



CONDITIONS OF CONTRACT  
FOR  
SMALL PROJECTS

BSPCC:2016

PROJECT	<input type="text"/>
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**BuildRight® BSPCC:2016 – GENERAL CONDITIONS OF CONTRACT**

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## INTRODUCTION

### Application of the Contract

1. The Contract shall apply to the Contract Works as described in the Contract Agreement.
2. This is a legally binding document. The Principal and Contractor should seek independent legal advice in relation to the rights and obligations created by the Contract prior to signing.
3. The Principal and the Contractor must sign the Contract Agreement, initial each page of the General Conditions of Contract, and initial any words added or deleted. The Principal and the Contractor must also initial each page of the Plans and Specifications for the project, and initial any alterations made to those documents.

### Definitions and Interpretation

4. The following words and expressions shall have the following meaning ascribed to them for the purpose of the Contract:

**ADJUDICATION** means adjudication under the Construction Contracts Act 2002.

**BUILDSAFE®** means BuildSafe Security of Payment Trustee Company Limited (company number 2229987) whose registered office is at 9 Anzac Street, Takapuna, Auckland 0622.

**BUILDSAFE® TRUST ACCOUNT** means the bank account in the name of BuildSafe® where the Security Amount paid by a Principal is held in escrow until it is released by BuildSafe® in accordance with clause 5.1(h) of the BuildSafe® terms and conditions.

**CHECKLIST** means the checklist in the form prescribed by the Building (Residential Consumer Rights and Remedies) Regulations 2014.

**CLAIMED AMOUNT** means an amount of Progress Payment specified in a Payment Claim that the Contractor claims to be due for construction work carried out under the Contract.

**CODE COMPLIANCE CERTIFICATE** means the document issued by the Building Consent Authority which certifies that the Contract Works have been completed in compliance with the building consent.

**COMMENCEMENT DATE** means the date specified in the Contract Agreement for the start of the Contract Works.

**COMPLETION** means that stage in the execution of the Contract Works following the expiry of the Security Retention Period, when all minor works and minor defects identified by the Principal on or before the expiry of the Security Retention Period have been completed and rectified by the Contractor, and when all as-built drawings, operating and maintenance manuals, producer statements, warranties, guarantees, and Records of Work have been supplied by the Contractor to the Principal.

**CONSENTS** means all licenses, approvals, statutory and regulatory consents, and compliance certificates which are required for the Contract Works and for the use of the Contract Works when completed.

**CONTRACT** means this Contract between the Principal and the Contractor and includes the Plans and Specifications initialled by the Parties and appended to the Contract Agreement, and related documents intended to have contractual force which are listed under 'Additional Documents' in the Contract Agreement (together the **Contract Documents**).

**CONTRACT PRICE** means the total amount payable by the Principal to the Contractor under the Contract for carrying out the Contract Works.

**CONTRACTOR** means the person who is authorised by the Principal to undertake the Contract Works.

**CONTRACT WORKS** means the work that the Contractor is to carry out in accordance with the Contract, including Variations and any design work carried out by the Contractor.

**DAY** means a day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, a day observed as the anniversary of the province of which the Site forms a part, and any day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year.

**DEFAULT** means a default as defined in clauses 121 and 122.

**DEFECTS REPAIR PERIOD** means the period of twelve (12) months after the date of Practical Completion when the Contractor is responsible for rectifying defects arising from defective workmanship or materials, notified by the Principal during that period when it is presumed that the defect is attributable to the Contractor unless the contrary is proven.

**DISCLOSURE STATEMENT** means the disclosure statement in the form prescribed by the Building (Residential Consumer Rights and Remedies) Regulations 2014.

**DISPUTE** means any dispute or difference that arises under, out of, or in connection with the Contract.

**HOUSEHOLD UNIT** means a building or group of buildings, or part of a building or group of buildings, that is:

- (i) used, or intended to be used, only or mainly for residential purposes; and
- (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than one household; but

does not include a hostel, boardinghouse, or other specialised accommodation.

**NOTICE AND CERTIFICATE OF COMPLETION** means the notice to be completed by the Contractor at such time as the Contractor considers the Contract Works are complete in all respects following the expiry of the Security Retention Period, and by which the Principal certifies the Contract Works are complete and agrees to the release by BuildSafe® of the final 10% of the Security Amount.

**NOTICE AND CERTIFICATE OF PRACTICAL COMPLETION** means the notice to be completed by the Contractor at such time as the Contractor considers the Contract Works to be Practically Complete and by which the Principal certifies acceptance and possession of the Contract Works save for agreed minor outstanding works and agrees to the release by BuildSafe® of 90% of the Security Amount.

**NOTICE OF ADJUDICATION** means the notice to be completed by a claimant and sent to all relevant Parties for the purpose of initiating an Adjudication.

**NOTICE OF DEFECTS** means the notice to be completed by the Principal specifying any defects in workmanship and/or materials that become apparent during the Defects Repair Period and which require rectification by the Contractor.

**NOTICE OF DISPUTE** means the notice to be completed by any Party giving notice to any other Party of a Dispute which must be resolved by the Parties within two (2) Days of receipt of the notice, or the Party giving notice must refer the Dispute to Adjudication.

**NOTICE OF INCOMPLETE WORK** means a notice advising the Contractor that the Principal does not accept that the Contract Works have reached Practical Completion and providing details of the items of work which the Principal requires to be completed before Practical Completion will be certified.

**NOTICE OF REQUEST FOR ADJUDICATION** means the notice to be completed by a Party requesting BuildSafe® to secure the appointment of an adjudicator as agent of that Party for the purpose of referring the Dispute to Adjudication, and includes a copy of the relevant Notice of Adjudication.

