

# TERMS & CONDITIONS



## EFFECT OF CONTRACT

1. This contract supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

## OBLIGATIONS OF THE PRINCIPAL CERTIFIER

2. Regarding the issuing of Construction Certificates, Complying Development Certificates and Occupation Certificates.
- 2.1 The Principal Certifier shall issue a Construction Certificate, Complying Development Certificate or Occupation Certificate:-
  - 2.1.1 Once the Client pays the Principal Certifier any money owed for work associated with the issuing of a Construction Certificate, Complying Development Certificate or Occupation Certificate; and
  - 2.1.2 The design and construction of the Building Works comply with a relevant Development Consent and the Regulations or any prescribed complying development criteria by either the State Government or Local Council; and
  - 2.1.3 The designs comply with the BCA.
- 2.2 The Principal Certifier shall provide the relevant Consent Authority and/or Local Council with a Notice of Determination within 2 days of the determination.
- 2.3 When the Principal Certifier issues a Construction Certificate, Complying Development Certificate or Occupation Certificate, the Principal Certifier may issue additional certificates or statements from any other Principal Certifier or any other party as the Principal Certifier considers necessary in the circumstances.
- 2.4 The Principal Certifier may carry out as many inspections as the Principal Certifier considers necessary in addition to any mandatory critical stage inspection
- 2.5 The Principal Certifier shall issue an Occupation Certificate for the Building Works when the Principal Certifier is satisfied that:-
  - 2.5.1 A Development Consent has been complied with, including any preconditions to the issue of an Occupation Certificate or a Complying Development Certificate is in force for the Building Works; and
  - 2.5.2 The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
  - 2.5.3 The Building Works or parts do not pose any danger for the occupants in the case of an Interim Occupation Certificate.

## OBLIGATIONS OF THE CLIENT

3. The client shall:-
  - 3.1 Not engage any other Principal Certifier after the Principal Certifier appointed pursuant to this contract has been engaged. Breach of this condition will entitle the Principal Certifier to recover any losses or costs of whatsoever nature that flow from such breach.
  - 3.2 Pay the Principal Certifier for the agreed amount when the Client submits an application for a Construction Certificate or Complying Development Certificate.
  - 3.3 Ensure that the site is available for the Principal Certifier to carry out its contractual obligations.
  - 3.4 Use Competent People for all aspects of the Building Works.
  - 3.5 Provide the Principal Certifier with evidence of Home Owners Warranty insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Works.
  - 3.6 Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of the Principal Certifier.
  - 3.7 Attend any meetings if required by the Principal Certifier to do so.
  - 3.8 Comply with any Notices that the Principal Certifier issues.
  - 3.9 Provide Compliance Certificates as may be requested by the Principal Certifier.
  - 3.10 Provide all information that the client reasonably can obtain to enable the Principal Certifier to fulfil its contractual obligations.
  - 3.11 Pay the Principal Certifier in accordance with this contract or any signed agreement between the client and the Principal Certifier.
  - 3.12 Act in good faith, in accordance with the Act and in a cooperative fashion.

## CONTRACTUAL VARIATIONS

4. If:-
  - 4.1 The Building Works do not commence within 60 days from the date of the execution of this contract; or

- 4.2 Any Competent Person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
- 4.3 Any part of the Building Works are re-designed by the Client or the client's representative; or
- 4.4 Any part of the Building is designed pursuant to a Deemed To Satisfy Provision and is subsequently changed by way of an Alternative Solution; or
- 4.5 More Certificates and / or Modified Certificates are required to be issued by the Principal Certifier than those listed originally agreed to; or
- 4.6 An amendment to any statutory legislation that requires any aspect of the Building Works or the Principal Certifier's work to be varied; or
- 4.7 The Principal Certifier is required to undertake more inspections than those listed in an Inspection Schedule; or
- 4.8 The Client does anything that causes a delay to the Building Works or does anything that delays the ability of the Principal Certifier to carry out its obligations under this contract; or
- 4.9 Any Notice is issued by the Principal Certifier, then:-
- 4.10 The Principal Certifier may:-

- 4.10.1 Vary this contract to the extent that the Principal Certifier will be able to carry out its contractual obligations; and
- 4.10.2 Increase the contract price with such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.
- 4.11 The variation will permit the Principal Certifier to claim all costs associated with that delay as reasonably determined by the Principal Certifier.
- 4.12 Notice must be given to the Client in writing when the Principal Certifier becomes aware that a variation will be necessary.

