

**NZS 3902:2004**

NEW ZEALAND STANDARD

**HOUSING, ALTERATIONS  
AND SMALL BUILDINGS  
CONTRACT**

ISBN 1-86975-015-2

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## NOTES

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### **REFERENCED DOCUMENTS**

Reference is made in this Standard to the following:

#### **NEW ZEALAND STANDARDS**

- NZS 3910:2003 Conditions of contract for building and civil engineering construction
- NZS 3915:2000 Conditions of contract for building and civil engineering construction (where no person is appointed to act as engineer to the contract)

#### **NEW ZEALAND LEGISLATION**

Arbitration Act 1996

Building Act 2004 and New Zealand Building Code

Companies Act 1993

Construction Contracts Act 2002

Construction Contracts Regulations 2003

Consumer Guarantees Act 1993

Fair Trading Act 1986

Health and Safety in Employment Act 1992

Resource Management Act 1991

#### **OTHER PUBLICATIONS**

Peter Degerholm, Managing Contractors' Cashflow – Making the Construction Contracts Act work for you. Published by Rawlinsons Media Limited, Auckland, New Zealand, 2003

Construction Information Ltd. MasterSpec® Warranty Agreement

### **LATEST REVISIONS**

The users of this Standard should ensure that their copies of the above-mentioned Standards are the latest revisions or include the latest amendments. Such amendments are listed in the annual Standards New Zealand *Catalogue* which is supplemented by lists contained in the monthly magazine *Standards Update* issued free of charge to committee and subscribing members of Standards New Zealand.

### **REVIEW OF STANDARDS**

Suggestions for improvement of this Standard will be welcome. They should be sent to the Chief Executive, Standards New Zealand, Private Bag 2439, Wellington 6020.



## FOREWORD

Over the past 30 years the predecessors to this new Standard (NZS 3901 and NZS 3902) have seen diminishing use. This new and updated NZS 3902 has been prepared as part of a raft of changes sweeping the New Zealand construction industry.

While various other conditions of contract for small building works exist, (principally those produced by the New Zealand Institute of Architects and the Registered Master Builders' Federation), the reality is that relatively few house building contracts involve building professionals. In recent years there have also been significant alterations carried out to many homes and similarly most of these do not involve independent and professional supervisors.

In the vast majority of cases in New Zealand the Owner arranges a building contract directly with a Builder and often this also includes the supply of the land on which the building is constructed. Inevitably these works involve borrowing, usually by way of mortgage finance on the part of the owner.

This new NZS 3902 incorporates the old NZS 3901 and has been developed specifically to answer the need for an independently prepared, fair, equitable and easily understood set of conditions of contract that can be used by owners as they enter into a contract for the construction of their house or house alterations.

Current legislation has been taken account of in the development of this new Standard. The Building Act, the Consumer Guarantees Act, the Fair Trading Act and the Construction Contracts Act have all impacted on the Standard. Changes in insurances are also reflected in the new Standard.

The Standard uses 'plain English' in an endeavour to make it as understandable and 'de-jargonized' as possible. As with any legal contract however, there are areas where a prudent owner will refer to a building professional or to a legal adviser.

The paramount aim has been to produce conditions of contract covering new houses and significant alterations to existing buildings with or without the provision of land. While construction is a specialist area, it is one that most people touch at least once in their life times. The aim has been to make the wording as clear and easy to understand as possible, so that users (owners) have the best opportunity to appreciate the process and the consequences of their actions or inactions during the delivery of their building project.

Significant reference has been made to the key construction contracts currently in use in New Zealand (NZS 3910 and NZS 3915 and the NZIA suite of conditions of contract), so that terminology is consistent with these documents.

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In line with the other main standard conditions of contract some guidelines have been included at the back of this Standard. Appendix B aids in interpretation of the terms and processes used in construction contracts.

While the Standard is intended for small contracts, small has no specific limits although it can perhaps be read as 'straightforward'. Where jobs are larger and not straightforward, it is still recommended that owners engage professional assistance.

Unfortunately disagreements are common in construction works. The Standard sets out a process for the resolution of disputes and users of this Standard are urged to follow the process and attempt to achieve resolution as quickly as possible. The use of professional advisers in this area can assist greatly.

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NEW ZEALAND STANDARD

HOUSING, ALTERATIONS AND  
SMALL BUILDINGS CONTRACT

*This is a legal document.  
You should read this carefully and understand it before you sign it.*

1 INTRODUCTION

1.1 What is this Contract for and who should use it?

The Boxes, subsequent general conditions, any special conditions (see Schedule 1), Schedules and Appendices as well as this introduction form the Contract.

This Standard is a type of building Contract for use by Persons (called the Owner) who want to engage a Builder to build their house, undertake Building Work of a simple nature or undertake alterations (called the Building Work). Although house construction is expected to be the main use of this Contract, the Contract refers only to "the Building Work" so it can be used without amendment for additions and alterations to existing structures and any other small Building Work, such as a garage, a farm building or small, commercial premises. This Contract must not be used as a labour-only Contract.

This Contract should not be used where the Owner has a professional expert design the Building Work and administer the Contract. In such cases the appropriate Standard is the New Zealand Standard Contract NZS 3910.

Where the Building Work is to be carried out on Land to be purchased by the Owner from the Builder, a separate sale and purchase agreement must be attached to this Contract.


Appendix A sets out a flow chart of the typical steps used in a construction contract.

If any disagreement arises between Builder and Owner see Section 16 of this Standard Contract. No kind of direct action, such as refusing a payment or stopping construction should be taken, without first obtaining professional advice.

1.2 How to fill in this Contract

The Owner and the Builder should fill in two identical copies of this Contract attaching to each a copy of the Plans and Specifications for the Building Work. One copy should be kept by the Owner and the other by the Builder as a record of this Contract.



The sign  appears in the margin alongside clauses that have a corresponding clause in the guidelines set out in Appendix B.

The numbers in the top right hand corner of the Boxes in Section 3 refer to a footnote with that number at the bottom of the page. The footnotes are to help you understand the details to be inserted in that Box.

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### 1.3 Signing this Contract

The Owner and Builder must sign this Contract in Box A and should initial (in the bottom margin) each page of this Contract and also initial any words added or crossed out.

They should also initial every page of the Plans and the Specifications and separately initial any alterations.

### 1.4 Builder's main obligations

#### 1.4.1

The Builder must:

- (a) Keep the Owner informed about the progress of the Building Work;
- (b) Complete the Building Work as set out in the Plans and Specifications;
- (c) Obtain insurance cover, as required by this Contract if a new building. See Box J;
- (d) Obtain all Consents to carry out the Building Work unless the Builder and the Owner have agreed otherwise. See Box E and 11.2;
- (e) Prepare a safety plan for the Building Work and the Site;
- (f) Begin the Building Work on the Start Date unless the Builder is entitled to delay starting, see 11.3;
- (g) Carry out and complete the Building Work with reasonable care and skill and in a prompt and timely manner;
- (h) Undertake any Variations to the Building Work as requested by the Owner in accordance with this Contract;
- (i) Complete the Building Work by the Finish Time unless the Builder is entitled to delay finishing, see Box D, 11.4 and 11.5;
- (j) Fix as soon as practicable any defects in the Building Work notified in the Defects Liability Period; and
- (k) Carry out the Building Work for the Contract Price as defined in 2.1.

#### 1.4.2

Further obligations are detailed in Section 6.

### 1.5 Owner's main obligations

#### 1.5.1

The Owner must:

- (a) Keep the Builder informed of concerns the Owner has about the Building Work;
- (b) If the Builder requests, provide evidence as to the Owner's capability to pay the Contract Price;
- (c) If building onto an existing structure, obtain insurance cover, as required by this Contract. See Box J;

- (d) Obtain those Consents required for the Builder to carry out the Building Work if the Builder and the Owner have agreed that such Consents will not be obtained by the Builder. See Box E and 11.2;
- (e) Give reasonable access to the Site to the Builder, Subcontractors and any other authorized Persons to enable the Building Work to be completed; and
- (f) Pay the Contract Price (including the price of all Variations) and if Land has been purchased, pay the Land Price on time and in accordance with the Land Purchase Contract.

### 1.5.2

Further obligations are detailed in Section 6.

## 2 INTERPRETATION

### 2.1 Definitions

All defined terms appear in this Standard Contract with a capital letter at the beginning of each word of the defined term. Words have the following meanings throughout this Standard Contract:

**Allowance** is a sum (if any) specified in Box I as an allowance for carrying out part of the Building Work or for the supply of appliances, materials or services. The Allowance includes all the Builder's costs and profit. The Allowance also includes the cost of installation unless specifically listed under the "Excluded Work and Items" of Box C. See Section 12.

**Box** is a reference to one of the Boxes in the Contract in Section 3 of this Standard Contract.

**Builder** means the Person named as the Builder in Box A.

**Builder's Final Account** is the Final Account for the Building Work provided by the Builder to the Owner.

**Building Work** is the work which the Builder is to carry out in accordance with this Contract, subject to adjustments, extras and Variations, and includes building design if that work is carried out by the Builder.

**Cancellation Date** is the date from which the Owner or the Builder is entitled to cancel this Contract because the Building Work has not started or because a Start Condition has not been satisfied.

**CC Act** is the Construction Contracts Act 2002.

**Code Compliance Certificate** is a certificate issued by a building consent authority which confirms that the Building Work has been completed in compliance with the New Zealand Building Code.

**Certificate of Practical Completion** is a certificate in the form attached as Schedule 4, to be signed by the Owner before the Owner is entitled to possession of the Building Work.

**Consents** are all licences, statutory and regulatory consents, approvals and compliance certificates which may be required for the construction of the Building Work and for the use of the Building Work when completed.

**Contract** is this Contract between the Owner and the Builder and includes any related Contract documents between the Owner and the Builder.

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**Contract Price** is the total price payable by the Owner for the Building Work, including all Allowances and Variations.

**Defects Liability Period** is the period from Practical Completion during which the Owner must notify the Builder of any defects in the Building Work.

**Delay Damages** is the Delay Damages amount specified in Box K.

**Directions** must be in writing and include approvals, assessments, authorizations, certificates, decisions, demands, determinations, instructions, Notices, orders, permissions, rejections and requirements. **Direct** has a similar meaning.

**Dispute** is any disagreement between the Owner and the Builder relating to the performance or interpretation of this Contract and which has been notified by one to the other in writing.

**Excluded Work and Items** are the items of work and/or materials which might be considered to form part of the Building Work but which the Owner and the Builder want to clearly identify as not forming part of the Building Work.

**Final Completion Certificate** is the certificate issued by the Owner to the Builder in accordance with 14.3.

**Final Account** is the final Payment Claim issued by the Builder to the Owner in accordance with 13.4.

**Finish Time** is the time period within which the Builder must have completed the Building Work. The exact date is calculated by adding to the Start Date the period shown in Box D plus any Time Extensions (see 11.5).

**Household Unit** means any building or group of buildings, or part of any building or group of buildings, used or intended to be used solely or principally for residential purposes and occupied or intended to be occupied exclusively as the home or residence or not more than one household; but does not include a hostel or boardinghouse or other specialized accommodation.

**Land** is the property which the Owner has agreed to purchase from the Builder under the Land Purchase Contract.

**Land Purchase Contract** is the agreement for sale and purchase of the Land (if any) attached to this Contract.

**Land Price** is the purchase price of the Land, set out in the Land Purchase Contract.

**Notice** is a notice required to be given in accordance with 17.2.

**Owner** means the Person/s named as the Owner in Box A.

**Payment Claim** is a statement issued by the Builder to the Owner in accordance with Section 13 and the CC Act.

**Payment Schedule** is a statement from the Owner to the Builder in accordance with Section 13 and the CC Act.



**Performance and Defects Retention** is the amount of the Contract Price which is retained to secure performance and the rectification of defects by the Builder.

