in regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014.

Owner		Builder	
Name		Name	
Signature		Signature	
Date		Date	

GENERAL TERMS & CONDITIONS

1 Interpretation

1.1 In this Contract, unless inconsistent with the context, the following expressions shall have the following meanings:

"Building" means the product or tangible result of the Building Work, whether it existed only temporarily to facilitate the Building Work, or remains as a permanent or semi-permanent feature at the conclusion of the Building Work.

"Building Consent" means a Building Consent issued for the Project by a building consent authority under the Building Act 2004.

"Building Work" means the building services to be provided by the Builder (and/or the Builder's subcontractors and suppliers) as described in the Contract Documents (subject to any Variations) and (if applicable) the relevant Building Consent.

"CCA" means the Construction Contracts Act 2002.

"Code Compliance Certificate" means a certificate issued by a building consent authority under section 95 of the Building Act 2004, and once section 6(3) of the Building Amendment Act 2012 comes into force, means a "Consent Completion Certificate" as defined in that Act.

"Contract" means this Building Contract together with the other Contract Documents.

"Contract Documents" means the plans, drawings, specifications, or other documents which contain the detailed descriptions, diagrams and instructions relating to the performance of the Building Work, including any document detailing the scope of work (to the extent that it has not been superseded).

"Deposit" means the figure described as the deposit in the schedule above.

"Final Contract Price" has the meaning given to it in clause 3.2 or clause 3.3 (as the case may be).

"Margin" means the percentage figure entered in the relevant box in the section headed "Agreed Builder's Margins" in the schedule above for Off-site Overheads and profit.

"Off-site Overheads" means expenses or losses not incurred on-site that are attributable to the general overall running of the Builder's business.

"Original Contract Price" means the figure described as such in the schedule above.

"Parties" means the Owner and the Builder.

"Practical Completion" means both the point in time, and the stage in the progression of the Building Work, when the Building Work is so far advanced that the Building can effectively be used by the Owner for its intended purpose, notwithstanding that certain non-critical or aesthetic features are yet to be completed or minor omissions or defects are yet to be rectified.

"Project" means the combination of the Building Work and all other inputs required to achieve the completion of the structure that the Owner intends to have built.

"Property" means the place where the Building Work is to be performed, or (if the Building is to be partly or wholly constructed off-site) the place where the Building is to be located after completion, as identified by the address and/or legal description entered in the schedule above.

"Provisional Sum" means a sum included in the Original Contract Price, for Building Work or materials to be supplied by the Builder, which is an estimate or an approximation made either by the Builder or subcontractor carrying out that Building Work or by the supplier who is to supply those materials, in circumstances where it is impractical to precisely calculate the true cost at that point in time.

"Served" means sufficiently served within the meaning of section 80 of the CCA or Regulation 9 of the Construction Contracts Regulations 2003 and "Serve" has a

corresponding meaning. For the purposes of those Regulations the Parties shall be deemed to have unconditionally consented under Regulation 10(1)(b).

"Variation" means any Building Work or materials that are not, whether expressly or by necessary implication, provided or allowed for in the plans, drawings or specifications forming part of the Contract Documents at the time this Contract is signed by the Builder, and any other event or circumstance described in this Contract which is, or is to be treated as, a Variation, and includes any preparatory work done in connection with a proposed Variation whether or not it proceeds.

"Working Day" means any calendar day other than a Saturday, Sunday, statutory holiday, any applicable regional holiday, and the period 24 December to 5 January inclusive.

1.2 The headings to clauses in this Contract are for convenience only and shall not affect their interpretation.

1.3 Any references in this Contract to a statute or regulation shall be taken to refer to that statute or regulation as subsequently amended, consolidated or re-enacted.

1.4 This Contract together with the Contract Documents constitute the entire agreement between the Parties in relation to the Project and they supersede any and all other agreements, arrangements, understandings or representations whether spoken or in writing in respect of or in connection with the Building Work.

2 Builder's Primary Obligations

2.1 The Builder shall carry out and perform the Building Work diligently and conscientiously, to the standard required by the Contract Documents (subject to any Variations) and (if applicable) the relevant Building Consent, and shall complete the Building Work as soon as is reasonably practicable.