**PARTIES** means the Parties to the Contract as named in the Contract Agreement.

**PAYMENT CLAIM** shall have the same meaning as in the Construction Contracts Act 2002.

**PAYMENT SCHEDULE** shall have the same meaning as in the Construction Contracts Act 2002.

**PLANS AND SPECIFICATIONS** means the plans and specifications prepared for the purpose of the Contract Works.

**PRACTICAL COMPLETION** means that stage in the execution of the Contract Works when the Contract Works are complete save for minor items of work and minor defects which the Principal accepts will not prevent the Contract Works from being used for their intended purpose, and completion and/or rectification of which will not prejudice the convenient use and enjoyment of the Contract Works and when all Consents, as-built drawings, operating and maintenance manuals, producer statements, guarantees, warranties, and Records of Work have been supplied by the Contractor to the Principal.

**PRIME COST SUM** means a monetary allowance that is included in the Contract Price for the purchase and supply of materials which are to be included in the Contract Works, but have not been specified or selected by the Principal at the time of tender. The amount specified for Prime Cost Sums does not include Contractor's overheads, margins, preliminary and general costs, coordination of all other trades (including builders' work) and attendances attributed to those works which will be allowed for by the Contractor elsewhere in the Contract Price.

**PRINCIPAL** means the person who authorises the Contractor to undertake the relevant Contract Works.

**PROGRESS PAYMENT** means a payment for Construction Work carried out under the Contract that is in the nature of an instalment of the Contract Price and includes any final payment under the Contract.

**PROVISIONAL SUM** means a monetary allowance for carrying out a specified part of the Contract Works, the scope of which has not been defined and/or the Principal's decision to proceed has not been made at the time of tender. It includes all of the Contractor's costs, margins, overheads and profit.

**RECORD OF WORK** means the record of work required to be produced by a licensed building practitioner in respect of restricted building work pursuant to section 88 of the Building Act 2004.

**RESTRICTED BUILDING WORK** means building work critical to the structural integrity and weathertightness of a residential building. It must be carried out or supervised by appropriately licensed building practitioners.

**SCHEDULED AMOUNT** means an amount specified in a Payment Schedule that the Principal proposes to pay to the Contractor in response to a Payment Claim.

**SECURITY AMOUNT** means the amount that is payable by the Principal under the Contract into the BuildSafe® Trust Account to initiate the BuildSafe® Security of Payment Scheme.

**SECURITY RETENTION PERIOD** means the period of twenty (20) Days after the date of Practical Completion.

**SITE** means the land, buildings and other places made available by the Principal to the Contractor where the Contract Works are to be carried out as identified in the Contract.

**SUBCONTRACTOR** means any person who contracts with the Contractor to carry out any part of the Contract Works on behalf of the Contractor.

**VARIATION** means any change in the Contract Works including any increase or decrease or omission of any part of the Contract Works; any change to the character or quality of any material or work; any change to the line, level, position, or dimension of any part of the Contract Works; any additional demolition or removal of any material or work; or any change to the order in which the Contract Works are to be completed.

A Variation does not include a change to the Contract Works which is so different from the work which the Contractor was required to do when the Contract was entered into.

**WEBSITE** means the website for BuildSafe® which can be found at [www.buildsafe.co.nz](http://www.buildsafe.co.nz).

**WORKING DAY RATE** means the daily rate nominated by the Contractor in the Contract for the purpose of assessing the Contractor's entitlement to compensation for the net effect of any Variation or delay that may arise as a result of Default by the Principal, or any other person for whose acts or omissions the Principal is responsible, and is deemed to provide for all on-site and off-site overheads and profit, unless the nature and circumstances of the Variation or Default are such that it would be inequitable to use the nominated rate and a reasonable rate shall then be used.

5. Unless the context otherwise requires, in these General Conditions of Contract:
- (a) words in the singular shall include the plural and vice versa; words importing a gender include every gender; and references to persons include corporations, partnerships, government and local authorities and agencies, and other incorporated associations or bodies of persons;
  - (b) references to "include" or "including" are to be construed without limitation;
  - (c) a reference to a Party includes its executors, administrators, successors and permitted assigns; and
  - (d) insofar as the provisions of the Contract are inconsistent with the terms and conditions in any quotation, tender or other document, the terms of the Contract will take precedence over and replace any such inconsistent terms and conditions.

## OBLIGATIONS OF THE PARTIES

### Contractor's Main Obligations

6. The Contractor must carry out and complete the Contract Works in a proper and workmanlike manner using reasonable care and skill, in accordance with the building consent, the New Zealand Building Act 2004 and the provisions of the Contract. The Contractor must:
- (a) supply all labour to carry out and supervise the carrying out of the Contract Works;
  - (b) supply all materials, services, temporary works, plant, and equipment necessary to complete the Contract Works;
  - (c) complete the Contract Works for the Contract Price;
  - (d) keep the Principal informed about the progress of the Contract Works;
  - (e) obtain those Consents required to carry out the Contract Works if the Contractor and the Principal have agreed in writing that such Consents will not be obtained by the Principal;
  - (f) obtain insurance cover as required by the Contract;
  - (g) prepare a health and safety plan for the Contract Works and the Site;
  - (h) begin the Contract Works on the Commencement Date and carry out and complete the Contract Works in a prompt and timely manner by the date for Practical Completion;
  - (i) undertake any Variation to the Contract Works requested by the Principal in accordance with the Contract;
  - (j) comply with all proper instructions by the Principal in relation to the Contract Works;