**Person/s** is any individual, couple, partnership, body of persons, firm, company, or organization whether corporate or not.

**Plans and Specifications** are the Plans and Specifications initialled by the Owner and Builder and attached to this Contract.



**Practical Completion** has the meaning set out in 11.8.

**Residential Occupier** has the meaning contained in the CC Act; namely an individual who is occupying, or intends to occupy, the premises that are the subject of this Contract wholly or mainly as a dwellinghouse. Dwellinghouse is defined in the CC Act to mean a building that is occupied as a residence and includes any fence, gate, path, garage, shed, or other structure, amenity, or improvement that is an accessory to, and used wholly or mainly for the purposes of, the residence.

**Site** refers to the Land, buildings and other places made available by the Owner where the Building Work is to be carried out as identified in this Contract.

**Start Conditions** are the conditions in Box E that must be completed before the Start Date becomes effective.

**Start Date** is the date on which the Builder and Owner have agreed that the Building Work will start.

**Subcontractor** means a Person who contracts with the Builder to carry out part of the Building Work.



**Time Extension** is any extension to the Finish Time which has been agreed to in writing by the Owner and the Builder.



**Variations** are those variations or alterations to the Plans and Specifications either Directed in writing by the Owner or agreed to in writing by the Owner and the Builder.

**Warranty Agreement** is the form of agreement set out in Schedule 7.

**Working Day** refers to any day other than Saturday, Sunday or a statutory or public holiday or any day falling within the period from 24 December to 5 January (both inclusive), irrespective of the days on which work is actually carried out.

## 2.2 General

Where the context requires, words in the singular also include the plural and vice versa.

The terms “Normative” and “Informative” have been used in this Standard to define the application of the Appendix to which they apply. A “Normative” Appendix is an integral part of a Standard, whereas an “Informative” Appendix is only for information and guidance. Informative provisions do not form part of the mandatory requirements of the Standard.

The words “must” and “will” refer to practices which are mandatory for compliance with the Standard. The words “should” or “may” indicate a recommended practice.

<b>A. OWNER AND BUILDER</b>							
<b>OWNER</b> Full Name(s) Physical address   Name of Owner's representative Phone Mobile Fax E-mail	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; background-color: #cccccc; text-align: center; padding: 5px;"><b>DETAILS</b></th> <th style="width: 50%; background-color: #cccccc; text-align: center; padding: 5px;"><b>SIGNATURES</b></th> </tr> <tr> <td style="padding: 5px;">1</td> <td style="padding: 5px;">2</td> </tr> <tr> <td style="padding: 5px;">3</td> <td style="padding: 5px;"> <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature   <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date   <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature   <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date </td> </tr> </table>	<b>DETAILS</b>	<b>SIGNATURES</b>	1	2	3	<div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature  <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date  <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature  <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date
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<b>BUILDER</b> Full Name   Physical address   Name of Builder's representative Phone Mobile Fax E-mail	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; background-color: #cccccc; text-align: center; padding: 5px;"><b>DETAILS</b></th> <th style="width: 50%; background-color: #cccccc; text-align: center; padding: 5px;"><b>SIGNATURES</b></th> </tr> <tr> <td style="padding: 5px;">4</td> <td style="padding: 5px;">5</td> </tr> <tr> <td style="padding: 5px;">6</td> <td style="padding: 5px;"> <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature   <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date </td> </tr> </table>	<b>DETAILS</b>	<b>SIGNATURES</b>	4	5	6	<div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Signature  <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Date
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<b>B. LOCATION OF SITE</b>	7
Street address _____  Suburb _____ City _____  Certificate of Title _____ Area _____ Lot _____ DP _____	

- 14



<b>C. DESCRIPTION OF THE BUILDING WORK</b>		For all terms and conditions relating to the Building Work and the Site, see Sections 6, 7 and 8.
		8
<b>DESCRIPTION OF EXCLUDED WORK AND ITEMS</b>		
		9
<b>DESIGN OF BUILDING WORK BY BUILDER</b>		See 4.1.7.
Is the Builder designing any part of the Building Work?	<i>Circle as applicable</i>	
	Yes	No 10
If the answer is <i>Yes</i> describe the Building Work to be designed by the Builder.		
<b>D. TIMING OF BUILDING WORK</b>		For all specific terms and conditions relating to the timing of the Building Work, see Section 11.
<b>START DATE</b> The Building Work will start by this date unless there are conditions outside the Builder's reasonable control. The Start Date cannot be delayed due to the Builder not finishing other work unless agreed below.		11
<b>START DELAY</b> Can the Start Date be delayed because of the need for the Builder to complete other work?	<i>Circle as applicable</i>	
	Yes	No
If the answer is <i>Yes</i> the Builder and the Owner are expected to discuss the reasons why the completion of other work may delay the Start Date and to write in the maximum delay that might arise so there are <i>no surprises</i> .		12

- 8 Write in a broad description of the work to be carried out by the Builder.
- 9 Write in a description of the work that might be mistakenly considered to be part of the Building Work but which the Owner and the Builder want to clearly identify as not forming part of the Building Work to avoid misunderstanding.
- 10 Describe the Building Work to be designed by the Builder.
- 11 Write in the date on which the Builder will start the Building Work. The Builder must tell the Owner if other work being undertaken by the Builder or key Subcontractors has the potential to cause a delay in the Start Date.
- 12 Write in, in weeks, the maximum delay that might arise.

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<p><b>CATCH UP IF START DELAY?</b></p> <p>If the Start Date is delayed will the Builder make up for lost time?</p> <p>If the answer is yes, describe how:</p>	<p><i>Circle as applicable</i></p> <p>Yes                  No</p>
<p><b>HOW LONG BUILDING WORK TO TAKE</b></p> <p>The Builder must take not more than this length of time, (excluding permitted Time Extensions) to achieve Practical Completion of the Building Work from the date the Building Work actually commences. (Finish Time see 11.4.)</p>	<p>13</p>
<p><b>FINISH DELAY</b></p> <p>Does the Builder agree to make up all or some of the lost time if there are delays after work has started and Practical Completion cannot be achieved by the Finish Time plus Time Extensions from Variations?</p> <p>If the answer is yes, describe how:</p>	<p><i>Circle as applicable</i></p> <p>Yes                  No</p> <p>14</p>
<p><b>CANCELLATION DATE</b></p> <p>If a Start Condition has not been satisfied or the Builder has not started work by this date the right to cancel this Contract starts on this date. See Section 15.</p>	<p>15</p>
<p><b>DEFECTS LIABILITY PERIOD</b></p> <p>Defects must be notified within this period which starts the day after Practical Completion.</p>	<p>16</p>

- 13 Write in the time, in weeks, the time the Owner and the Builder have agreed the Building Work will take.
- 14 If the Builder is prepared to work longer hours or put on extra labour to make up delays then this should be set out here.
- 15 Write in the date that will give rise to the right to cancel the Contract.
- 16 Write in the period from Practical Completion within which defects in the Building Work must be notified. This period is usually between 8 and 12 weeks.

<b>E. START CONDITIONS</b>	<i>Circle as applicable</i>				
<b>Finance:</b> Prior to the Start Date, the Owner must provide the Builder with a banker's or solicitor's certificate evidencing that the funds required to complete the Building Work are available.	17 Yes          No				
<b>Resource Management Consent:</b> Prior to the Start Date, the Consents under the Resource Management Act (if any) to construct the Building Work must have been obtained by...	18 Builder      Owner				
<b>Building Consent:</b> Prior to the Start Date, the building consent required to construct the Building Work must have been obtained by the Builder unless Owner is circled.	19 Builder      Owner				
<b>Insurance:</b> Prior to the Start Date evidence that the insurances required under this Contract are in full force and effect must have been provided.	Yes          No				
<b>Code Compliance Certificate:</b> The Owner is responsible for obtaining the Code Compliance Certificate, unless the Builder has agreed to obtain as agent for the Owner. Has the Builder agreed to do so?	Yes          No				
<b>Is the Owner purchasing Land from the Builder for the Building Work?</b> If the Owner is entering into a Land Purchase Contract with the Builder, the Land Purchase Contract must be unconditional prior to the Start Date. (See Section 18 if applicable.)	20 Yes          No				
<table border="1" style="width: 100%;"> <tr> <td data-bbox="245 1088 1134 1149"> <b>F. CONTRACT PRICE</b> </td> <td data-bbox="1134 1088 1447 1149" style="text-align: right;">           21         </td> </tr> <tr> <td data-bbox="245 1149 1134 1279"> <b>Total Contract Price</b> .....         </td> <td data-bbox="1134 1149 1447 1279" style="text-align: right;">           \$ (incl GST)         </td> </tr> </table>		<b>F. CONTRACT PRICE</b>	21	<b>Total Contract Price</b> .....	\$ (incl GST)
<b>F. CONTRACT PRICE</b>	21				
<b>Total Contract Price</b> .....	\$ (incl GST)				

- 17 Circle *Yes* if this is to be a Start Condition of your Contract, or circle *No* if it is not to be a Start Condition.
- 18 If a Consent is required under the Resource Management Act before construction can be started, seek professional advice as to whether this Contract should be signed before that Consent has been obtained.
- 19 Circle *Owner* if the Owner is to apply for the building consent.
- 20 If the Owner is also purchasing the Land from the Builder, this condition should be compulsory. The Land Purchase Contract must be attached to the back of this Contract before it is signed by the Owner and the Builder.
- 21 Write in Contract Price in figures. Note this does not include the Land Price (if applicable).

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<b>G. PAYMENTS</b>		For all terms and conditions relating to payment for the Building Work, see Section 13.	
<b>DEPOSIT</b> (If applicable)	22	\$	(incl GST)
Date deposit payable	23		
<b>PAYMENT CLAIMS</b>			
<b>Option A</b> (Claims at regular times)	24		
The Builder may make Payment Claims when?	25		
<b>Option B</b> (Claims when certain work is completed)	26		
1. Substantial completion of the foundations and floor structure		\$	(incl GST)
2. Substantial completion of all wall and roof framing, all exterior wall claddings and/or veneers, all exterior doors and windows		\$	(incl GST)
3. Substantial completion of the roof		\$	(incl GST)
4. Substantial completion of all external decoration and coatings		\$	(incl GST)
5. Substantial completion of all internal linings and doors		\$	(incl GST)
6. Substantial completion of all internal painting and wall-papering		\$	(incl GST)
7. Substantial completion of all landscaping and external works		\$	(incl GST)
8.		\$	(incl GST)
<b>Option C</b> (Claims when certain work completed)	27		
1.		\$	(incl GST)
2.		\$	(incl GST)
3.		\$	(incl GST)
4.		\$	(incl GST)
5.		\$	(incl GST)
<b>PAYMENTS APPLYING TO ALL OPTIONS</b>			
<b>Payment Claim on Practical Completion</b> (which amount includes 40 % of the amount of the Performance and Defects Retention)		\$	(incl GST)
<b>Final Account</b> (including balance of retentions)	28	\$	(incl GST)
<b>Interest rate for late payment</b> (see 13.6.1)	29		% per annum
<b>Balance of Performance and Defects Retention</b> (which amount is payable on the issue of the Final Completion Certificate)		\$	(incl GST)
<b>H. RETENTIONS</b>			
<b>PERFORMANCE AND DEFECTS RETENTION</b>	30		
The Builder must deduct from the amount of each Payment Claim this percentage of the amount which the Builder is otherwise entitled to claim as described in 2.1 and 14.2.			%

22 Write in amount of the deposit payable – usually 10 % of the Contract Price.

23 Write in date deposit is payable.

24 Choose Option A if the Builder is to make Payment Claims on a regular basis rather than when completion of certain stages of the Building Work has been achieved.