2.2 If this is a Contract to which sections 362I-362K of the Building Act 2004 apply or if the Building Work constitutes services to which the Consumer Guarantees Act 1993 applies, then to the extent they cannot be contracted out of, the warranties or guarantees implied by those statutes apply notwithstanding any other provision of this Contract.

2.3 If the Building Work is to be carried out for the purposes of a business, then all guarantees, warranties, rights or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or any similar statutes are expressly excluded. To the maximum extent permitted by law, all guarantees, warranties or provisions that would otherwise be implied by statute or rule of law are expressly excluded, as are any representations or statements made prior to these terms and conditions taking effect.

3 Owner's Primary Obligations

3.1 The Owner shall pay the Builder the Final Contract Price, at the times and in the manner specified in this Contract.

3.2 If the method of contract price calculation selected in the schedule above is Fixed Price +, then the Final Contract Price will be the Original Contract Price adjusted for any Provisional Sums and Variations.

3.3 If the method of contract price calculation selected in the schedule above is Cost & Margin, then the Final Contract Price will be calculated by reference to the hours of work expended by the Builder and the Builder's employees and contractors in carrying out the Building Work, using the rates set out in the schedule above, plus the materials and other direct costs incurred by the Builder in carrying out the Building Work. Onto those amounts shall then be added the relevant Builder's Margin for Off-site Overheads and profit, calculated by reference to the relevant percentage shown in the schedule above. The relevant Builder's Margin shall be applied to all labour, materials & other inputs provided in connection with the Project, whether provided by the Builder, or by suppliers of materials or trade services to the Builder.

3.4 The Owner must proceed with the Project expeditiously and without delay, and must not unreasonably impede the Builder in the performance of the Builder's obligations. Without limiting the above obligation the Owner must promptly and comprehensively provide any information and make any decision that the Builder may reasonably request.

4 Provisional Sums

4.1 Any Provisional Sums shall be recalculated by reference to the actual expenditure incurred in connection with the relevant aspect of the Building Work, as soon as it is known. The actual expenditure shall be calculated on a cost reimbursement basis using the actual cost of labour, materials and other inputs provided in connection with the relevant aspect of the Building Work, plus the relevant Builder's Margin for Off-site Overheads and profit, all as set out in the schedule above. Any difference between the Provisional Sum and the actual expenditure shall be reflected in either a credit or an additional charge in the Builder's invoice.

5 Variations

5.1 The Builder shall carry out all Variations that the Owner or the Owner's authorised agent instructs or requests the Builder to carry out, provided that any such Variation does not impose an unreasonable burden on the Builder. Wherever reasonably practicable any Variation shall be recorded in writing and the estimated cost of the Variation advised to the Owner by the Builder, but any failure to do so shall not disqualify the Owner from his/her/its entitlement to have the Variation carried out, nor disqualify the Builder from his/her/its entitlement to be paid for the Variation in accordance with the provisions of this Part 5.

5.2 If the method of contract price calculation selected in the schedule above is Cost & Margin, then any Variations shall be charged for in the same manner as the rest of the Building Work. If the method of contract price calculation selected in the schedule above is Fixed Price +, then any Variations shall be charged for as if the Variation was carried out under the Cost & Margin option.

5.3 The Builder shall be entitled to charge for and recover all costs that the Builder would not have incurred but for the Variation and that are reasonably necessary to carry out the Variation to the standard required by this Contract, plus the relevant Builder's Margin.

6 Invoices and Payments

6.1 The Deposit shall be paid by the Owner upon signing the Contract, and the Builder is not obliged to commence the Building Work until the deposit has been paid. The Deposit shall be held by the Builder and applied towards payment of the Builder's invoice (or if more than one, the final invoice), or as provided by clause 18.4.

6.2 Although this Contract contemplates a short-term Project and a single invoice after Practical Completion, if the Building Work takes more than two weeks the Builder may issue an invoice on a fortnightly basis for the proportion of the Building Work that has been completed up to the date of the invoice. The Builder is entitled to issue the final invoice immediately after Practical Completion, but may issue later invoices if any portion of the Building Work has not yet been invoiced, for example where prior invoices contain errors, or subcontractors or suppliers submit late but valid invoices to the Builder.

