

General Terms

1. Definitions and Interpretation

1.1 In this Agreement, capitalised terms have the meaning given to them in the Specific Terms and unless the context requires otherwise:

Agreement means this agreement (including the Specific Terms and these General Terms) as amended from time to time in writing by the Builder and the Owner;

Building Work means the building services provided by the Builder to the Owner on the Building in accordance with this Agreement;

Builder means Kauri Point Construction Limited (company number: 8158774);

Final Price means the final price for the completed Building Work based on the actual hours of work, the rates, the Materials, the Subcontracted Services and the margins in the Specific Terms;

Force Majeure Event means the occurrence of an event which is beyond the Builder's reasonable control;

GST means the applicable goods and services tax in accordance with the Goods and Services Tax Act 1985;

Interruption Event means any interruption to the Building Work caused by:

- (a) a Force Majeure Event;
- (b) the Owner's failure to carry out or perform any obligation required of it under this Agreement which in the opinion of the Builder may cause a delay in the Building Work; or
- (c) any other matter which in the reasonable opinion of the Builder will cause an interruption or delay in the performance of the Building Work;

Manufacturer's Warranty means the warranty supplied from time to time by the manufacturer of the Materials;

Materials means any goods, accessories, components, and materials supplied by the Builder to the Owner as part of the Building Work;

Owner means the entity or person named in the Specific Terms and being provided Building Work by the Builder and if there is more than one Owner is a reference to each Owner jointly and severally;

Practical Completion means the date when the Building Work is completed to the extent that the Building can effectively be used by the Owner for its intended purpose despite some aesthetic features remaining to be completed or minor omissions or defects not being rectified;

Specific Terms means the specific terms outlining the details of the Building Work;

Subcontracted Services means those parts of the Building Work that the Builder subcontracts to third parties;

Underground Services means any underground main or service, including electrical services, gas services, sewer services, plumbing services, sewer connections, sewer sludge mains, water mains, telephone cables, fibre optic cables and other services that may be at the Location;

Variation means a change in the Building Work including the specifications, scope, time of supply, price or scale of the work and such variation shall form part of this Agreement; and

Working Day means a day that is not a Saturday, Sunday or any other day that is not a public holiday or a regional holiday in Auckland.

1.2 Unless the context requires otherwise, references to:

- (a) singular word includes the plural and vice versa;
- (b) the word "including" and similar words do not imply any limitation; and
- (c) any party to this Agreement shall include that party's executors, administrators, successors and/or permitted assigns (as the case may be).

2. Acceptance and Provision of Building Work

2.1 The Builder will endeavour to commence the Building Work on the Expected Start Date, provided the Owner has paid the Deposit and obtained any consents needed to commence the Building Work.

2.2 Unless otherwise agreed by the parties, the Owner shall obtain all project information memoranda, building consents, resource and any other consents required by law for the Building Work.

2.3 The Builder shall carry out the Building Work:

- (a) in a proper and workmanlike manner with reasonable care and skill;
- (b) in accordance with the building consent (if applicable); and
- (c) using new Materials that are fit for purpose,

and endeavour to be completed by the Expected Completion Date.

3. Payment

3.1 Regardless of the Original Estimate Price, the Owner shall pay the Builder the Final Price.

3.2 Unless otherwise agreed, payment is due as follows:

- (a) the Deposit (based on the Original Estimate Price) is required before the commencement of the Building Work and on receipt of the Builder's invoice; and

- (b) fortnightly instalments are payable within five Working Days of receipt of the Builder's invoice for Building Work completed to the date of the invoice; and

- (c) the balance of the Final Price for the Building Work is payable on Practical Completion of the Building Work and within five Working Days of receipt of the Builder's invoice.

3.3 If the Deposit is not paid within five Working Days of when due, the Builder may cancel this Agreement by written notice to the Owner.

3.4 The Owner may not withhold payment or make any deductions from or set off any amount against any amount owing without the Builder's prior written consent. If the Owner disputes any amount owing, the Owner shall pay the undisputed amount and clause 15 shall apply.

3.5 If the Owner fails to make any payment on its due date, the Owner shall be required to pay interest on the amount outstanding at the rate of 15% per annum calculated daily from the due date for payment until payment is made. The Owner shall also pay all costs, expenses and charges (including legal costs on a solicitor/client basis) that are incurred by the Builder in recovering any money owing to the Builder by the Owner.