25 Write in how often Builder can make Payment Claims if you have chosen Option A e.g. monthly.

26 Choose Option B if Contract is to build a new house and the Builder can make Payment Claims when completion of the Building Work has reached certain stages. Write in the dollar amount of Contract Price payable, e.g. amount on completion of foundations and floor structure (15 % of Contract Price); completion of wall framing and roof framing (15 % of Contract Price); completion of exterior cladding, doors, windows and roofing (25 % of Contract Price). Note the amounts will increase or decrease, if there are Variations to the Contract Price.

27 Choose Option C if different Payment Claim arrangements are required. Describe the stages at which the work completed entitles the Builder to make a Payment Claim and the amount of the Contract Price in respect of which the Payment Claim can be made.

28 Write in amount of last payment.

29 Write in interest rate the Owner will be charged on moneys unpaid from the due date. See 13.6.1.

30 Write in the retention percentage to be deducted from each Payment Claim. This is typically in the range of 5 % – 10 %.



<b>I. ALLOWANCES</b>		For all terms and conditions relating to Allowances, see Section 12.
<b>Allowances have been included in the Contract price for the following work or materials</b>	31	32
1.		<b>Allowance</b>
	\$	(incl GST)
2.	\$	(incl GST)
3.	\$	(incl GST)
4.	\$	

<b>J. INSURANCE CHECKLIST</b>		For all terms and conditions relating to insurance, see Section 10.
<p><b>Important note:</b> Insurance certificates for each of the insurances the Owner and the Builder are responsible for must be attached to the back of this Contract – see Schedule 2.</p> <p>Is the Building Work to an existing structure (i.e. alterations or renovations)? If the answer is <i>Yes</i> the Owner must obtain insurance to cover the Building Work (in accordance with Section 10).</p> <p>Does the Building Work involve the construction of a new building? If the answer is <i>Yes</i> the Builder must obtain insurance to cover the Building Work (in accordance with Section 10).</p> <p>Does the Builder have public liability insurance? (in accordance with Section 10)</p>		<p><i>Circle as applicable</i></p> <p>Yes                      No</p> <p>Yes                      No</p> <p>Yes</p>

<b>K. DELAY DAMAGES</b>	33
<p>The Owner and the Builder agree that this amount is a genuine pre-estimate of the costs the Owner will incur each calendar day if the Building Work is not completed within the Finish Time.</p>	<p>\$                      per calendar day (incl GST)</p>

<b>L. ATTACHMENTS</b>	<p><i>Tick the Box if the document is attached to the back of this Contract.</i></p>
<p><b>Important note:</b> do not sign this Contract until all the attachments listed below have been attached to the back of this Contract.</p> <p>Have you attached the Plans and Specifications?</p> <p>If Land is being purchased have you attached the Land Purchase Contract?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

<b>M. OWNER'S CHECKLIST</b>	<p><i>Tick the Box if the document is attached to the back of this Contract.</i></p>
<p>Ensure you receive the insurance certificate (see Schedule 2).</p> <p>Ensure you receive the Site specific safety plan (see 8.2).</p> <p>Have you completed and signed the arbitration agreement in Schedule 9?</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

31 Write in description of materials such as appliances and/or work to which Allowances relate.

32 Write in amount of Allowance for materials and/or work to which the Allowances relate.

33 Write in the amount per day (if any) the Builder is required to pay if Practical Completion takes place after the Finish Time and the Builder is not entitled to a Time Extension. This amount is to cover the Owner's reasonable additional expenses such as accommodation costs and legal costs (if applicable). Note that leaving this Box blank allows the Owner to recover reasonable damages.

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### **4 WARRANTIES**

#### **4.1 Builder's warranties**

##### **4.1.1**

The Builder warrants that the Building Work will be carried out:

- (a) With reasonable care and skill and in a proper and competent manner:
  - (i) In accordance with the Plans and Specifications attached to this Contract, and
  - (ii) In accordance with the relevant building consent;
- (b) All materials supplied for use in the Building Work (other than materials supplied by the Owner):
  - (i) Will be suitable for the purpose for which they will be used, and
  - (ii) Unless otherwise stated in this Contract, will be new;
- (c) In accordance with, and complying with, all laws and legal requirements, including, without limitation, the Building Act and the regulations made pursuant to that Act;
- (d) So that it is completed:
  - (i) Within the Finish Time, or
  - (ii) If no date or period is specified, within a reasonable time;
- (e) If it is in relation to a Household Unit, the Household Unit will be suitable for occupation on Practical Completion of the Building Work;
- (f) If this Contract states the particular purpose for which the Building Work is required, or the result that the Owner wishes the Building Work to achieve, so as to show that the Owner relies on the skill and judgement of the Builder, the Building Work and any materials used in carrying out the Building Work will:
  - (i) Be reasonably fit for that purpose, or
  - (ii) Be of such a nature and quality that they might reasonably be expected to achieve that result.

##### **4.1.2**

The Builder and the Owner acknowledge that the statutory warranties set out in the Building Act apply where the Building Work relates to one or more Household Units and that these warranties follow the life of the building. These rights cannot be modified or excluded.

##### **4.1.3**

The Builder is responsible for the quality and performance of materials supplied by the Builder and any Subcontractor and for the performance and workmanship of every Subcontractor engaged by the Builder to carry out any part of the Building Work.

**4.1.4**

The Builder must provide a minimum five-year warranty in respect of all workmanship and materials incorporated into the Building Work effective from the date of Practical Completion in the form set out in Schedule 7.

**4.1.5**

The Builder's warranty does not apply to fair wear and tear or improper or inadequate maintenance of the Building Work by the Owner after the issue of the Certificate of Practical Completion.

**4.1.6**

If suppliers and manufacturers of the materials incorporated into the Building Work provide warranties or guarantees in excess of the Builder's minimum five year warranty then the Builder must ensure that those warranties or guarantees are passed on to the Owner. These rights are in addition to any rights a consumer may have under the Consumer Guarantees Act.

**4.1.7**

If the Builder has designed any part of the Building Work, then the warranties contained in 4.1 apply to that design work. No comment, review or approval by the Owner relieves the Builder of any responsibility for that part of the Building Work.

**4.2 Owner's warranties**

The Owner warrants that all materials to be supplied by the Owner for use in the Building Work:

- (a) Will be suitable for the purpose for which they will be used;
- (b) Unless otherwise stated in this Contract, will be new.

**4.3 Warranties to be in writing****4.3.1**

All warranties and guarantees (other than statutory warranties or guarantees under the Building Act and the Consumer Guarantees Act) must be in writing, describe the product or service provided, and be transferable to the Owner.

**4.3.2**

Where the Owner acquires the Building Work for the purposes of a business, the provisions of the Consumer Guarantees Act are excluded from this Contract. This will not affect any rights under the Building Act, or rights any subsequent purchaser may have under the Consumer Guarantees Act.

**5 CONSENTS AND APPROVALS****5.1**

The Builder or Owner as specified (in Box E) is responsible for obtaining project information memoranda and Consents required for the carrying out of the Building Work and the Code Compliance Certificate for the use of the Building Work when complete.

**5.2**

If Consents obtained by either the Owner or the Builder are issued subject to conditions affecting the design or Plans and Specifications attached to this Contract then the Builder and the Owner must consult and agree how best to proceed. If compliance with the conditions or modification of the design will cause a delay in the completion of the Building Work or additional cost that the Builder could not have reasonably foreseen at the time this Contract was signed, the compliance issues must be treated as a Variation.



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### 5.3

When requested by the Owner and in any case before making application for the Certificate of Practical Completion, the Builder shall give the Owner all documents necessary to prove the issue of all Consents (other than Code Compliance Certificate) that the Builder was required to obtain in relation to this clause.

### 5.4

If the Builder has agreed to obtain the Code Compliance Certificate (Box E), the Builder shall give the Owner the Code Compliance Certificate relating to the Building Work before making application for the Certificate of Practical Completion.

## 6 GENERAL OBLIGATIONS

### 6.1 Owner's representative

In addition to the Owner, only the Owner's representative (named in Box A) is authorized to give and receive on behalf of the Owner any instructions to or from the Builder or the Builder's representative.

### 6.2 Builder's representative

In addition to the Builder, only the Builder's representative (named in Box A) is authorized to give and receive on behalf of the Builder, any instructions to or from the Owner or the Owner's representative. The Builder's representative is responsible for the supervision of all Building Work.

### 6.3 Change of representative

Either the Builder or the Owner may change their representative by giving a Notice to the other.

### 6.4 Builder's employees and subcontractors

The Owner may object to any Subcontractor or employee of the Builder or Subcontractor involved in the Building Work where the Owner reasonably believes that Person has carried out acts of serious misconduct, incompetence or negligence in the proper performance of the Building Work or is a danger to the safety or welfare of others or to the proper performance of this Contract. The Builder may require the Owner to produce evidence in support of the Owner's belief. In such case the Builder and the Owner must discuss the Owner's objection and endeavour to reach a solution acceptable to the Owner and Builder. If the Owner requires the Builder to replace that employee or Subcontractor or employee of the Subcontractor, the Builder must accommodate the wishes of the Owner if the Builder can reasonably do so having regard to the availability of other suitably experienced employees of the Builder or Subcontractor.

### 6.5 Subcontractors and supply of materials

The Builder may appoint Subcontractors to do any part, but not all, of the Building Work.

The Builder must supply all the labour, materials, services, temporary works, plant and equipment necessary to complete the Building Work (unless described as Excluded Work and Items in Box C).

### 6.6 Owner's contractors

The Owner may enter into separate contracts for any work to be carried out on the Site that is not included in this Contract. The Owner must ensure that each separate contractor complies with the Builder's reasonable requirements on the Site.

### 6.7 Plans and Specifications

#### 6.7.1

This Contract does not transfer any copyright or other intellectual property rights in designs or Plans. The Builder and the Owner each warrant that they have the right to provide any copyright materials or



other intellectual property required for performance of the Building Work. The provision of Plans or designs to a party entitles them to be used only for this Contract.

#### **6.7.2**

In the event of any discrepancy between the Plans and the Specifications, the Plans take precedence. Figured dimensions take precedence over scaled dimensions.

### **6.8 Compliance with laws**

In carrying out this Contract the Builder must comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Building Work.

## **7 SITE POSSESSION AND ACCESS**

### **7.1 Access to the Site**

#### **7.1.1**

The Owner must provide to the Builder, Subcontractors and third party contractors all reasonable access to the Site as is necessary to carry out the Building Work.

#### **7.1.2**

The Owner and the Owner's agents or contractors are entitled to go onto the Site and inspect the Building Work at reasonable times.

#### **7.1.3**

If the Owner owns the Site, the Owner must obtain authority for the Builder to have a reasonable right of entry on to any property adjoining the Site as is necessary to construct the Building Work. Otherwise obtaining access is the Builder's responsibility.

### **7.2 Survey**

The Owner or the Builder may request that the boundaries of the Site be pegged or verified by a licensed cadastral surveyor. If the Land has been purchased from the Builder, the surveyor's costs under this clause must be paid by the Builder; otherwise the Owner is responsible for all costs associated with the survey.

### **7.3 Keeping the Site clean and tidy**

The Builder must keep the Site and the Building Work clean and tidy and must remove all the Builder's rubbish, surplus material and temporary works before the Builder can achieve Practical Completion of the Building Work.

### **7.4 Use and occupation of the Site**

If the Building Work involves an existing building occupied by the Owner or the Owner's invitees, the Builder must cause as little inconvenience to those Persons as is reasonable in the circumstances and must take reasonable steps to keep the Site secure. The Builder is entitled to carry out the Building Work between 7 a.m. and 6 p.m. on any day except a statutory holiday subject to any limitations in the building and/or resource Consents.