6.3 The Owner must pay the invoiced amount in full within 5 Working Days of the invoice being delivered or sent to the Owner. If the Owner does not consider that all or any part of the invoiced amount is payable, the Owner must, within 5 Working Days after the invoice was delivered or sent to the Owner:

- a) reply in writing to the Builder stating the amount that the Owner considers payable (the undisputed amount), and specifying the reasons why any part of the invoiced amount is disputed, and the method in which the disputed amount has been calculated; and
- b) pay the undisputed amount.

6.4 If the Builder's invoice is or is accompanied by a payment claim made under the CCA, then any payment schedule as defined in section 5 of that Act must be provided to the Builder within 5 Working Days of the payment claim being served on the Owner.

6.5 The Owner shall pay the Builder's invoice(s) on the due date(s), irrespective of when the Owner's bank or financier is prepared to advance any monies required by the Owner in order to meet the Owner's payment obligations under this Contract. It is the Owner's responsibility to ensure that sufficient funds are available to comply with the Owner's payment obligations under this Contract. The issue of a Code Compliance Certificate is not a prerequisite to Practical Completion or the Builder's entitlement to payment of the final or any other invoice.

6.6 The Owner may at any time request the Builder to provide a receipt or statement recording or evidencing the payments received from the Owner.

6.7 The Parties will comply with their obligations (if any) under Subpart 2A of the CCA (which requires certain retention monies to be held on trust or otherwise secured) to the extent that Subpart 2A applies to this Contract. The purpose of this provision is to ensure that an adjudicator appointed under the CCA or an arbitrator appointed under the Arbitration Act 1996 has jurisdiction to make a determination in respect of any such obligations, as if they were expressly incorporated into this Contract.

7 Access to Site

7.1 During the course of the Project, the Owner (or the Owner's project manager) shall have overall responsibility for the site, but the Builder shall have a free and uninterrupted right of access to it (in conjunction with all other contractors or suppliers providing goods or services in connection with the Project) sufficient to enable him to comply with his obligations or exercise his rights under this Contract.

7.2 Once Practical Completion has been achieved, the Owner shall give the Builder free and uninterrupted access to the site to enable the Builder to undertake any remedial work that he is obliged or wishes to perform.

8 Commencement and Completion of Work

8.1 The Builder shall commence the Building Work within a reasonable time after:

- a) the Contract has been signed by both parties; and
- b) any deposit payable in accordance with clause 6.1 has been paid; and
- c) any necessary Building Consent or resource consent or other requisite consents or licences or consent amendments have been issued.

8.2 Unless otherwise agreed in writing between the Parties, the Owner shall obtain all project information memoranda, Building Consents, resource or other consents or licences, and consent amendments required for the Building Work.

8.3 The Owner shall promptly provide all information reasonably required by the Builder to enable the Builder to comply with the Builder's obligations under this Contract, whether prior to the commencement of, during the performance of, or after the completion of the Building Work.

8.4 The expected completion date stated in the schedule above shall be automatically extended by a reasonable time where delays arise due to any event which is beyond the reasonable control of the Builder and for which the Builder is not responsible.

9 Contract Document Flaws

9.1 In the event of any conflict or inconsistency between any of the Contract Documents, the Project-specific documents such as the plans and drawings and any detailed scope or description of the Building Work shall take precedence over standard form or generic documents. Figured dimensions shall take precedence over scaled dimensions.

9.2 If any error, omission, mistake or discrepancy in any of the Contract Documents, or any conflict or inconsistency between any of the Contract Documents, results in the Builder incurring costs or suffering a loss which could not reasonably have been anticipated at the time the Builder signed this Contract, those costs or that loss may be charged to the Owner by the Builder.

9.3 The Builder is entitled to rely on the designer of the Building, the relevant Building Consent authority, and any publicly or privately owned accreditation entity charged with approving building designs, products or processes, to ensure that the Contract Documents and any directives issued by any of those parties, if faithfully adhered to, will result in compliance with the Building Code. Notwithstanding this, the Builder is not obliged to carry out any Building Work that the Builder reasonably believes does not comply with the Building Code, and may require the Owner to approve a Variation in order to ensure compliance.