## CONTRACTUAL TERMINATION

5. If:-
  - 5.1 The Client fails to pay any money owing to the Principal Certifier after 7 days of that money becoming payable; or
  - 5.2 The Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
  - 5.3 The Client breaches the contract in any respect; or
  - 5.4 A Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or 6 months (whichever is the lesser) from the date of execution of this contract; or
  - 5.5 The Building Works do not commence within 60 days from the date a Construction Certificate or Complying Development Certificate was issued; or
  - 5.6 The Client does not permit the Principal Certifier to issue any Occupation Certificate within 60 days from the date of practicable completion; or
  - 5.7 The Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-
  - 5.8 The Principal Certifier may terminate this contract by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.
  - 5.9 If the Principal Certifier terminates the contract, then the Principal Certifier is entitled to payment of Termination Money.
  - 5.10 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the Principal Certifier within 14 days of receiving a Notice of Termination.
  - 5.11 If the Principal Certifier terminates the contract, the Principal Certifier is entitled to carry out a final inspection, at the Client's expense, prior to termination.
  - 5.12 As from the date of final inspection, the Client must indemnify the Principal Certifier for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:-
    - 5.12.1 The need to terminate this contract or the Building Contract;
    - 5.12.2 Any matters of non-compliance with the Act on the part of the Client or any other contractors.
6. Any dispute of whatever nature to do with this contract must be referred to mediation.
- 6.1 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.

- 6.2 The mediator must be appointed by the AAC.
- 6.3 The mediation will be invoked by either party serving Notice upon the AAC and the other party within 7 days of a party being notified of a dispute.
- 6.4 Both parties must attend the mediation and must cooperate with the mediator and each other and shall give the mediator whatever the mediator requests.
- 6.5 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.
- 6.6 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
- 6.7 Both parties will remunerate the mediator on a 50 / 50 % basis, regardless of any alleged fault and regardless of the outcome.
- 6.8 The AAC may request mediation funds to be placed into an AAC trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

## MISCELLANEOUS

7. **Occupation Certificates**
  - 7.1 An Occupation Certificate must be applied for, and issued, within 24 months of the date of the construction approval. Failure to comply with this requirement shall entitle the Principal Certifier to terminate the contract, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate or as specified in the fee proposal acceptance.
  - 7.2 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Contract, the Principal Certifier's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act, the Principal Certifier will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Contract occurred.

## ADDRESS FOR NOTICES

8. Where any Notice is to be forwarded to the client, the address for such Notice shall be the address stated in the application for a relevant Certificate, or to any other address that is notified in writing by the Client to the Principal Certifier.

## INSURANCE

9. **Insurance**
  - 9.1 The RC and PC shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the Owner upon request.
  - 9.2 The extent of any claim or otherwise against the policy held by the RC or PC or against the RC or PC in any way shall be limited to five times (5x) the value of the service fee paid to the RC or PC for the services provided and no more.

## DEFINITIONS

The Act means the *Environmental Planning and Assessment Act 1979 (NSW)*. All amendments and references to the Act also mean amendment and references to the Regulations.

AAC means the Association of Accredited Certifiers.

Alternative Solution has the same meaning as the term in the Building Code of Australia.

BCA means the Building Code of Australia including all applicable amendments.

Building Contract means the contract to construct the Building Works that the client enters into with the builder.

Building Works means any physical activity associated with the erection of a building.

Certificates mean statutory certificates and non-statutory certificates.

Principal Certifier means a Principal Certifier within the meaning of the Act including a Principal Certifier and a body corporate.

Client means the owner or the owner's agent.

Inspection Schedule means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.

Notice includes any notice issued under the Act or this contract.

Practicable Completion means the date the builder has completed the Building Works in accordance with the Building Contract.

Termination Money means the money owing to the PC if the Principal Certifier terminates the contract in accordance with this contract, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the Principal Certifier if the contract had been totally completed.