- (k) inform the Principal of any change to the licensed building practitioners employed to supervise and carry out Restricted Building Work at the Site;
- (l) on reaching Practical Completion, promptly serve a Notice of Practical Completion on the Principal;
- (m) remedy as soon as practicable, any defects notified during the Defects Repair Period;
- (n) provide all as-built drawings, operating and maintenance manuals, producer statements, guarantees, warranties and Records of Work as reasonably required to the Principal prior to Practical Completion;
- (o) on the expiry of the Security Retention Period and Completion of the Contract Works, serve a Notice of Completion on the Principal;
- (p) in the event of a Dispute arising under the Contract, immediately serve a Notice of Dispute on the Principal; and
- (q) in the event that any Dispute is not resolved with the Principal directly within two (2) Days of service of the Notice of Dispute, immediately serve a Notice of Request for Adjudication and a Notice of Adjudication on BuildSafe® and the Principal.

**Contractor's Warranties**

7. The Contractor warrants that:

- (a) the Contract Works will be carried out:
  - (i) with reasonable care and skill;
  - (ii) in a proper and competent manner;
  - (iii) in accordance with the Plans and Specifications; and
  - (iv) in accordance with the relevant building consent.
- (b) all materials supplied for use in the Contract Works (other than materials supplied by the Principal):
  - (i) will be suitable for the purpose for which they will be used; and
  - (ii) unless otherwise stated in the Contract, will be new;
- (c) the Contract Works will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, the Building Act 2004 and the Regulations made pursuant to that Act;
- (d) the Contract Works will be completed by the date (or within the period) specified in the Contract or, if no date or period is specified, within a reasonable time;
- (e) if the Contract Works relate to a Household Unit, the Household Unit will be suitable for occupation on completion of the Contract Works; and
- (f) if the Contract states the particular purpose for which the Contract Works are required, or the result that the Principal wishes the Contract Works to achieve, so as to show that the Principal relies on the skill and judgement of the Contractor, the Contract Works and any materials used in carrying out the Contract Works 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.

8. Where the Contract Works relate to one or more Household Units, the Principal or a future owner of the building or land in respect of which the Contract Works are carried out under the Contract may, despite any agreement to the contrary, or any provision of any other enactment or rule of law, take proceedings for a breach of any of the above statutory warranties, as set out in section 362I of the Building Act 2004, whether or not that person was a Party to the Contract.
9. The Contractor warrants that where the Contract Works involve Restricted Building Work, that work will at all material times be carried out or supervised by appropriately licensed building practitioners.

### **Principal's Main Obligations**

10. The Principal must:
- (a) pay the Contractor the Contract Price (including the price of all Variations);
  - (b) pay the Security Amount into the BuildSafe® Trust Account prior to commencement of the Contract Works;
  - (c) keep the Contractor informed of any concerns that the Principal has about the Contract Works;
  - (d) if building onto an existing structure, obtain insurance cover as required by the Contract;
  - (e) obtain all Consents necessary to carry out the Contract Works, unless the Principal and the Contractor have agreed otherwise;
  - (f) give reasonable access to the Site to the Contractor, Subcontractors, and any other authorised persons to enable the Contract Works to be completed; and
  - (g) provide all information to the Contractor, which has been obtained by or on behalf of the Principal for the purposes of the Contract, regarding the nature of the physical conditions relevant to the Contract Works, save that the Principal does not make any warranty as to the sufficiency or accuracy of such information, and the Contractor is responsible for the interpretation of all such information.

### **Principal's Warranties**

11. The Principal warrants that:
- (a) all materials supplied by the Principal for use in the Contract Works will be suitable for the purpose for which they will be used; and
  - (b) unless otherwise stated in the Contract, those materials will be new.

### **Subcontracting Work**

12. The Contractor may assign or subcontract any portion of the Contract Works but shall not assign or subcontract the whole of the Contract Works without the written consent of the Principal and BuildSafe®.
13. The Contractor remains responsible for the acts and omissions of any Subcontractors it employs, and for ensuring that its Subcontractors are properly licenced to carry out the subcontract works and have appropriate insurance in place. The Contractor will be responsible for procuring any guarantees from any Subcontractor and any information and/or documentation in the power or possession of any Subcontractor necessary to enable the Principal to obtain a Code Compliance Certificate, and comply with any other regulation requirements.

## Principal's Contractors

14. The Principal may enter into separate contracts with persons other than the Contractor (**Separate Contractor**) for any work to be carried out on the Site that is not included in the Contract. The Principal must:
- (a) take all practicable steps to ensure that each Separate Contractor complies with the Contractor's reasonable requests and requirements on the Site;
  - (b) ensure that any Separate Contractor's work is carried out or supervised by a licensed building practitioner where that work involves Restricted Building Work;
  - (c) ensure that any Separate Contractor's work and/or materials are covered by the insurance in place and will, if necessary, arrange additional insurance at its own cost; and
  - (d) indemnify the Contractor for delay suffered in completion of the Contract Works or any additional cost incurred arising from the effect of the activity of Separate Contractors not otherwise provided for in the Contract, and for any loss or damage caused to the Contract Works as a result of any act or omission by the Principal and/or its Separate Contractors in relation to undertaking the separate works. The effect of that activity, act, or omission shall be treated as a Variation.
15. The Contractor shall cooperate fully with Separate Contractors and render every reasonable assistance necessary for the execution and coordination of their works.
16. The Principal shall ensure that any Separate Contractor shall comply in all respects with the reasonable requests of the Contractor.
17. If the Contractor suffers delay in completion of the Contract Works or incurs additional cost as a result of the Separate Contractor's works which is not otherwise provided for in the Contract, the delay or additional cost shall be treated as a Variation.