10 No Unreasonable Interference

10.1 The Owner shall ensure that at all times neither the Owner nor any other contractor or supplier providing goods or services to the Owner in connection with the Project unreasonably interferes with, inhibits or constrains the performance of the Builder's obligations or the exercise of the Builder's rights under this Contract.

10.2 The Builder shall not be responsible for any damage done to the Building Work by the Owner or by any other contractor or supplier providing goods or services to the Owner in connection with the Project, whether or not the Builder or one of the Builder's employees or contractors was present at the time.

10.3 For as long as the Builder is still performing his obligations or exercising his rights under this Contract, the Builder may take whatever steps he deems reasonably necessary to comply with his own obligations under the Health and Safety at Work Act 2015 and all other statutory or regulatory requirements imposed on him in connection with the Project. However the fact that the Builder has obligations under the Health and Safety at Work Act 2015 and other statutory or regulatory requirements, does not absolve the Owner and all other contractors or suppliers providing goods or services to the Owner in connection with the Project from complying with their own obligations of a similar nature.

11 Insurance

11.1 The Owner must arrange contract works insurance if the Building Work involves changes, alterations, renovations, restoration, repairs or maintenance to existing structures. If the Building Work involves constructing an entirely new stand-alone structure then the Builder is responsible for arranging contract works insurance. Irrespective of who arranges the contract works insurance, given that such insurance typically expires on Practical Completion, the Owner must ensure that the Building is insured from that point onwards.

11.2 The amount insured must be at least as much as the Original Contract Price, plus a reasonable allowance for Owner-supplied materials, expediting expenses, removal of debris, professional fees, increased costs during construction, increased costs during reconstruction, and materials in storage (off the Project site).

11.3 The Owner must arrange contract works insurance against loss or damage to the Owner's existing structures made available by the Owner to enable the performance of the Building Work, or existing structures adjacent to the Building, and to the Owner's contents. This insurance must be for the full replacement value, and for consequential loss arising from loss or damage to those structures and contents.

11.4 The Builder must arrange public liability insurance for loss or damage to any property, or illness, injury or death to any person, that arises from the performance of the Building Work.

11.5 In the event of loss or damage to any part of the Building which is not caused by the Builder or any party for whom the Builder is responsible:

- a) The Builder is not required to carry out any restoration work at the Builder's own expense.
- b) The Builder will restore all loss or damage to the Building and the restoration work will be treated as a Variation.
- c) The Owner must apply the proceeds of the contract works insurance (if any) towards payment for the restoration work.
- d) If the delay in confirming insurance cover after loss or damage to the Building has occurred is such that the Builder can no longer reasonably afford to maintain spare capacity to perform the Building Work when required, the Builder may suspend the Building Work as if clause 18.2 applied, and if the Builder has not cancelled the contract in the meantime, the Builder shall not be obliged to resume the Building Work until the Builder's commitments reasonably allow for a resumption.

11.6 If this Contract is completed on-line, and either Party has selected the option to apply for a contract works policy marketed under the "REDI" brand, then an application for such a policy will be automatically generated from the information entered into the Schedule of this Contract.

11.7 The insurance broker responsible for arranging the REDI contract works policy and the underwriter(s) to whom the application is submitted together with their respective representatives or agents are authorised to obtain from, and disclose to, any other party any information they consider relevant to the assessment of the application for the policy.

11.8 For the purpose of section 12 of the Contract and Commercial Law Act 2017, the provisions in this Part 11 are intended to create obligations enforceable by the insurance broker and the underwriter(s) referred to in clause 11.7 and their respective representatives or agents, whether or not they are parties to this Building Contract.

12 Unprocurable Materials

12.1 If any materials specified are not reasonably procurable, the Builder may substitute other materials of a similar nature and quality after consultation with the Owner.

12.2 If the substitution requires an amendment to the plans, specifications or the Building Consent, the Owner shall be responsible for obtaining and paying for the amendment, and any time spent by the Builder in assisting the Owner with the amendment shall be treated as a Variation and charged in accordance with Part 5.