4. Obligations of the Owner

4.1 The Owner agrees to:

- (a) provide the Builder with all necessary and accurate plans, specifications, measurements, building pegs, services and amenities, to allow the Builder to carry out the Building Work and provide access to the Location;

- (b) not to cause any disruption or obstruction to the carrying out of any Building Work and to follow any reasonable instructions provided by the Builder about the Building Work;

- (c) where the Building Work requires co-ordination with other tradespersons then the Owner will provide sufficient information and allow the Builder sufficient time to co-ordinate with the Owner's other tradespersons;

- (d) unless otherwise agreed, arrange for any scaffolding at the Owner's expense which the Builder (in the Builder's sole discretion) considers necessary to complete the Building Work in a safe manner;

- (e) permit the Builder to attach such reasonable signage as the Builder may wish at the Location so as to identify that the Builder is carrying out the Building Work;

- (f) advise the Builder of the precise location of all Underground Services on the site and make sure it is clearly marked; and

- (g) exclusively permit the Builder or its authorised representative to remedy or make good any defects in the Building Work and not permit any other third party to do so.

5. Variations

5.1 Unless otherwise agreed by the parties, the Owner may request a Variation to the Building Work and the Builder may carry out such Variation, provided the parties can agree the increased estimated costs and the impact of carrying out the revised Building Work. Where practicable, the agreed Variation is to be recorded in writing but any failure to do so shall not in any way deprive the Builder from being paid for completing the revised Building Work.

5.2 The supply of Materials is subject to availability and if for any reason the Materials cease to be available the Builder reserves the right to substitute the Materials with suitable alternatives and any increased costs shall be payable by the Owner.

6. Interruption Event

6.1 Without prejudice to any other right or remedy of the Builder, the parties acknowledge that from time to time an Interruption Event may occur and, in that case, such occurrence will delay the Building Work and will entitle the Builder to immediately cease the performance of any part of the Building Work until the Interruption Event ends or is remedied (as the case may be).

6.2 The Owner acknowledges that there may be additional costs relating to recommencement of the Building Work after the occurrence of an Interruption Event which the Owner is liable for.

7. Insurance

7.1 The Owner must:

- (a) insure the Building against loss or damage caused by the Building Work. This insurance must be for the full replacement value;

- (b) arrange contract works insurance against loss or damage to the Building Work, the Owner's existing structures made available by the Owner to enable the performance of the Building Work, or existing structures adjacent to the Building, and to the Owner's contents. This insurance must be for the full replacement value; and

- (c) ensure that the Building is insured from the point of Practical Completion onwards.