## Additions or Alterations to Existing Building

18. Where the Contract Works involve additions or alterations to an existing building or structure:
- (a) the Contractor shall not be liable for any loss or damage suffered by the Principal in relation to the Contract Works where such loss or damage results from the state or condition of the Principal's existing building or structure which could not have been reasonably foreseen by the Contractor at the time of tender; and
  - (b) any additional work required because of unforeseen non-compliant construction and or sub-standard materials which are found as a result of opening up any part of the existing structure to carry out the Contract Works shall be treated as a Variation and the Contract Price adjusted accordingly.
19. The Contractor agrees to use reasonable endeavours to match any new materials being used in the construction to those materials existing, in place, or in use. The Principal agrees that, despite the use of reasonable endeavours, the Contractor may not be able to provide a 100% matching of materials and, in such event, there shall be no claim against the Contractor.

## REPRESENTATIVES

20. The Contractor must nominate a representative who is authorised to give and receive on behalf of the Contractor, any instructions to or from the Principal or the Principal's representative (the **Contractor's Representative**). The Contractor's Representative is responsible for the supervision of the Contract Works.

21. The Principal must nominate a representative who is authorised to give and receive on behalf of the Principal, any instructions to or from the Contractor or the Contractor's Representative (the **Principal's Representative**).
22. The Principal and the Contractor may change their Representative by giving notice in writing to the other Party.

## **DESIGNS, PLANS AND CONSENTS**

### **Building and Resource Consents**

23. Unless otherwise agreed, the Principal shall obtain and pay for project information memoranda and Consents required for the carrying out of the Contract Works, and the Code Compliance Certificate for the use of the Contract Works when complete.
24. The Contractor shall comply with the terms and conditions of all Consents and approvals as far as such Consents and approvals relate to the Contract Works.
25. The Contractor shall, when requested by the Principal, provide all documents in its power, possession, or control that relate to the Contract Works necessary for obtaining all Consents and approvals for the Contract Works.

### **Code Compliance Certificate**

26. Unless otherwise agreed, the Principal shall be responsible for applying for and obtaining the Code Compliance Certificate(s) for the Contract Works. The Contractor shall, before making an application for Practical Completion, provide to the Principal any information and/or documentation in relation to the Contract Works necessary to enable the Principal to obtain a Code Compliance Certificate.
27. If the Contractor has agreed to obtain the Code Compliance Certificate, the Contractor shall provide the Principal with a copy of the Code Compliance Certificate before making an application for Practical Completion.

### **Plans and Specifications**

28. In the event of any discrepancy between the Plans and Specifications, the Plans take precedence. Drawings of a larger scale take precedence over drawings of a smaller scale. Figured dimensions take precedence over scaled dimensions.

### **Design by the Contractor**

29. Where the Contract Works include any element of design on the part of the Contractor, the Contractor shall be responsible for carrying out such design with reasonable skill, care, and diligence. No comment, review, or approval by the Principal shall relieve the Contractor of any responsibility for that part of the Contract Works.
30. If shop drawings and/or as-built drawings are reasonably required for the proper completion of the Contract Works, such drawings shall be supplied to the Principal on request and in any case prior to Practical Completion.

### **Copyright in Plans and Designs**

31. The Contract does not transfer any copyright or other intellectual property rights in Plans or designs.
32. The Contractor and the Principal each warrant that they have the right to provide any copyright materials or other intellectual property required for the performance of the Contract Works. The provision of Plans or designs to a Party entitles them to be used only for the Contract.

## THE SITE

### Possession of the Site

33. The Principal shall give the Contractor possession of the Site or such parts of the Site as are reasonably necessary to enable the Contractor to carry out and complete the Contract Works on the Commencement Date provided in the Contract Agreement.
34. The Principal shall arrange for the Contractor to have reasonable right of entry and do any act upon any adjoining property as may be necessary to carry out the Contract Works. Any costs involved in obtaining such right shall be borne by the Principal.
35. The Contractor shall ensure that the Contract Works are undertaken so as not to interfere unreasonably with the convenience and rights of adjoining property owners and the public, or with the condition of, access to, or use of, any private property or public place, road or footpath.
36. The Contractor shall make good as soon as practicable, and at the Contractor's expense, any damage to any private or public property which might arise out of or in consequence of, carrying out the Contract Works.
37. Should the Principal fail to give possession of the Site in accordance with the Contract for any reason other than Default on the part of the Contractor, the Contractor shall be entitled to an extension of time for Completion of the Contract Works. The failure shall be treated as a Variation.

### Labour, Plant, and Materials

38. The Contractor shall include in its Contract Price everything necessary for the proper completion of the Contract Works and the performance of its obligations under the Contract. The Contractor will be deemed to have made all allowances required for the nature of the Site, the extent and nature of the work, and access for, and carriage of, all labour, plant and materials required for the proper execution of the Contract Works, to, from, and on the Site.

### Site Boundaries

39. The Principal must clearly establish the boundaries of the Site and, if survey pegs are required by the Contractor to define the Site boundaries, these will be provided by a licenced cadastral surveyor employed by the Principal. Any costs involved in pegging or verifying the boundaries of the Site shall be borne by the Principal.
40. The Contractor shall be responsible for the care and protection of all boundary pegs and any cadastral survey mark which has at any time been set in or on the ground for the purposes of survey.
41. The Principal agrees to indemnify the Contractor in respect of any expense, loss, action, or claim whatsoever arising out of errors in the position of survey pegs or mistakes as to the correct boundaries of the building Site where the survey pegs and/or Site boundaries are established and fixed by a surveyor employed by the Principal.