13 Materials on Site

13.1 The Builder shall retain legal, equitable and beneficial ownership of and title to any plant, equipment, appliances, products or materials that are intended to be incorporated into the Building, even once they have been brought onto the Property by the Builder or the Builder's subcontractors or suppliers (the "Builder's Materials"), until the invoice relating to the Builder's Materials, and all preceding invoices, have been paid in full.

13.2 Notwithstanding the attachment or intermingling of the Builder's Materials to or with any other object or materials, the Builder's Materials shall retain their identity as personal property of the Builder for as long as the Builder retains legal, equitable and beneficial ownership of and title to them.

13.3 In the event of the sale of the Property or of the Builder's Materials by the Owner, the Owner must hold on trust for the Builder that part of the proceeds of the sale that is equal to the amount owing to the Builder at the time of receipt of the proceeds, and immediately pay such proceeds to the Builder on demand.

13.4 Should the Owner default in any payment due to the Builder, or breach any of the Owner's other obligations under this Contract, the Builder shall be entitled to enter the Property and remove any of the Builder's Materials and to sell any of them in order to recover any monies owing by the Owner under this Contract. All costs and expenses incurred by the Builder in doing so shall be paid by the Owner on demand or deducted from the proceeds of sale.

14 Alteration to the Works

14.1 In the event that any alteration to the Building Work is required:

- a) as a condition of the granting of any Building Consent or other consent or licence or;
 - b) as a result of changes to applicable law relating to building; or
 - c) by any regulatory agency either before or after the Building Work commences,
- and the requirement for the alteration to the Building Work was not reasonably foreseeable by the Builder at the time this Contract first came into effect, the alteration shall be deemed to be a Variation.

15 Practical Completion

15.1 Provided the Owner has paid to the Builder the Final Contract Price following Practical Completion and the Owner is not otherwise in default of the Owner's obligations under this Contract, the Builder shall provide the Owner with all information and documentation as may be reasonably required, and take all reasonable and necessary actions, to enable the Owner to apply for a Code Compliance Certificate. This clause shall not affect the obligation of any Licensed Building Practitioner engaged by the Builder to provide a Record of Work in relation to any Restricted Building Work carried out or supervised by that Licensed Building Practitioner.

15.2 The parties agree that the prerequisites to the performance of the Builder's obligations under clause 15.1 are essential terms of this Contract, the intention being that there shall be a mutual and contemporaneous exchange at the point of Practical Completion.

15.3 The issue of a Code Compliance Certificate under the Building Act 2004 is not a prerequisite to Practical Completion, nor is practical completion of the whole Project a prerequisite to Practical Completion when the Builder is only engaged to construct a part of it.

16 Rectification of Defects

16.1 Any defect in the Building which is notified to the Builder in writing within 45 days after Practical Completion, or within 12 months after completion of the Building Work if section 362Q of the Building Act 2004 applies to this Contract, shall be rectified by the Builder at the Builder's expense, within a reasonable time. The notification of any defect must be sufficiently detailed so that the Builder knows precisely what is required to be done.

16.2 In this Part 16 a "defect" means any fault or flaw in the Building Work or the Building which is sufficient to constitute a breach of the Builder's obligations under clause 2.1 or any implied warranties or guarantees, and "rectified" means remedied, re-done, fixed or completed so that the relevant item complies with those obligations. Defects do not include:

- a) Mere cosmetic blemishes, imperfections, or trivial faults or flaws that are within the tolerances normally regarded as acceptable according to common trade practice.
- b) Any failure to achieve standards of finish or detail that are beyond what is required by the Contract Documents (subject to any Variations) and (if applicable) the relevant Building Consent.
- c) Any fault or flaw that is attributable to the acts or omissions of, or materials supplied by, anyone who has contracted directly with the Owner.
- d) Any fault or flaw that is attributable to any event or occurrence beyond the Builder's reasonable control or the acts or omissions of anyone for whom the Builder is not responsible.
- e) Any fault or flaw that is attributable to fair wear and tear, or any failure by the Owner to adequately maintain, preserve, protect and care for the Building.