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

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- 7.3 Either party may request confirmation of the insurance required by this clause which shall be provided as soon as possible.
8. **Materials**
- 8.1 Ownership and title in the Materials shall not pass to the Owner until the Owner has paid the Builder in full for the Building Work and all other sums due to the Builder by the Owner on any account whatsoever in accordance with this Agreement.
- 8.2 Notwithstanding the attachment of the Materials to the Building, the Materials shall remain owned by the Builder for as long as the Builder retains legal, equitable and beneficial ownership of and title to them.
- 8.3 The Builder shall be entitled to enter the Location and remove any of the Materials and to sell any of them in order to recover any monies owing by the Owner under this Agreement. All costs and expenses incurred by the Builder in exercising its rights under this clause shall be paid by the Owner on demand or deducted from the proceeds of sale.
- 8.4 The Builder acknowledges and agrees that:
- (a) the Builder shall be entitled to a mortgage over the Owner's rights, title and interest in any real property owned by the Owner (whether joint or several) to secure performance by the Owner of its obligations under this Agreement (including but not limited to the payment of any moneys); and
- (b) the agreement to mortgage in clause (a) above shall constitute a caveatable interest in favour of the Builder.
- 8.5 The Owner indemnifies the Builder from and against all of the Builder's legal costs incurred in exercising the Builder's rights under this clause.
9. **Warranties**
- 9.1 The Builder acknowledges that the implied warranties in relation to household units under section 362I of the Building Act apply to the Building Work.
- 9.2 In addition to the implied warranties under the Building Act 2004, and subject to clause 10.3, the only other warranties relating to the Materials are the Manufacturer's Warranty.
- 9.3 The Owner warrants that it is the owner of the Building at the Location and has the necessary funding to pay for the Building Work.
10. **Limitation of Liability**
- 10.1 Notwithstanding any other provision of this Agreement, but subject to clause 10.3, under no circumstances, shall the Builder be liable to the Owner or any other person (whether in contract, tort, including negligence, statute or otherwise) for any:
- (a) loss of profits;
- (b) consequential loss or damage;
- (c) indirect loss or damage; or
- (d) special loss or damage of any kind.
- 10.2 Notwithstanding any other provision of this Agreement, but subject to clause 10.3, if for any reason the Builder becomes liable for loss or damage then its total liability to the Owner arising out of any claim for damages for any cause will be limited to the value of that part of the Building Work giving rise to the claim.
- 10.3 The parties agree that if the Building Work is supplied and acquired in trade then, in that case, the parties agree to contract out of:
- (a) sections 9, 12A, or 13 of the Fair Trading Act 1986 in accordance with section 5D of the Fair Trading Act 1986; and
- (b) the Consumer Guarantees Act 1993 in accordance with section 43 of the Consumer Guarantees Act 1993;
- such agreement being acknowledged as fair and reasonable for the parties to be bound by this clause. Nothing in this Agreement is intended to contract out of the provisions of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, except to the extent permitted by those Acts.
- 10.4 While the Builder shall take reasonable care to avoid damaging any Underground Services, the Owner agrees to indemnify the Builder in respect of all liability, claims, loss, damage, costs or fines are a result of any damage to the Underground Services due to the Owner not correctly and precisely locating and advised the Builder of such Underground Services in accordance with clause 4.1(f).
11. **Health and Safety**
- 11.1 If the Builder identifies any hazardous, toxic, or otherwise dangerous materials (**Dangerous Materials**) around the Location it will be the Owner's responsibility to test such Dangerous Materials and if necessary remove the Dangerous Materials from the Location.
- 11.2 The Owner must confirm to the Builder's satisfaction (in the Builder's sole discretion) that the Dangerous Materials are safe or have been removed by a suitably qualified person.
- 11.3 To the extent that the parties and any other contractor have overlapping health and safety duties in relation to the Building Work, then the parties agree to, consult, cooperate, and co-ordinate activities.
12. **Rights of Termination**
- 12.1 The Builder may in its sole discretion terminate this Agreement by written notice to the Owner if:
- (a) the Owner defaults in performing its obligations under this Agreement and the default, if capable of being remedied, is not remedied within 7 Working Days from receiving a notice specifying the default and requiring remedy;
- (b) the Owner defaults in the performance of its obligations under this Agreement and the default is in the Builder's reasonable opinion incapable of being remedied; or
- (c) the Owner commits an act of bankruptcy to insolvency including a compromise with creditors or appoints a voluntary administrator, receiver, or liquidator.
- 12.2 Upon termination of this Agreement in accordance with this clause, the Owner will (subject to any payment obligation) be liable to pay the Builder for:
- (a) the value of that part of the completed Building Work performed and remaining payable according to the terms of this Agreement as at the date of termination; and
- (b) any reasonable costs that the Builder has incurred as a result of the early termination.
- 12.3 Termination of this Agreement will not prejudice or affect the rights or remedies available to the Builder.
- 12.4 The termination of this Agreement will not affect any provisions of these Agreement, which are expressly or by implication, intended to continue after expiry or termination.
13. **Authorised Representatives**
- 13.1 The Owner agrees that the Builder shall communicate with the Authorised Representative. Once introduced to the Builder the Authorised Representative shall have full authority to order any Works and request any Variations. The Owner shall be solely liable for any additional costs incurred by the Builder in providing any Building Work or Variations advised by the Authorised Representative.
14. **Construction Contracts Act 2002**
- 14.1 The Builder shall be entitled to exercise any powers available to the Builder under the Construction Contracts Act 2002, including suspending the Works, seeking adjudication or obtaining charging orders.
15. **Disputes**
- 15.1 Any party who claims that a dispute has arisen in relation to this Agreement may give written notice to the other party specifying the nature of the dispute.
- 15.2 On receipt of the notice by the other party, the parties to this Agreement must use their respective reasonable endeavours to resolve the dispute.
16. **Miscellaneous**
- 16.1 The Builder may assign or subcontract its rights or obligations under Agreement.
- 16.2 The Owner may not assign all or any of its rights or obligations under this Agreement without the written consent of the Builder.
- 16.3 All notices to be served upon either party shall be deemed to be duly served if sent by email to the addresses in the Specific Terms. Each party shall be deemed to have received any notice if sent by email when the notice enters the information system of the receiving party, if this occurs within business hours in the place where the party's principal place of business is located in New Zealand, but if not, then at 9.00 a.m. on the following Working Day in such place.
- 16.4 This Agreement contains all terms of the arrangement between the parties and supersedes and extinguishes any prior agreements, discussion, representations and arrangements between the parties about the matters covered in this Agreement.
- 16.5 Any waiver or failure to execute any rights by the Builder shall not be deemed a waiver of any further or other right of the Builder in respect of the Owner.