### Care of the Site and Contract Works

42. The Contractor shall be responsible for the Contract Works from the Commencement Date until Practical Completion, and for any loss or damage to the Contract Works occurring after Practical Completion arising as a result of carrying out its further obligations under the Contract.
43. The Contractor shall keep the Site and the Contract Works clean and tidy and remove all Contractor's rubbish and surplus materials at regular intervals.
44. The Contractor shall be responsible for the care and protection of all materials in its care or possession awaiting incorporation into the Contract Works.

- 45. The Contractor shall be responsible for loss or damage to the Site and the Contract Works arising out of, or in consequence of carrying out, the Contract Works.
- 46. The Contractor shall leave the Site and the Contract Works clean and tidy upon Practical Completion and Completion of any agreed deferred works or defective works notified by the Principal during the Defects Repair Period.
- 47. The Principal shall be responsible for the care and protection of the work undertaken by any Separate Contractors engaged by the Principal. The Contractor shall be obliged at all times to exercise reasonable care to ensure that no damage occurs to the separate works arising out of the execution of the Contract Works.

**Use and Occupation of the Site**

- 48. If the building work involves an existing building occupied by the Principal or the Principal's invitees, the Contractor shall use all reasonable endeavours to cause as little inconvenience to those persons and all other persons using the building as is practicable in the circumstances. The Contractor must take all reasonable steps to keep the building and the Site safe and secure at all times during the execution of the Contract Works.

**Unforeseen Physical Conditions**

- 49. The Contractor shall notify the Principal in writing within five (5) Days of becoming aware of any physical condition which the Contractor considers could not reasonably have been foreseen at the time of tendering by an experienced contractor, and which will, in the Contractor's opinion, increase its costs or delay progress of the Contract Works or require an extension of time.
- 50. Any additional work required because of unforeseen physical conditions shall be treated as a Variation.

**Health and Safety**

- 51. The Contractor is responsible for the adequacy and safety of all Site operations and work methodologies within the Contractor's reasonable control.
- 52. The Contractor shall comply with all requirements of the Health and Safety at Work Act 2015.
- 53. The Contractor shall provide and maintain a safe working environment and must prepare and work to a Site-specific safety plan for the execution of the Contract Works.
- 54. Compliance with the Site-specific safety plan will not relieve the Contractor from any of its duties, obligations and liabilities under the Contract, or at law.
- 55. The Principal must notify the Contractor of any Site-specific safety hazards that the Principal is aware of and which might not reasonably be apparent to a reasonably experienced Contractor.

**Unprocurable Materials**

- 56. If any materials specified are not reasonably procurable, the Contractor may substitute those materials with any other materials that are of a similar quality and nature. The Contractor agrees to consult the Principal and obtain any amendments to any Consents that might be required before making any substitution for specified materials. Any difference in the cost of such substituted materials shall be treated as a Variation.

**Materials brought onto the Site by the Contractor**

- 57. The legal, equitable and beneficial ownership and title to any goods or materials brought onto the Site by the Contractor and not affixed to the land shall remain vested in the Contractor until such time as the Contractor receives payment for those goods and/or materials from the Principal.

## INSURANCE

### Contractor to Insure

58. Where the Contract Works relate to the erection of a separate structure, the Contractor shall, from the Commencement Date until Completion, keep the Contract Works insured under a contract works insurance policy in the joint names of the Principal and the Contractor.
59. The Contractor shall not cancel or materially change the insurance without the prior written consent of the Principal.

### Principal to Insure Work on Existing Structures

60. Where the Contract Works involve physical change to an existing structure including additions or alterations work, the Principal shall arrange insurance in the joint names of the Principal and the Contractor that is sufficient to cover the existing dwelling and contents and the Contract Works until the date of Completion, plus an allowance for:
- (a) items supplied by the Principal that are not included in the Contract Price;
  - (b) Variations that the Principal may direct;
  - (c) demolition, disposal and preparation for making good following a loss;
  - (d) professional fees and similar costs;
  - (e) increased construction costs and escalation of costs during the reinstatement period.
61. The Principal shall not cancel or materially change the insurance without the prior written consent of the Contractor.

### Public Liability

62. The Contractor shall maintain a public liability insurance policy indemnifying the Principal and the Contractor against claims in respect of loss or damage against property, or injury or death or illness to any person arising out of the operations of the Contractor or any of its Subcontractors in connection with the execution of the Contract Works. The policy shall be for an amount of not less than two million dollars and shall be kept continuously in force until the expiry of the Defects Repair Period and any work required to remedy defects notified during that period has been completed.

### Plant, Equipment and Motor Vehicles

63. The Contractor is responsible for the insurance of all plant, tools, equipment or other property belonging to the Contractor or in its care or control, critical to the carrying out of the Contract Works.
64. The Contractor must have motor vehicle third party insurance cover for any vehicles used in, or associated with the carrying out of the Contract Works.

### Professional Indemnity Insurance

65. Where the Contractor is required to provide design work, the Contractor shall effect professional indemnity insurance for the Contractor's design to cover liability for damage or loss caused by the Contractor failing to carry out such design with reasonable skill, care, and diligence. The Contractor shall maintain the insurance for a period of six (6) years from the date of Practical Completion.

## Proof of Insurance

66. Each Party must, prior to the commencement of the Contract Works, forward to the other Party certificates from insurers or insurance brokers evidencing that any insurance cover which that Party is responsible for under the Contract, is in effect.