16.3 The Builder is both obliged and entitled to rectify any defects in accordance with clause 16.1. The Owner must give the Builder a reasonable opportunity to rectify any defects that are notified in accordance with that clause and shall not engage anyone else to do so unless and until a reasonable time has elapsed and the Owner has given the Builder at least 20 Working Days' notice of the Owner's intention to engage someone else, or the Builder has permanently and unequivocally abandoned the Project.

17 Guarantee

17.1 The Builder warrants that the Builder is a Business Member of NZCB, and by virtue of that membership is able to arrange for a Guarantee to be issued to the Owner (subject to any applicable conditions and qualifying criteria being satisfied) for an additional cost.

17.2 The Guarantee is a separate Contract between the Owner and the insurance underwriter, and is arranged by an insurance broker. Unless and until otherwise advised, the insurance underwriter is Lloyd's of London Syndicate 4444, acting through the agency of Archer Group Ltd and under the management of Canopus Managing Agents Ltd, and the insurance broker is BrokerWeb Risk Services Ltd. Although they work closely together, the underwriter, the agent, the manager and the insurance broker are all independent of both the Builder and NZCB.

17.3 The following clauses 17.4-17.7 apply if the parties have indicated in the schedule above that the Builder will apply for a Guarantee.

17.4 If this Contract is completed on-line then an application for a Guarantee in relation to the Building Work will be automatically generated from the information entered into the Schedule of this Contract. If instead this Contract is completed in hard copy then an application for a Guarantee in relation to the Building Work will be completed by the Builder and then signed by both the Builder and the Owner before being submitted by the Builder to the insurance broker who arranges the Guarantee.

17.5 In either case, the application for the Guarantee forms the basis of, and will become incorporated into, the Guarantee. The underwriter, the agent, the manager and the insurance broker referred to in clause 17.2 and their respective representatives or agents are authorised to obtain from, and disclose to, any other party any information they consider relevant to the assessment of the application.

17.6 The application for the Guarantee must be accepted by or on behalf of the underwriter, and the appropriate premium paid, before the Guarantee comes into effect. An acceptance letter and the Guarantee policy wording will be sent to the Owner once cover has been confirmed.

17.7 For the purpose of section 12 of the Contract and Commercial Law Act 2017, the provisions in this Part 17 are intended to create obligations enforceable by the underwriter, the agent, the manager and the insurance broker referred to in clause 17.2 and their respective representatives or agents, whether or not they are parties to this Building Contract.

18 Owner Default

18.1 If at any time the Owner fails to pay any sum owed to the Builder in full by the due date, the Owner shall pay interest on the amount outstanding from the due date until the date of payment. The interest rate shall be the Builder's default bank overdraft borrowing rate, or one and a half times the Builder's non-default bank overdraft borrowing rate,

whichever is the higher. The entitlement to interest is without prejudice to any of the Builder's rights and remedies in respect of the non-payment.

18.2 If at any time the Owner fails to pay any sum owed to the Builder in full by the due date, or any act, omission or default by the Owner effectively precludes the Builder from continuing the Building Work or performing or complying with the Builder's obligations under this Contract, then without prejudice to the Builder's other rights and remedies, the Builder may suspend the Building Work immediately after serving on the Owner a written notice specifying the payment default or the act, omission or default upon which the suspension of the Building Work is based. All costs and expenses incurred by the Builder as a result of such suspension and any recommencement shall be payable by the Owner as if they were a Variation.

18.3 If pursuant to any right conferred by this Contract the Builder suspends the Building Work and the default that led to that suspension continues unremedied for at least 40 Working Days, the Builder shall be entitled to cancel this Contract.

18.4 If at any time the Owner has failed to comply with any of the Owner's obligations under this Contract then without prejudice to the Builder's other rights and remedies the Builder may forfeit the deposit or any sum paid in advance of the Builder's entitlement to payment, and apply it to any damages, costs, interest or other sums to which the Builder is entitled.

18.5 The Owner shall be liable for all costs and expenses incurred by the Builder as a result of the Owner's default, including but not limited to all costs of debt collection, suspension and (if applicable) recommencement of work, preparation, execution, registration and discharge of securities, and the Builder's actual and reasonable legal costs, including those incurred in the course of litigation, adjudication, negotiation, mediation, arbitration or any other method of dispute-resolution.