### **7.5 Circumstances not reasonably foreseeable**

If the Owner owns the Site and the Builder encounters adverse physical conditions which could not have been reasonably foreseen and which are not due to weather conditions then the Builder must notify the Owner as soon as reasonably practicable, and may require a Time Extension, and can recover any reasonable costs attributable to such conditions, but not otherwise.

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### 8 SAFETY OF THE SITE AND THE BUILDING WORK

#### 8.1 Care of Building Work

##### 8.1.1

The Builder must take good care of the Building Work and of all materials to be incorporated into the Building Work from the Start Date until Practical Completion of the Building Work. The Builder is also responsible for the care of any Building Work to be completed after Practical Completion. However, except to the extent that the risks are covered by the policy of insurance the Builder is required to maintain under Section 10, the Builder will not be responsible for any loss or damage beyond the Builder's reasonable control, including loss or damage arising from any accident or extraordinary occurrence or circumstances.

##### 8.1.2

The Builder is also responsible for the adequacy, stability and safety of all Site operations and methods of construction, but is not responsible for the design or specification of the Building Works unless the Builder has agreed to be responsible for the design of any part of the Building Work (see Box C).

#### 8.2 Safety

##### 8.2.1

The Builder must prepare and work to a Site specific safety plan:

- (a) Whoever is designated in control of the Site in the Site safety plan, is responsible for health and safety under the Health and Safety in Employment Act;
- (b) So far as the Site and Building Work are under the Builder's control, the Builder must take all practicable steps to keep them in an orderly state and in such condition as to avoid danger to Persons and property;
- (c) The Builder must take all practicable steps to:
  - (i) Provide and maintain a safe working environment
  - (ii) Identify any significant hazards
  - (iii) Ensure that any employee or Subcontractor involved in carrying out the Building Work is not unnecessarily exposed to hazards which are under the Builder's control
  - (iv) Have proper procedures for dealing with emergencies that may arise.

##### 8.2.2

The Builder must:

- (a) Maintain a register of accidents and serious harm;
- (b) Investigate accidents and identify their cause;
- (c) Ensure that all Persons under the Builder's control are appropriately supervised.

### 8.2.3

The Builder must give to the Owner a copy of any report which the Builder is required to make to a public authority on any accident which is associated with the carrying out of the Building Work and results in serious harm to any Person.

### 8.2.4

The Owner must notify the Builder of any safety hazards associated with the Building Work or the Site, or special safety measures required, of which the Owner is aware, and with which an experienced Builder may not reasonably be expected to be familiar.

### 8.2.5

The Builder must provide, erect, maintain and when no longer required remove, all barricades, fencing, signs and lighting necessary for the safety of any Person.

## 8.3 Emergency action

The Builder must take all emergency actions necessary to protect the Building Work, any other property or Persons affected by the carrying out of the Building Work, at any time. If the Builder is unavailable or unable to take such action, it may be initiated by the Owner.

## 9 LOSS OR DAMAGE

### 9.1 Builder to indemnify Owner

The Builder must indemnify the Owner against any loss suffered or liability incurred by the Owner arising from loss or damage to the Building Work or any property, personal injury to anyone, or illness or death of anyone, that arises out of, or as a consequence of or as a result of the Builder, or anyone for whom the Builder is responsible, carrying out the Building Work or remedying any defects. However, the Builder's liability to indemnify the Owner is reduced proportionally to the extent that the Owner, or anyone for whom the Owner is responsible, contributed to that loss or liability.

### 9.2 When indemnity is not to apply

The Builder's obligation to indemnify the Owner does not extend to any loss, liability or cost in respect of:

- (a) The permanent use or occupation of the Site by the Building Work and the right of the Owner to construct the Building Work on the Site unless the Builder supplied the Land;
- (b) Injuries to any Persons or damage to property or interference with the rights of other Persons which is an unavoidable result of the construction of, or remedying of defects in, the Building Work; or
- (c) Any act or omission of the Owner, the Owner's representatives or of any Person for whom the Owner is responsible.

### 9.3 Owner to indemnify Builder

The Owner must indemnify the Builder for any loss or cost suffered by the Builder in respect of the acts or omissions referred to in 9.2.



## 10 INSURANCE

### 10.1 Owner to insure work on existing structures

If the Building Work involves physical change, alteration or additions to an existing structure, the Owner must arrange insurance of the Building Work including the existing structure and contents.

### 10.2 Builder to insure

In all other circumstances the Builder must fully insure the Building Work against loss or damage.

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### 10.3 Public liability insurance

The Builder must arrange and maintain public liability insurance against liability for loss or damage to any property, injury or death or illness of any Person that arises from the:

- (a) Performance of the Building Work; and
- (b) Use of any motor vehicle that the Builder owns or has direct control over for the period that it is directly or indirectly involved with this Contract.

### 10.4 Insurance requirements

Insurances arranged under this Contract must meet the following requirements:

- (a) The interest of the Owner and any mortgagee of the Owner must be noted on the policy;
- (b) Public liability insurance must be for at least \$2,000,000;
- (c) Insurance cover for all design work carried out by the Builder must be included; and
- (d) The party responsible for arranging the insurance cover must attach to the back of this Contract evidence from the insurer or insurance broker that the insurance required under this Contract is in effect (in the form of a certificate).

## 11 START DATE AND FINISH TIME

### 11.1 Start Date

The Builder must have started the Building Work by the later of:

- (a) The Start Date; or
- (b) If there are Start Conditions, within five Working Days of the last of the Start Conditions being satisfied.

### 11.2 Start Conditions

#### 11.2.1

Each Start Condition that must be fulfilled must be circled in Box E. The Person responsible for fulfilling a Start Condition must use all reasonable endeavours to ensure that the Start Condition is satisfied prior to the Start Date.

#### 11.2.2

If the Start Conditions have not been fulfilled by the Start Date, the Start Date must be delayed until all conditions have been fulfilled. If a Start Condition is not satisfied by the Cancellation Date either the Builder or Owner may cancel this Contract by giving a Notice to the other.

### 11.3 Delay in Start Date

Where the Start Date has been delayed, the Owner and Builder must adjust the Start Date and the Finish Time:

- (a) For the period of delay in starting the Building Work caused by anything beyond the Builder's reasonable control other than delay due to the Builder not having finished other work; or
- (b) If there is delay in starting the Building Work as set out in Box D for the period of delay but not longer than the period stated in Box D.

#### 11.4 Finish Time

The Builder must achieve Practical Completion of the Building Work within the time period (Finish Time) stated in Box D adjusted in accordance with 11.5.



#### 11.5 Time Extensions

The Owner and the Builder must agree an adjustment to the Finish Time for the period of delay caused by anything beyond the Builder's reasonable control, including delays due to Variations to the Building Work.

#### 11.6 Making up for lost time

The Builder will make up for lost time in starting the Building Work as set out in Box D.

#### 11.7 Remedy for late completion

The Owner's remedy for late completion is Delay Damages as set out in Box K for the period from the Finish Time (adjusted for delay in Start Date and/or for Time Extensions as set out in 11.3 and 11.5) to the date of Practical Completion. The amount of Delay Damages must be deducted by the Builder from the final Payment Claim.



#### 11.8 Practical Completion

##### 11.8.1

Practical Completion of the Building Work occurs when everything has been done except for:

(a) Minor omissions and minor defects that:

- (i) The Builder has reasonable grounds for not promptly completing
- (ii) Do not prevent the Building Work from being used for its intended purpose
- (iii) Can be corrected without prejudicing the convenient use of the Building Work
- (iv) Do not prevent compliance with the New Zealand Building Code; and

(b) Work which the Owner and Builder have agreed to defer.

##### 11.8.2

The Builder must give a Notice to the Owner when the Builder considers that Practical Completion of the Building Work has been achieved (see Schedule 3). The Notice must set out work which the Owner and Builder have agreed to defer and all known maintenance items.

##### 11.8.3

The Owner and Builder must inspect the Building Work within five Working Days of the Owner receiving the Builder's Notice that Practical Completion has been achieved. They must review the list set out in the Notice in 11.8.2, make appropriate changes and agree in writing the work that the Builder is to do after Practical Completion and the date or dates by which that work is to be completed.

##### 11.8.4

If Practical Completion has been achieved, the Owner must issue the Certificate of Practical Completion (see Schedule 4).

**11.8.5**

If Practical Completion has not been reached, the Builder and Owner must agree in writing the items requiring completion to achieve Practical Completion. When these items are complete the Builder must give a new Notice in accordance with 11.8.2.

## **12 VARIATIONS AND ALLOWANCES**

### **12.1 Variations permitted**

**12.1.1**

The Owner is entitled to Direct the Builder to carry out Variations. However a Variation does not include a change to the Building Work which is so peculiar, so unexpected and so different from that which this Contract anticipated that the scope of the Building Work is significantly altered.

**12.1.2**

The Owner may not, without the consent of the Builder, order any Variation after Practical Completion.

### **12.2 Variation orders**

The Builder must only carry out Variations to the Building Work that are Directed in writing by the Owner.

### **12.3 Value of Variation**

**12.3.1**

The cost of the Variation (if any) and any Time Extension required under 11.5 must be agreed in writing by the Owner and the Builder. The Contract Price must then be adjusted by the cost (if any) of the Variation.

**12.3.2**

Agreement of the value of any Variation should be reached before the Variation work starts.

**12.3.3**

If the value of any Variation is not agreed before the Variation work starts and the Owner has agreed that the Variation work can start, then the Owner must pay the Builder's reasonable costs of the Variation.

### **12.4 Allowances**

**12.4.1**

This Contract includes the Allowances set out in Box I, for the items or work stated. Any additional costs over and above the stated Allowances must be added to the Contract Price and any reduction in the cost of the Allowances must be deducted from the Contract Price.

**12.4.2**

The Owner must Direct how the Allowances are to be spent.

### **12.5 Additional works**

In the event that any work additional to that in the Plans and Specifications or any altered work 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 Building Work to comply with the New Zealand Building Code, then:

- (a) The Builder and the Owner must consult concerning the requirement for additional work. The Owner must advise the Builder whether additional or altered work is to be carried out or advise of 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, or is otherwise due to non-compliance with territorial authority or legislative requirements such as the Building Act and Resource Management Act, then the costs of such additional or altered work must be borne by the Owner, except where the Builder has breached any warranty in 4.1 in which case such costs must be borne by the Builder.

### 12.6 Unprocurable materials

If any materials specified are not reasonably procurable, the Builder may substitute other materials of similar quality and nature as are reasonably practicable. The Builder must consult and agree any substitution with the Owner before it is made. Any difference in the cost of such substituted materials must be treated as a Variation.



## 13 PAYMENTS

### 13.1 Builder's Payment Claims

The Builder may give Payment Claims to the Owner only at the times or at the stages stated in Box G.

Each Payment Claim must:

- (a) Be in writing and state that it is made under the CC Act;
- (b) Contain sufficient details to show the claim is made in respect to this Contract;
- (c) Identify the Building Work and the relevant period to which the Payment Claim relates;
- (d) State the claimed amount, detail how that amount is calculated and state the due date for payment;
- (e) If the claim is in respect of the Final Account state the amount or amounts claimed by the Builder in respect to all outstanding claims and be marked "Final Account"; and
- (f) Be accompanied by Form 1 from Schedule 1 of the Construction Contracts Regulations, unless the Owner is not a Residential Occupier.