## COMMENCEMENT AND COMPLETION

### Commencement

67. The Contractor must commence the Contract Works on the date provided in the Contract Agreement or within such other time as is agreed, and shall thereafter carry out the Contract Works with all reasonable diligence, subject to:
- (a) payment by the Principal of the Security Amount to BuildSafe®;
  - (b) the issue of any Consents required for the Contract Works; and
  - (c) evidence of the insurance cover which the Principal is responsible for under the Contract.

### Due Date for Completion

68. The Contractor must achieve Practical Completion of the Contract Works by the date specified in the Contract Agreement, as adjusted for any extensions of time awarded in terms of the Contract (**Due Date for Completion**).

### Extensions of Time

69. The Principal shall grant an extension of time for completion of the Contract Works if the Contractor is fairly entitled to an extension by reason of:
- (a) the net effect of any Variation;
  - (b) weather sufficiently inclement to interfere with the progress of the Contract Works;
  - (c) loss or damage to the Contract Works or materials, not due to the fault of the Contractor;
  - (d) flood, volcanic or seismic events;
  - (e) any strike, lockout, industrial, or protest action;
  - (f) any circumstances not reasonably foreseeable by an experienced contractor at the time of tendering and not due to the fault of the Contractor; or
  - (g) Default by the Principal, or any other person for whose acts or omissions the Principal is responsible, which is not a Variation.
70. The Principal shall not be bound to grant an extension of time unless the Contractor gives written notice to the Principal within ten (10) Days of becoming aware of the occurrence of any circumstance relied upon to support a claim for an extension of time.
71. On receipt of notice of a claim for extension of time, the Principal must investigate the claim, determine whether the Contractor is fairly entitled to an extension of time and the period of the extension, and notify the Contractor of the decision as soon as practicable.

72. The Principal may grant an extension of time in relation to the Due Date for Completion where the Principal deems it appropriate in circumstances where the Principal is at fault or caused a delay, whether the Contractor has made a claim for an extension of time in relation to those circumstances, or not.
73. The Contractor shall not be entitled to compensation for time related costs unless the extension of time is granted under clause 68(a) or (g) above. Where the Contractor has nominated a Working Day Rate, such rate shall be used to calculate the Contractor's entitlement to compensation unless the nature or the circumstances of the Variation are such as to render it inequitable to use that rate and a reasonable rate shall then be used.

*Acceleration*

74. Whenever the Contractor may be entitled to an extension of time, then *in lieu* of granting an extension of time for all or part of the delay, the Principal may, following consultation with the Contractor, require the Contractor to, (if practicable in the reasonable opinion of the Principal), overcome all or part of the delay by applying additional resources or working longer hours or in whatever manner is required, at a fair cost to be determined as a Variation.

*Expedition*

75. In any circumstance where there is a critical delay to the Contract Works, for which delay the Contractor is not entitled to an extension of time, the Contractor must take all reasonably necessary steps to overcome the delay at its own cost. The Contractor shall ensure the time lost as a result of any and all such delays is overcome at the earliest opportunity. The Contractor shall prepare a programme showing the application of all additional resources as are necessary to promptly overcome the delay. If, in any particular case, the Contractor proposes a period longer than one (1) calendar month to catch up the delay, the consent of the Principal shall be necessary (which shall not unreasonably be withheld). In no circumstances shall the provisions of this clause or any programme issued under it, or any consent of the Principal permit or excuse the Contractor from completing the Contract Works by the Due Date for Completion.

**Procedure for Practical Completion**

76. When the Contractor believes on reasonable grounds that the Contract Works have reached Practical Completion, the Contractor shall issue a Notice of Practical Completion to the Principal confirming that the Contract Works have been completed in accordance with the Plans and Specifications, the directions of the Principal, the building consent, and the New Zealand Building Code, with the exception of any work agreed by the Principal and the Contractor to be deferred and carried out prior to Completion.
77. On receipt of the Notice of Practical Completion, the Principal must inspect the Contract Works and within two (2) Days either:
- (a) sign the Certificate of Practical Completion certifying that the Principal has received all the Contractor's warranties and guarantees for materials and services, as-built drawings, operating and maintenance manuals, producer statements, and Records of Work; or
  - (b) provide a Notice of Incomplete Work.

**Security Retention Period**

78. The Security Retention Period is twenty (20) Days from the date of Practical Completion.
79. The Principal must as soon as any defect is discovered and, in any event, on or before the expiry of the Security Retention Period, provide the Contractor with a Notice of Defects specifying any defects in the Contract Works which the Principal requires the Contractor to rectify.
80. The Contractor must promptly rectify all defective work, defective materials and defective fittings in the Contract Works notified by the Principal before the end of the Security Retention Period. The Contractor

must use every reasonable endeavour to complete the Contract Works no later than thirty (30) Days from the date of Practical Completion or as soon as practicable thereafter.

### Procedure for Completion

81. On expiry of the Security Retention Period and at such time as the Contractor believes on reasonable grounds that it has remedied and completed all defects and omissions notified by the Principal on or before the expiry of the Security Retention Period, the Contractor shall issue a Notice and Certificate of Completion to the Principal.
82. On receipt of the Notice and Certificate of Completion, the Principal must, within two (2) Days either:
- (a) sign the Certificate of Completion certifying that the Principal has inspected the Contract Works and accepts that the Contract Works are complete; or
  - (b) provide a Notice of Incomplete Work specifying which items of work remain outstanding that the Contractor is to rectify and/or complete prior to the Certificate of Completion being signed.