19 Extent of Liability

19.1 Unless and to the extent that this Contract expressly or by necessary implication provides otherwise:

- a) each party's total liability to the other in respect of the Building Work, the Building or this Contract, whether in contract, tort or otherwise, shall not in any event exceed the Final Contract Price; and
- b) neither party shall be liable to the other for any consequential, indirect or special loss, damage or injury of any kind whatsoever.

20 Dispute Resolution

20.1 If any dispute or disagreement (a "dispute") arises between the parties concerning the Building Work, the Building or this Contract, it shall be resolved in accordance with this Part 20. A dispute shall be deemed to have arisen when the first written communication evidencing the dispute (which may include an electronic transmission such as a fax or e-mail, but not a text message) has been delivered or sent by one party to the other.

20.2 As soon as reasonably practicable after the dispute has arisen, the parties shall meet together or otherwise communicate with each other and attempt to resolve the dispute in good faith through negotiation.

20.3 After 10 Working Days if the dispute has not been resolved by negotiation, the parties may agree to attempt to resolve it by mediation. Mediation shall not be compulsory unless both parties agree to it, and that agreement may be revoked by either party at any time up until 5 Working Days before the scheduled date for the mediation. The parties shall share the mediator's fees and expenses equally and meet their own costs. If the parties cannot agree on a mediator within 5 Working Days of the agreement to mediate, then either party may request the President or relevant nominating officer of the Arbitrators' & Mediators' Institute of New Zealand Inc ("AMINZ") or of LEADR (NZ) Inc. to select a mediator.

20.4 If the dispute has not been resolved within 20 Working Days of the dispute arising, and there is no agreement to mediate currently in force, and being actively pursued, then the dispute may be resolved by any of the following methods:

- a) Adjudication under the CCA;
- b) Adjudication before a Disputes Tribunal under the Disputes Tribunal Act 1988;
- c) Arbitration under the Arbitration Act 1996; or
- d) Legal proceedings through the appropriate Court.

20.5 If either party elects to have the dispute resolved by adjudication under the CCA, then once either party has served a notice of adjudication complying with the requirements of the CCA, if the other party wishes to serve its own notice of adjudication in respect of the same or a different dispute relating to the Project, it must do so within 5 Working Days of service of the first notice, and the claims arising from those notices shall be consolidated, with the same adjudicator appointed to hear each claim.

20.6 If the dispute is referred to arbitration then the arbitration shall be governed by the Arbitration Act 1996 but the degree of formality adopted with respect to the arbitration shall be commensurate with the amounts at stake and the issues involved. Where the Owner is a consumer as defined in the Arbitration Act 1996, this agreement to arbitrate is subject to a separate written agreement being entered into after the dispute has arisen in accordance with section 11 of that Act.

20.7 Notwithstanding clauses 20.4 - 20.6, nothing in this Part 20 prevents:

- a) either party from exercising any statutory rights to the extent that those rights cannot be lawfully contracted out of; or
- b) the Builder from commencing and continuing legal proceedings for the enforcement of one or more payment claims under the CCA at any time, provided that once the outcome of the underlying dispute is finally determined, any such legal proceedings must be discontinued, subject only to either party's entitlement to costs or other incidental relief.

21 Parties to this Contract

21.1 The person or persons purporting to sign this Contract for or on behalf of the Owner, warrant(s) that he/she/they has/have the authority to bind all of the registered proprietors of the Property (jointly and severally if more than one), to the Owner's obligations under this Contract.

21.2 The terms "Owner" and "Builder" shall also be deemed to include their respective executors, administrators, successors and permitted assigns.

21.3 Where the Owner is made up of two or more individuals or entities then each of them shall be bound jointly and severally by the Owner's obligations under this Contract.

21.4 If the Property is owned by trustees, and any of the trustees is not a beneficiary (actual or contingent) of the trust, then the liability of that trustee (the "Independent Trustee") is limited to the assets of the trust. However if any other party to this Contract suffers loss as a result of the intentional default or the dishonesty (but not negligence) of the Independent Trustee in breach of trust, then the Independent Trustee will be personally liable to the extent that the trust assets do not satisfy the loss.