### 13.2 Pay or give Payment Schedule

Within five Working Days of the Owner receiving a Payment Claim, or 15 Working Days in respect of receiving the Final Account, the Owner must either:

- (a) Pay the amount claimed by the Builder in the Payment Claim; or
- (b) Provide a Payment Schedule to the Builder which sets out in writing:
  - (i) The Payment Claim to which the Payment Schedule relates
  - (ii) The amount that the Owner considers the Builder is entitled to be paid (the "scheduled amount")
  - (iii) How the scheduled amount was calculated
  - (iv) The Owner's reasons for the difference between the scheduled amount and the amount in the Payment Claim;

and pay the Builder the scheduled amount.

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### 13.3 Payment of Performance and Defects Retention

#### 13.3.1

The Builder may give a Payment Claim at or immediately following Practical Completion for 40 % of the amount retained as the Performance and Defects Retention and the Owner must pay the Builder within five Working Days of receipt of the Payment Claim.

#### 13.3.2

The Builder may give a Payment Claim for the balance of the amount retained as the Performance and Defects Retention on the later of:

- (a) Immediately following the issue of the Final Completion Certificate, see 14.3; or
- (b) The date the Final Account is to be paid.

The Owner must pay the Builder within five Working Days of receipt of the Payment Claim.

### 13.4 Builder's Final Account

The Builder must give a Payment Claim to the Owner for the Final Account within three months of Practical Completion, or such further time as the Owner and the Builder agree is reasonable in the circumstances. Any Dispute under this clause must be resolved in accordance with Section 16.

### 13.5 Effect of payment of Final Account

Upon receipt of the Final Account the Owner must respond in accordance with 13.2. Upon payment of the Final Account the Owner ceases to be liable to the Builder except for the Owner's obligations to pay:

- (a) Any retained amounts owing under the defects retention;
- (b) Any amounts owing in respect of any Disputes; and
- (c) Any interest which is or becomes payable under 13.6.1.

### 13.6 Late payment

#### 13.6.1 Interest

The Builder may require the Owner to pay interest at the rate (compounding monthly) set out in Box G on amounts payable and remaining unpaid after the expiry of the time provided for payment. If there is no interest rate stated in Box G, interest will be payable at the Reserve Bank of New Zealand base lending rate applicable on the afternoon on the date of the Payment Claim plus 5 %.

#### 13.6.2 Suspension of work

If any amounts payable remain unpaid after the expiry of the time provided for payment, the Builder may give five Working Days' Notice of intention to suspend work, and suspend work until paid in full. If work is suspended the Finish Time will be adjusted, and the Owner must pay the Builder as a Variation the reasonable costs incurred in resuming work.

## 14 PERFORMANCE AND DEFECTS LIABILITY

### 14.1 Defects Liability

The Builder must (without undue delay and at the Builder's own cost) make good all defects in and omissions from the Building Work notified before the end of the Defects Liability Period set out in Box D.



## 14.2 Performance and Defects Retention

In each Payment Claim the Builder must deduct from the amount to which the Builder would otherwise be entitled the percentage of that amount set out in Box H as security for the Builder's performance and liability for defects.

## 14.3 Final Completion Certificate

The Owner must issue a Final Completion Certificate (Schedule 6) to the Builder for the Building Work when, in respect of the Building Work:

- (a) The Defects Liability Period has expired;
- (b) The Builder has remedied all defects in and omissions from the Building Work (if any) under 14.1;
- (c) The Builder has completed all the work covered by 11.8.1 (b);
- (d) The Builder has delivered to the Owner the Builder's warranty agreement, and all suppliers' and manufacturers' warranties and guarantees for materials and services provided to the Owner or incorporated in the Building Work; and
- (e) The Builder has delivered to the Owner the Notice of Final Completion (Schedule 5).

## 15 CANCELLATION OF THIS CONTRACT

### 15.1 Automatic cancellation

This Contract is at an end if a Start Condition has not been satisfied by the Start Date unless the Owner and the Builder agree otherwise. If this Contract is cancelled, any deposit paid by the Owner to the Builder must be refunded immediately less any expenses incurred by the Builder and authorized by the Owner.

### 15.2 Right to cancel

#### 15.2.1

The Owner may cancel this Contract if:

- (a) A Start Condition required to have been met by the Builder has not been fulfilled by the Cancellation Date;
- (b) The Builder is required to obtain a Consent and does not obtain it by the Cancellation Date;
- (c) The Start Conditions have been satisfied but the Builder has not commenced the Building Work by the Start Date or any permitted extension of the Start Date;
- (d) The Owner considers that this Contract has become impossible to perform or is otherwise frustrated and the Builder agrees. If the Builder does not agree, the Owner and the Builder must resolve the Dispute in accordance with Section 16; or
- (e) The Builder is persistently, flagrantly or wilfully neglecting to carry out the Builder's obligations under this Contract and the Builder agrees to the cancellation of this Contract. If the Builder does not agree, the Owner and the Builder must resolve the Dispute in accordance with Section 16.

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### 15.2.2

The Builder may cancel this Contract if:

- (a) The Owner is required to obtain a Consent and does not obtain it by the Cancellation Date;
- (b) A Start Condition required to have been met by the Owner has not been fulfilled by the Cancellation Date;
- (c) The Builder considers that this Contract has become impossible to perform or is otherwise frustrated and the Owner agrees. If the Owner does not agree, the Owner and the Builder must resolve the Dispute in accordance with Section 16; or
- (d) The Owner is persistently, flagrantly or wilfully neglecting to carry out the Owner's obligations under this Contract and the Owner agrees to the cancellation of this Contract. If the Owner does not agree, the Owner and the Builder must resolve the Dispute in accordance with Section 16.

### 15.3 What happens on cancellation?

If this Contract is cancelled the Owner or the Builder (as the case may be) must pay to the other the amount the other is entitled to be paid under this Contract up to the date of cancellation and such other amount as is fair and reasonable in the circumstances. If the Owner and the Builder cannot agree on the amount payable they must resolve the Dispute in accordance with Section 16.

## 16 DISPUTES RESOLUTION

### 16.1 Good faith

If a Dispute arises between the Owner and the Builder relating to this Contract or the Building Work both the Owner and the Builder must act in good faith and endeavour to resolve the Dispute between them amicably and as soon as possible.

### 16.2 Mediation

#### 16.2.1

If a Dispute is not resolved in terms of 16.1 within seven Working Days either party may give a Notice to the other party requiring that the Dispute be referred to mediation.

#### 16.2.2

The Owner and the Builder must endeavour to agree on a mediator and shall submit the Dispute to him or her. If the Owner and the Builder cannot agree on a Person to act as mediator, the mediator must be appointed at the request of either the Owner or the Builder by an office holder of LEADR New Zealand Inc. or the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ), or the nominee of that office holder. The guidelines governing the mediation are to be set by the Owner and the Builder. Failing agreement on the guidelines within five Working Days after the appointment of a mediator, the mediator must set the guidelines which will govern the mediation.

#### 16.2.3

The Owner and the Builder may at any stage agree to invite the mediator to give a decision to determine the matter in Dispute. In that case, and if the mediator agrees to give a decision, the mediator's decision is binding on the Owner and the Builder.

## 16.3 Adjudication

### 16.3.1

At any time, the Owner or the Builder may give a Notice to the other requiring the Dispute to be referred to adjudication under the CC Act. Schedule 8 sets out the key steps of the adjudication procedure established by the CC Act.

### 16.3.2

Unless the Owner and the Builder agree otherwise, adjudication must not suspend or delay any mediation or arbitration in relation to that Dispute.

## 16.4 Arbitration

### 16.4.1

If settlement has not been achieved within 50 Working Days of a Notice requiring mediation and/or adjudication, the Owner or the Builder may refer the Dispute to arbitration under the Arbitration Act or any Act passed in its place. Either party may give a Notice to the other party referring the Dispute to arbitration.

### 16.4.2

If the Owner and the Builder cannot agree on an arbitrator within five Working Days from the date on which the Notice requiring arbitration was first given by one party to the other, either party may request the President of the New Zealand Law Society, the President of AMINZ or his or her nominee to appoint the arbitrator. The costs of an arbitrator (subject to any award by the arbitrator) are to be borne equally by the Owner and the Builder.

### 16.4.3

The arbitrator may award interest upon any amount due and payable under any award made by the arbitrator at a rate and for a period determined by the arbitrator.

### 16.4.4

The award of the arbitrator is final and binding on the Owner and the Builder.

## 16.5 No suspension during Dispute

### 16.5.1

No Dispute proceedings entitle the Builder to stop the Building Work, except in accordance with the instructions of the Owner or with an award made during the Dispute resolution proceedings.

### 16.5.2

No Payment Claim, Payment Schedule or payment due or payable is to be withheld on account of Dispute proceedings.

## 16.6 Cost of adjudication

The cost of adjudication shall be determined in accordance with sections 56 and 57 of the CC Act which state:

### **Section 56 Costs of adjudication proceedings –**

- (1) *An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication (whether those parties are or are not, on the whole, successful in the adjudication) if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by –*
  - (a) *Bad faith on the part of that party; or*
  - (b) *Allegations or objections by that party that are without substantial merit.*

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- (2) *If the adjudicator does not make a determination under subsection (1), the parties to the adjudication must meet their own costs and expenses.*
- (3) *An agreement about how the costs and expenses in adjudication proceedings are to be apportioned (including an agreement that a party is to indemnify another party in relation to those costs and expenses) is not binding on the parties to the adjudication if that agreement was made before the dispute arose.*

### **Section 57 Adjudicator's fees –**

- (1) *An adjudicator is entitled to be paid, by way of fees and expenses, an amount –*
  - (a) *That is agreed between the adjudicator and the parties to the adjudication; or*
  - (b) *If there is no agreement, that is reasonable, having regard to the work done and expenses incurred by the adjudicator.*
- (2) *The parties to the adjudication are jointly and severally liable to pay the adjudicator's fees and expenses.*
- (3) *The parties to the adjudication are each liable to contribute to the adjudicator's fees and expenses in –*
  - (a) *Equal proportions; or*
  - (b) *The proportions that the adjudicator may determine.*
- (4) *An adjudicator may make a determination under subsection (3)(b) if, in the adjudicator's view, –*
  - (a) *The claimant's adjudication claim, or the respondent's response, was without substantial merit; or*
  - (b) *A party to the adjudication acted in a contemptuous or improper manner during the adjudication.*
- (5) *An adjudicator is not entitled to be paid any fees and expenses in connection with adjudication if he or she fails to determine the dispute within the time allowed by section 46(2).*
- (6) *Despite subsection (5), an adjudicator may require payment of his or her fees and expenses before communicating his or her determination on a dispute to the parties to the adjudication.*
- (7) *If an adjudication claim is withdrawn or terminated, or the dispute between the parties is resolved, an adjudicator is entitled to be paid the fees and expense incurred in the adjudication up to, and including, as the case may be, the date on which –*
  - (a) *The adjudication claim was withdrawn or terminated; or*
  - (b) *The adjudicator was notified that the dispute had been resolved.*

## **17 GENERAL**

### **17.1 Assignment**

This Contract may only be assigned if both the Owner and the Builder agree in writing.

### **17.2 Notices**

Communications which are required to be in the form of Notices must be in writing addressed to the other party and delivered by hand, by receipted delivery system or sent by fax supported by a successful transmission report. Notices must not be given by email.

### **17.3 Waiver**

No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a particular breach is not a waiver of any other breach.

### **17.4 Costs**

The Owner and the Builder must pay their own costs of negotiating and executing this Contract.

### **17.5 Governing law**

New Zealand law governs. New Zealand courts have exclusive jurisdiction.

### **17.6 Personal information**

Any personal information given by one party to the other must be kept private, unless expressly agreed otherwise in writing. The personal information must only be used for the purpose for which it was given.

### **17.7 GST**

All monetary amounts included in this Contract include GST, unless stated otherwise.