### Defects Repair Period

83. The Principal may, by written notice given before the expiry of the Defects Repair Period, require the Contractor to remedy any defect or breach of warranty, including repairing or replacing defective materials used in the Contract Works.
84. The Contractor shall remedy any defect or breach of warranty notified by the Principal in writing during the Defects Repair Period within a reasonable time of notification.
85. The Contractor is not liable for any defect or breach of warranty to the extent that the defect or breach is caused after Practical Completion by:
- (a) a cause independent of human control;
  - (b) any act or omission, including accidental damage, by a person other than:
    - (i) the Contractor;
    - (ii) a Subcontractor; or
    - (iii) a person for whom the Contractor is responsible in law; or
  - (c) failure on the part of the Principal:
    - (i) to carry out normal maintenance; or
    - (ii) to carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent.

### VARIATIONS

86. The Contractor shall carry out any Variation instructed by the Principal and the Contract Price is to be adjusted accordingly.
87. The value to be paid for any Variation instructed by the Principal is to be calculated using the rates and prices specified in the Contract for that or similar work, but if there are no such rates or prices or if they are inappropriate or inapplicable, then by assessing a fair and reasonable value for the work.
88. The Contractor shall not vary the Contract Works without a written order from the Principal.

89. Where an instruction given by the Principal is not in writing or is not expressly stated to be a Variation, or any matter arises which the Contractor considers should be treated as a Variation, the Contractor shall, within ten (10) Days of the instruction or becoming aware of the matter, or as soon as practicable thereafter, give written notice to the Principal of its claim for a Variation.
90. Within ten (10) Days of receipt of the Contractor's notice, or as soon as practicable thereafter, the Principal shall advise the Contractor in writing as to whether the instruction or matter involves a Variation and the reasons for that decision.
91. Wherever practicable, the value of any Variation shall be agreed before the work is commenced, however any failure to do so will not invalidate the Variation or the Contractor's entitlement to be paid the reasonable value of the Variation including the Contractor's off-site overheads and margin.
92. Where the value of a Variation is a negative amount, the value shall not include any allowance for margin.
93. Where the Contractor is entitled to an extension of time as a result of the net effect of any Variation, the Contractor shall be entitled to compensation for the time-related costs incurred in relation to that extension, and margin. Where the Contractor has nominated a Working Day Rate, such rate shall be used to calculate the Contractor's entitlement to compensation unless the nature or the circumstances of the Variation are such as to render it inequitable to use that rate and a reasonable rate shall then be used.

## PAYMENT

### Payment Claims

94. The Contractor may serve on the Principal a Payment Claim in respect of any costs and expenses incurred by the Contractor in making an application for, and/or uplifting any Consent in relation to the Contract Works, including but not limited to the costs of obtaining such approvals and professional advice, reports, plans, and drawings as may be necessary in the circumstances and all fees, expenses and levies charged by the building consent authority together with the Contractor's associated administration and processing costs. Any amount claimed shall become due and payable by the Principal two (2) Days after any such Payment Claim is served on the Principal.
95. The Contractor may serve on the Principal a Payment Claim in respect of all work carried out during each monthly period commencing on the day of the month in which Contract Works were first carried out and ending on the last day of that month, and each month after the first period. A Payment Claim is to be calculated in accordance with section 17 of the Construction Contracts Act 2002.
96. The due date for payment of a Payment Claim other than a Payment Claim made under clause 94 above in relation to any Consent is ten (10) Days after the relevant Payment Claim is served on the Principal.
97. For the avoidance of any doubt, the BuildSafe® Payment Regime set out in the Schedule to the BuildSafe® Terms and Conditions applies to the Contract. The Contractor shall be entitled to claim 90% of the Security Amount when the Contract Works reach Practical Completion and the final 10% of the Security Amount once Completion has been certified.

### Payment Schedules

98. If the Principal intends to pay the Contractor less than the amount claimed in a Payment Claim, the Principal **must** respond to the Payment Claim by providing a Payment Schedule to the Contractor within ten (10) Days after the date the Payment Claim is received.
99. A Payment Schedule must comply with the requirements of the Construction Contracts Act 2002, and if the Scheduled Amount is less than the Claimed Amount, the Payment Schedule must indicate the manner in which the Principal calculated the Scheduled Amount and the Principal's reason or reasons for the difference between the Scheduled Amount, state the Claimed Amount, and where the difference is because the Principal is withholding payment on any basis, indicate the reason(s) for withholding payment.

100. If the Principal does not provide a Payment Schedule to the Contractor or make payment of the Claimed Amount within ten (10) Days after the date the Payment Claim was served, the Principal becomes liable to pay the Contractor the whole of the claimed amount on the due date for payment without set-off or deduction irrespective of the merits of the Payment Claim.

**Payment Does Not Constitute Approval**

101. The issuing of a Payment Schedule or payment of any amount by the Principal to the Contractor does not constitute or imply acceptance of the work undertaken by the Contractor, nor does it relieve the Contractor of any of its obligations under the Contract.

**Overpayment**

102. If there is any error or over-certification by or on behalf of the Principal or any other cause that results in the amount paid to the Contractor exceeding the amount properly due under the Contract, the amount overpaid becomes a debt due from the Contractor to the Principal payable on demand.

**Damages for Late Completion**

103. The Parties agree that the sum stated as damages for late completion in the Contract is a genuine pre-estimate by the Principal made at the time the Contract is entered into of the loss the Principal will likely suffer in the event of delay in completion of the Contract Works by the Contractor, and that sum shall be paid by the Contractor to the Principal for each week or part week in the period between the due date of Practical Completion and the date of Practical Completion.