## **18 PURCHASE OF LAND (IF APPLICABLE)**

### **18.1 Application of this Contract**

#### **18.1.1**

Section 18 applies only if the Owner is to purchase the Land on which the Building Work is to be carried out from the Builder or from any company of which the Builder is a shareholder or director, or (where the Builder is a company) which is a related company to the Builder within the meaning of section 2(3) of the Companies Act, or from any trust of which the Builder is a trustee or beneficiary.

#### **18.1.2**

The Builder is not entitled to receive any payments from the Owner until Section 18 has been complied with in full.

### **18.2 Land Purchase Contract**

#### **18.2.1**

In addition to and at the same time as entering into this Contract, the Owner and the Builder or the related entity referred to in 18.1.1 must enter into an agreement for the sale and purchase of the Land (called the Land Purchase Contract).

NOTE – The Owner and the Builder should each obtain independent advice from a solicitor before entering into this Contract and the Land Purchase Contract.

#### **18.2.2**

Default under either the Land Purchase Contract or this Contract by the Owner or by the Builder or the related entity referred to in 18.1.1 is default by that person under both Contracts.

### **18.3 Land fit for purpose**

#### **18.3.1**

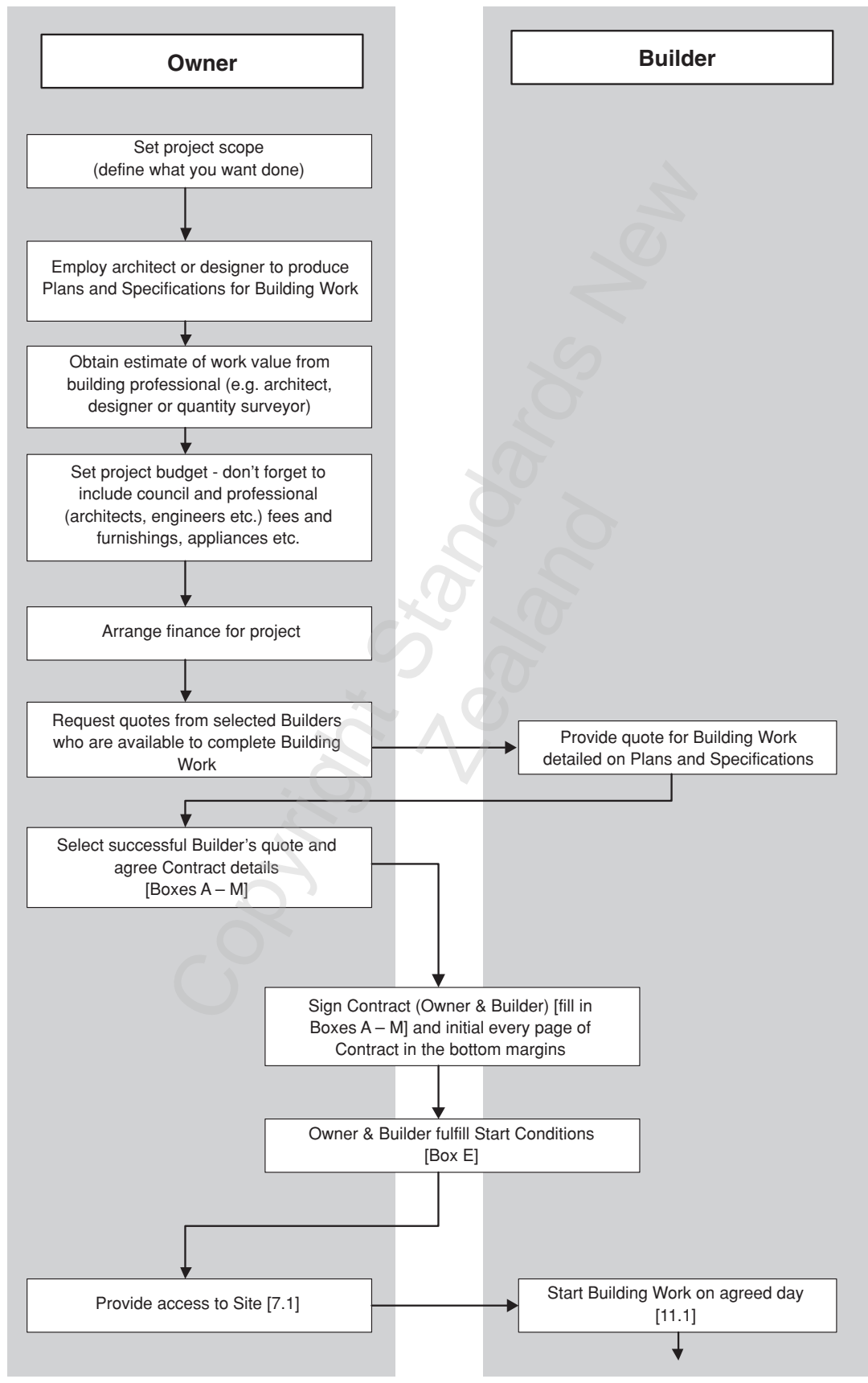
Notwithstanding any other terms of this Contract the Builder warrants that the Land is not subject to subsidence and is fit for the purpose of constructing the Building Work.

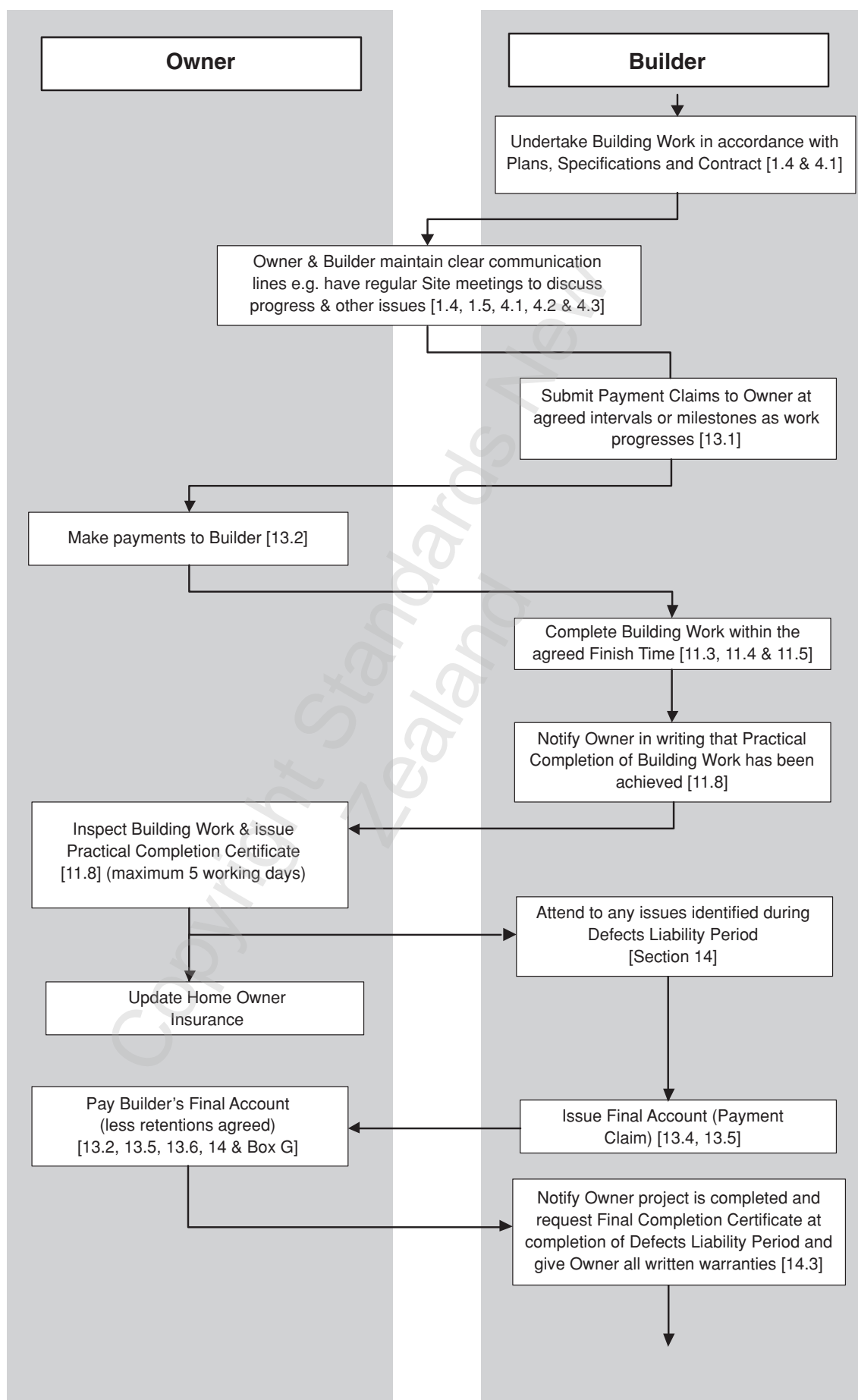
#### **18.3.2**

If the Land is not fit for the purpose of constructing the Building Work the Builder is deemed to have allowed for all excavation and reinstatement costs which should have reasonably been foreseen by an experienced Builder who has inspected the Site.

**APPENDIX A**  
**CONSTRUCTION CONTRACT FLOW CHART**

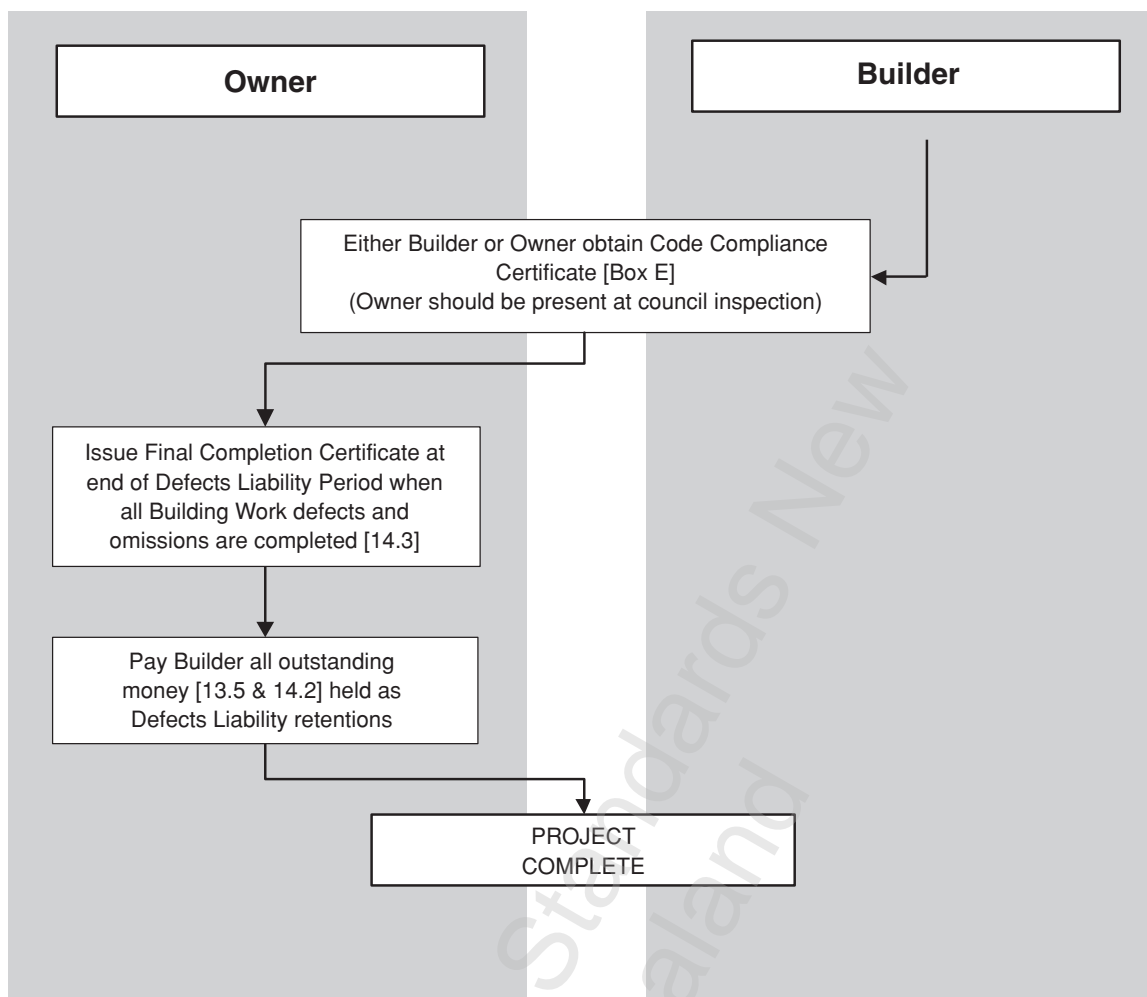
(Informative)







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## **APPENDIX B GUIDELINES – HELPFUL HINTS TO USING THIS STANDARD**

(Normative)

Building Work is covered by a number of statutes i.e. Construction Contracts Act, Building Act, Consumer Guarantees Act.

These guidelines are part of NZS 3902 and have contractual status as between the Owner and the Builder, but only to the extent that they may be referred to as an aid to the interpretation of the main part of the Contract. The purpose of the guidelines is to provide assistance in understanding the principles behind the clauses and in applying the clauses to situations which are not dealt with specifically.

Contingency Sum – the Owner should allow in their financial calculations a sum of money over and above the Contract Price in Box F to pay for Variations that may arise during construction. This sum is to be spent only on the Owner's authorization and is to cover changes that are agreed with the Builder (see Section 12); 10 % of the Contract Price is usual as a contingency sum.

### **SECTION 10 – INSURANCE**

Section 10 sets out the extent of the insurance cover which the parties responsible for insuring are required to arrange under the Contract. A prudent Builder and a prudent Owner will consider whether any additional insurance is desirable in the particular case. Note that the provision of insurance is one of a range of means available to manage some of the risks involved in Building Work.

#### **10.1 Owner to insure work on existing structures**

The Owner must arrange the special insurance in cases where additions, alterations, repairs or maintenance are required to an existing building or building complex or are very close to another structure which is in the care of the Owner. This is because the Owner is in the best position to know the amount and the scope of cover required. In most cases the Owner will have an insurance policy in place and can usually arrange an extension of the cover.

#### **10.2 Builder to insure**

Most Builders have an annual cut-off policy which is a contract works policy arranged on an annual basis to cover some, or all, of a Builder's or Owner's construction projects commenced during that annual period. Note that all cover ceases with the particular underwriter on the policy expiry date, if it is not renewed with that underwriter.

This is in contrast to either a specific project Building Work policy (which matches exactly the life of the Building Work), or a contract works annual run-off policy. A contract works run-off policy cover continues with the underwriter for all qualifying projects commenced before the expiry date of the annual policy through to completion of that project, even if the policy is not renewed with that underwriter from the expiry date.

Both forms of contract works annual policies will usually have qualifying criteria concerning the scope of work undertaken, project values and project duration.

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### SECTION 11 – START DATE AND FINISH TIME

#### 11.5 Time Extensions

Delays usually result in additional costs to both Owner and Builder. The Builder will be liable for these costs only if the delay is within the Builder's reasonable control.

The late supply of anything by the Owner should be treated as a Variation. There will also be an entitlement for the Builder to claim a Time Extension and for any time related costs which result from the Variation.

Examples of circumstances which might apply are delays in the supply of materials or equipment from overseas, delays arising from environmental objections or political decisions, delays caused by vandalism and breaches of Contract or acts or omissions of the Owner or of any Person for whose acts or omissions the Owner is responsible.

#### 11.8 Practical Completion

Minor omissions and minor defects of the kind stated do not prevent Practical Completion. Circumstances may arise where the uncompleted work is more than "minor", but if the Owner wishes to take possession, there may be advantages to both parties in treating Practical Completion as having been achieved. This can be done if the both Owner and Builder agree.

In many cases the Builder will notify the Owner, before the works are completed, that they will be ready at a certain date, and the Owner will act on this Notice and arrange to inspect the Building Work. This is a sensible practice and facilitates Practical Completion.

### SECTION 12 – VARIATIONS AND ALLOWANCES

#### 12.1 Variations permitted

The Courts have held that the power to delete work from a Contract can only be exercised where the work in question is no longer intended to be carried out. Work cannot be taken out of the Contract in order that it be carried out by another Builder or by the Owner.

The Owner may not order additional work to be carried out after Practical Completion, even if the instruction is given before Practical Completion. If the additional work cannot be completed before the Finish Time and 11.5 applies, the Builder is entitled to an extension of time. The only work which can be left to be carried out after Practical Completion is work of the kind referred to in 11.8.1.

#### 12.3 Value of Variation

The object of any method of valuation is to arrive at an amount which fairly compensates the Builder, in a manner consistent with the Contract Price, for the extra work involved and for the impact of the Variation on the Builder's Costs. Wherever possible Variations should be valued *by agreement* between the Builder and the Owner. Where practicable they should be valued before the work is commenced.

The intention is that in every case agreement should be reached between the Builder and the Owner as to the value of every Variation. If the Owner Directs the Builder to proceed with a Variation before the value is agreed, the Owner is likely to find the cost exceeds expectations. If agreement is not reached then the value of the Variation will be determined in accordance with the Disputes procedures in Section 16.

Where the Variation involves an extension of time, 11.5 provides for additional time to be granted.

## SECTION 13 – PAYMENTS

### 13.1 Builder's Payment Claims

In assessing the Builder's Payment Claims and if necessary responding with a Payment Schedule, the Owner's representative must not make any deduction for Delay Damages. The power to deduct these is vested only in the Owner.

## SECTION 14 – PERFORMANCE AND DEFECTS LIABILITY

### 14.1 Defects Liability

A three-month Defects Liability Period is adequate for most Contracts and should only be extended if there is a specific need to do so.

## SECTION 16 – DISPUTES RESOLUTION

### 16 General

In the first instance the Owner and the Builder must attempt to resolve the Dispute. If this fails they should then refer the Dispute to mediation. AMINZ and LEADR and may be contacted at:

*e-mail:* institute@aminz.org.nz

*website:* www.aminz.org.nz

*e-mail:* leadrnz@extra.co.nz

*website:* www.leadr.com.au

If mediation fails, the Owner and the Builder should refer the Dispute to adjudication. If the adjudication fails they should refer the Dispute to arbitration.

Either party may refer a Dispute to adjudication, under the CC Act, whether or not the Dispute resolution procedure under Section 16 of the Contract has been initiated.

Note that adjudication proceedings and the contractual Dispute resolution procedure can take place concurrently, but in some circumstances the parties may agree to suspend the contractual Dispute resolution procedure pending completion of the adjudication proceedings. An adjudication determination can be overturned only by arbitration. Where the Builder serves a notice of adjudication on the Owner who is a residential occupier, it must be accompanied by Form 2 from Schedule 1 of the Construction Contracts Regulations.

Neither party is entitled to suspend or delay any Dispute resolution under Section 16 of this Standard Contract due to any Dispute proceedings.

However, it should also be noted that only the latter stages of the contractual Dispute resolution process (i.e. mediation under 16.2 or arbitration under 16.4) can produce outcomes which may take precedence over any adjudicator's determination. It may be in the Owner's and/or Builder's interests to continue to progress the contractual Dispute resolution process notwithstanding any adjudication proceedings.

## SCHEDULE 1 – SPECIAL CONDITIONS OF CONTRACT

Special Conditions form part of the Contract and can vary standard clauses.

This Contract is subject to the following Special Conditions:

Copyright Standards New Zealand

## SCHEDULE 2 – CONFIRMATION OF INSURANCE COVER

<b>Builder:</b>	
<b>Owner:</b>	
<b>Building Work:</b>	
<b>Address of Building Work:</b>	
<b>Insurance company:</b>	

We confirm that we have effected the insurance described below in respect of the Building Work to be carried out at the address stated above and that the policy will not be amended or cancelled by us within the period of insurance without written Notice to the insured party and to the Owner.

Building Work Insurance	Public Liability Insurance	Professional Indemnity Insurance
Annual cut-off policy Yes/No Policy expiry date _____	Annual policy: Yes/No Policy expiry date _____	Annual policy: Yes/No Policy expiry date: _____
The sums insured are:		
(a) Contract Price \$ _____	Limit of indemnity \$ _____	Limit of indemnity \$ _____
(b) Costs of demolition \$ _____	Sub limit insured for vibration, removal or weakening of support \$ _____	Deductible (GST inclusive) \$ _____
(c) Professional fees \$ _____	Deductible is (GST inclusive) \$ _____	The policy covers: \$ _____
(d) Value of items incorporated or to be incorporated \$ _____	Deductible for vibration, removal or weakening of support (GST inclusive) \$ _____	Number of automatic reinstatements _____
(e) Increased construction costs \$ _____	We advise that "additional" terms (copy attached) have been specifically applied to this project Yes/No	We advise that additional terms, copy attached, have been specifically applied to this project Yes/No
<b>Total Sum Insured</b> \$ _____	The policy covers liability arising out of:	
The policy deductibles are:	The ownership/use of construction machinery not required to be registered for road use Yes/No	
Non earthquake (GST inclusive) \$ _____	The use of hired plant Yes/No	
Earthquake (GST inclusive) \$ _____	The ownership/use of watercraft up to 8m Yes/No	
Other (name) (GST inclusive) \$ _____	The ownership/use of aircraft Yes/No	
We advise that the 'special' terms, copy attached, have been applied to this policy	The use of explosives Yes/No	
Policy cover terms included are:	Policy cover terms included are:	
(a) Automatic reinstatement Yes/No	Automatic reinstatement Yes/No	
(b) Cancellation for non-payment without prior notification Yes/No	Cancellation for non-payment without prior notification Yes/No	
(c) Severally insured Yes/No	Severally insured Yes/No	
(d) No settlement delay due to exercise of subrogation Yes/No	No settlement delay due to exercise of subrogation Yes/No	
Project specific policy Yes/No		
Construction period .....		
Defects Liability Period ..... (both subject to alteration under construction Contract)		
Annual run-off policy Yes/No		

NOTE – All amounts exclude GST unless stated otherwise.

The insurance issued is subject to the terms of the policy. We do not warrant that this insurance complies with the requirements of NZS 3902.

SIGNED BY Insurance Company

Insurance Company Stamp:

Date:

\_\_\_\_\_  
Title of Signatory

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### SCHEDULE 3 – NOTICE OF PRACTICAL COMPLETION

<b>Builder:</b>	
<b>Address:</b>	

<b>Owner:</b>	
<b>Address:</b>	

<b>Address of Building Work:</b>	
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The Builder certifies that the Building Work has been completed in accordance with the Contract with the exception of the deferred work listed below:

<b>Signature of Builder:</b>		<b>Date:</b>	
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Work agreed by the Owner and the Builder to be deferred and carried out by the dates agreed and prior to final completion.

Deferred work	Completion date

**SCHEDULE 4 – CERTIFICATE OF PRACTICAL COMPLETION**

<b>Builder:</b>	
<b>Address:</b>	

<b>Owner:</b>	
<b>Address:</b>	

<b>Address of Building Work:</b>	
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<b>COMPLETION NOTICE:</b>
The Owner certifies that the Owner has received the Builder's Notice of Practical Completion (Schedule 3), has inspected the Building Work and accepts possession of the Building Work with the exception of the deferred work listed below.
<b>DEFECTS LIABILITY PERIOD:</b>
The Owner must notify to the Builder in writing, within the period specified in the Contract, any defects in relation to the Building Work that may require remedial work. The Builder must correct the defects forthwith at the Builder's cost, fair wear and tear excepted.

<b>Signature of Builder:</b>		<b>Date:</b>	
<b>Signature of Owner:</b>		<b>Date:</b>	

Work agreed by the Owner and the Builder to be deferred and carried out by the dates agreed:

Deferred work	Completion date



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### SCHEDULE 5 – NOTICE OF FINAL COMPLETION

<b>Builder:</b>	
<b>Address:</b>	
<b>Owner:</b>	
<b>Address:</b>	
<b>Address of Building Work:</b>	

The Builder certifies that in respect of the Building Work undertaken at the above address:

- The Defects Liability Period has expired
- All defects and omissions notified by the Owner to the Builder have been remedied
- All work agreed to be deferred and recorded on the Certificate of Practical Completion has been completed
- All Builder's, suppliers' and manufacturers' warranties and guarantees for materials and services provided to the Owner or incorporated into the Building Work have been delivered to the Owner
- All Building Work has been completed in accordance with the Plans and Specifications and Contract

Accordingly the Builder requests that the Owner issues the Final Completion Certificate.

<b>Signature of Builder:</b>		<b>Date:</b>	
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**SCHEDULE 6 – FINAL COMPLETION CERTIFICATE**

<b>Owner:</b>	
<b>Address:</b>	

<b>Builder:</b>	
<b>Address:</b>	

<b>Address of Building Work:</b>	
----------------------------------	--

<b>FINAL COMPLETION NOTICE:</b>
<p>The Owner certifies that the Owner has:</p> <ul style="list-style-type: none"><li>• Received all Builder's, suppliers' and manufacturers' warranties and guarantees for materials and services provided to the Owner or incorporated into the Building Work</li><li>• Received the Builder's Notice of Final Completion</li><li>• Inspected the Building Work</li><li>• Accepted the Building Work as being complete.</li></ul>

<b>WARRANTY PERIOD:</b>
<p>The warranty for the Building Work extends for a period of five years from the date of Practical Completion and will expire on .....(date of Practical Completion plus five years).</p>

<b>Signature of Builder:</b>		<b>Date:</b>	
<b>Signature of Owner:</b>		<b>Date:</b>	

SCHEDULE 7 – WARRANTY AGREEMENT

Builder:	
Owner:	
Building Work:	
Warrantor: (name of Builder)	
Warranted works:	
Warranty period:	Five years from the date of Practical Completion of the Contract

The Owner has entered into a contract (the Contract) with the Builder for carrying out the Building Works. The warranted works are part of the Building Work.

The Builder has agreed to arrange for the provision of a warranty in respect of the warranted works for the warranty period on the terms set out in this warranty.

The warrantor has agreed to provide a warranty in respect of the warranted works for the warranty period on the terms set out in this warranty.

1. IT IS HEREBY AGREED

The warrantor warrants to the Owner that the warranted work performed shall be as required in the Contract. If not specified the work shall be of good trade practice with materials and fittings of acceptable quality.

This warranty shall be in addition to and shall not derogate from any manufacturer’s warranty or any warranty implied by law, attaching to any part of the warranted works.

1.1 WARRANTOR’S OBLIGATIONS

The warrantor agrees that if the warrantor is advised by the Owner in writing of any defect in the warranted works within the warranty period for which the warrantor is liable under the terms of this warranty, the warrantor will promptly take steps to remedy the defect.

1.2 REMEDIAL WORK

Any remedial work which the warrantor is liable to undertake under this warranty shall be carried out:

- (a) To the standard required by the Contract;
- (b) In a prompt and timely manner;
- (c) Without unnecessary inconvenience to any occupants;
- (d) At the warrantor’s cost; and
- (e) Subject to reasonable access being provided to the warrantor for the purpose of carrying out the remedial work.

### 1.3 REPAIR AND/OR COMPENSATION

Where the cost of replacement of work and/or materials is out of all proportion to the consequences of the defect, or where the defect may not be reasonably capable of rectification without substantial expense which is out of all proportion to the cost of the Building Works, the warrantor may:

- (a) Where the defect is reasonably rectified by repair rather than by replacement, the warrantor's obligation under this warranty shall be only to repair or otherwise make good the defect; or
- (b) Propose reasonable monetary compensation in lieu of remedying the defect; or
- (c) Propose a combination of both repair and compensation.

The Owner must consider the warrantor's reasonable proposals and the parties must endeavour in good faith to reach agreement. Where agreement cannot be reached the dispute shall be resolved in accordance with Section 16.

### 1.4 FAILURE BY WARRANTOR TO PERFORM REMEDIAL WORK

If the warrantor fails to promptly, adequately and satisfactorily carry out the remedial work or to propose acceptable repair/compensation, the Owner may then arrange for the remedial work to be carried out by others.

The Owner must first give the warrantor 10 working days' notice to carry out and complete the remedial work. If the warrantor does not do this within the time, the Owner must then advise the warrantor in writing that the work will be carried out by others.

In such event the warrantor is not released from obligations under this warranty, which continues in full force and effect, except in respect of the defect remedied by the Owner or by another person contracted by the Owner. The reasonable cost of the remedial work carried out by such other persons including all reasonable costs of the Owner is to be paid to the Owner by the warrantor on demand.

### 1.5 EXCLUSIONS

The Owner agrees that the warrantor is not liable for any defect or damage caused by:

- (a) Wilful act or negligence of the Owner or any person other than the warrantor;
- (b) Fire, explosion, earthquake, war, subsidence, slips, faulty materials or workmanship other than caused by the defect in the warranted work;
- (c) Any force of nature which the warrantor could not reasonably foresee;
- (d) Any neglect or unnecessary delay by the Owner in giving notice to the warrantor of a defect in the warranted works becoming apparent;
- (e) Design faults, errors or discrepancies, unless the warrantor undertook the design of the part of the warranted works the subject of the defect;
- (f) Unintended use of the warranted works by the Owner or any occupant thereof; or
- (g) Failure by the Owner or any occupant thereof to maintain the warranted works in accordance with good practice and any manufacturer's stated or recommended instructions or requirements.

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1.6 ASSIGNMENT

The Owner may assign the benefit of this warranty to any person.

1.7 DISPUTES

Any dispute between the Owner and warrantor arising out of this warranty shall be resolved in accordance with Section 16.

1.8 NOTICES

Notices given to the warrantor are deemed to have been effectively served on the warrantor if given in accordance with the Contract.

EXECUTED

Signed by the warrantor: .....

On this:.....day of ..... 200 .....

(And where required) signed in the presence of:

Witness signature: .....

Name (print): .....

Address (print): .....

Occupation (print): .....

Signed by the Owner: .....

On this:.....day of ..... 200 .....

(And where required) signed in the presence of:

Witness signature: .....

Name (print): .....

Address (print): .....

Occupation (print): .....

NOTE –  
Any of these parties which are a company must execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the warranty agreement is signed under the name of the company by that director, but the signature must be witnessed by another person.

The witness must not only sign but must also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) must execute by affixing its seal, which must be attested in the manner provided for in the rules of, or applicable to, the body corporate.

In the case of a party who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address.

Schedule 7 is sourced with permission from Construction Information Ltd's MasterSpec® Warranty Agreement.

## SCHEDULE 8 – ADJUDICATION PROCESS

Seven key steps of the adjudication procedure as defined in the CC Act.\*

Step	Action	Time Limit	Responsible
1 Notice of adjudication	One party (claimant) serves notice of adjudication on another party (respondent) – A prescribed notice must be given if served on a residential occupier		Claimant (payee or payer)
2 Request adjudicator to act	Request and agree adjudicator to act. If no agreed adjudicator, request agreed nominating body to appoint If no agreed nominating body, request authorised nominating body to appoint – Claimant is primarily responsible, parties jointly responsible	As soon as practicable, or 5 working days from adjudication Notice, or 5 working days	Claimant
3 Confirm adjudicator appointment	Selected adjudicator confirms acceptance of appointment – Adjudicator must confirm whether willing and available within 2 working days. If adjudicator has done so but has not formally accepted appointment within 5 working days the claimant may withdraw the notice of adjudication and issue a fresh notice. In practice this step may take longer than 2 days	2 working days from request	Adjudicator
4 Adjudication claim	Claimant submits adjudication claim	5 working days	Claimant
5 Adjudication response	Respondent submits adjudication response Adjudication continues without response if late	5 working days – limited entitlement to extension	Respondent
6 Adjudication proceedings	Adjudicator may call conference, conduct investigations, request details as required	Up to 20 working days from due date for response – limited entitlement to extension	Adjudicator – Parties must co-operate
7 Issue written determination	Issue written determination with reasons		Adjudicator

\* Schedule 8 is sourced with permission from Peter Degerholm's – Managing Contractors' Cashflow – Making the Construction Contracts Act work for you, Published by Rawlinsons Media Limited, 2003.

**SCHEDULE 9 – SEPARATE AGREEMENT TO ARBITRATION**

<b>Builder:</b>	
<b>Owner:</b>	
<b>Building Work:</b>	

This separate agreement to arbitration is made to satisfy the requirement of section 11 of the Arbitration Act.

Section 11 of the Arbitration Act states that:

- Where:
  - A contract contains an arbitration agreement; and
  - A person enters into that contract as a consumer, —  
the arbitration agreement is enforceable against the consumer only if—
  - The consumer, by way of separate written agreement, certifies that, having read and understood the arbitration agreement, the consumer agrees to be bound by it; and
  - The separate written agreement referred to in paragraph (c) discloses, if it is the case, the fact that all or any of the provisions of Schedule 2 do not apply to this arbitration agreement.
- For the purposes of this section, a person enters into a contract as a consumer if—
  - That person enters into the contract otherwise than in trade; and
  - The other party to the contract enters into that contract in trade.

By this separate arbitration agreement I, as a consumer as defined in section 11(2) of the Arbitration Act, certify that:

I have read and understood Section 16 of NZS 3902 *Housing, Alterations and Small Buildings Contract* and as provided for in section 11 of the Act, I agree to be bound by it.

**This agreement to arbitration was signed by the Owner**

Signed: ..... Date: .....

Print name: .....

**in the presence of (witness)**

Signed: ..... Date: .....

Address: .....

Occupation: .....

**and was signed by the Builder**

Signed: ..... Date: .....



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COMMITTEE REPRESENTATION

Committee P 3902 Housing, Alterations and Small Buildings Contract was responsible for the preparation of this Standard and consisted of the following representatives:

Nominating Organizations

- Building Industry Authority
- Design Association of New Zealand
- Housing New Zealand Corporation
- Institution of Professional Engineers New Zealand
- Ministry of Consumer Affairs
- New Zealand Bankers' Association
- New Zealand Building Industry Federation
- New Zealand Building Subcontractors' Federation
- New Zealand Institute of Architects
- New Zealand Institute of Surveyors
- New Zealand Law Society
- Real Estate Institute of New Zealand
- Registered Master Builders' Federation

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Published by Standards New Zealand, the trading arm of the Standards Council, Private Bag 2439, Wellington 6020.

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Website: [www.standards.co.nz](http://www.standards.co.nz)

AMENDMENTS			
No.	Date of issue	Description	Entered by, and date

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Approved by the Standards Council on 4 October 2004 to be a New Zealand Standard pursuant to the provisions of section 10 of the Standards Act 1988.

First published: 11 October 2004

The following SNZ references relate to this Standard:

Project No. P 3902

Draft for comment No. DZ 3902

Printing code: 1000-2004/6/22230

Typeset by: Standards New Zealand

Printed by: APN Print/Standards New Zealand

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