104. The Principal may, without prejudice to any other method of recovery, deduct in a Payment Schedule from any monies otherwise payable to the Contractor under the Contract the amount of damages for late completion that has accrued at the end of the period for which the Payment Claim is made.

105. Deduction or payment of damages for late completion shall not relieve the Contractor from any of its other liabilities or obligations under the Contract.

**Contractor's Final Payment Claim**

106. The Contractor must give the Principal a final Payment Claim within one (1) month of Practical Completion, or such other time as the Contractor and the Principal may agree in writing.

107. Submission of the final Payment Claim shall be conclusive evidence that the Contractor has no further claim against the Principal other than that contained therein and any matter that is then currently the subject of a dispute resolution process.

108. Upon payment of the final Payment Claim, the Principal ceases to be liable to pay the Contractor any further amount under the Contract except for the Principal's obligations to pay:

- (a) any portion of the Security Amount retained by BuildSafe® pending completion or rectification by the Contractor of minor works and defects identified by the Principal as requiring completion or rectification before the end of the Security Retention Period; and
- (b) any disputed amounts which may subsequently become due and owing to the Contractor as a result of a dispute resolution process.

109. Notwithstanding the issue of the final Payment Claim, the Contractor shall remain liable for the fulfilment of any obligation under the Contract which then remains unperformed or not properly performed.

## Interest

110. The Principal shall pay the Contractor interest compounding monthly on all monies due and payable and remaining unpaid after the expiry of the time provided for payment from and including the date immediately following the date upon which the payment was due, up to and including the date upon which payment is made in full.
111. The rate of interest shall be equal to 1.5 times the monthly small to medium sized enterprise overdraft rate published by the Reserve Bank of New Zealand for the relevant period.
112. The right to interest shall be in addition to any other remedy that the Contractor may be entitled to at law.

## Suspension of Work

113. If a Claimed Amount is not paid by the due date for payment and no Payment Schedule has been provided by the Principal in response to the Payment Claim, or if the whole of the Scheduled Amount is not paid by the due date for payment, or the Principal has not complied with an adjudicator's determination that the Principal must pay a sum of money to the Contractor, the Contractor may give the Principal notice in writing of its intention to suspend the carrying out of the Contract Works if the unpaid amount is not paid in full within five (5) Days after the date of the notice.
114. If the unpaid amount is not paid in full and work is suspended, the Contractor:
- (a) is not in breach of the Contract;
  - (b) shall maintain its rights under the Contract and will not be liable for any loss or damage suffered by the Principal, or any person claiming through the Principal;
  - (c) is entitled to an extension of time and to recover the reasonable costs incurred to demobilise and to remobilise on Site as a consequence of suspending work, as a Variation; and
  - (d) may lift the suspension at any time even if the amount has not been paid in full.

## Prime Cost Sums and Provisional Sums

115. Prime Cost Sums and Provisional Sums shall be expended only on the written instruction of the Principal.

## Charge up Contract

116. Under a charge-up contract, the Contractor shall be entitled to be paid at the rates set out in Schedule 2 to the Contract Agreement.
117. The Contractor shall not be entitled to be reimbursed any cost which:
- (a) is not justified by the Contractor's records or was not reasonably and properly incurred in carrying out the Contract Works; or
  - (b) was incurred due to a Default by the Contractor including remedying defects caused by the Contractor, or the Contractor's failure to comply with the Contract.
118. For each payment claim, the Contractor shall provide full details of all amounts claimed.

## Cost Fluctuations

119. The Contractor shall be deemed to have given due consideration to the prices of all labour, plant, materials and services necessary for the complete and proper execution of the Contract Works for the full period of the Contract Works as adjusted in terms of the Contract.

120. No payment for cost fluctuations will be paid under the Contract.

## DEFAULT

### Acts of Default

121. The Contractor commits an act of Default if the Contractor:

- (a) fails to proceed with the Contract Works with reasonable diligence; or
- (b) refuses or persistently neglects to carry out and complete the Contract Works in accordance with its obligations under the Contract; or
- (c) fails after receipt of notice in writing from the Principal to remove or remedy defective work or improper materials; or
- (d) becomes bankrupt, goes into liquidation or has a receiver or statutory manager appointed, and the assignee, liquidator, receiver, or statutory manager fails to make arrangements satisfactory to the Principal to complete the Contract Works.

122. The Principal commits an act of Default if the Principal:

- (a) abandons the Contract; or
- (b) refuses or persistently fails to fulfil its obligations under the Contract; or
- (c) becomes bankrupt, goes into liquidation or has a receiver or statutory manager appointed, and the assignee, liquidator, receiver, or statutory manager fails to make arrangements satisfactory to the Contractor for continued payment of amounts due under the Contract.

123. If either the Principal or the Contractor defaults in the observance or performance of their respective obligations under the Contract, the non-defaulting Party may give the defaulting Party notice in writing to remedy the Default within five (5) Days, and if the notified Default is not remedied within that period of time, the non-defaulting Party may, without prejudice to any other remedies available to it, cancel the Contract.

124. In the event that the non-defaulting Party cancels the Contract pursuant to clause 123, the defaulting Party shall be liable to pay to the non-defaulting Party such costs, damages, or expenses as the non-defaulting Party may be entitled to recover at law.

## DISPUTES

### Notice of Dispute

125. If a Dispute arises between the Principal and the Contractor under the Contract, a Notice of Dispute must immediately be completed and served on the other Party to the Dispute, and a copy provided to BuildSafe®.

126. On receipt of a Notice of Dispute, the Parties must act in good faith and endeavour to resolve the Dispute between them within two (2) Days.

### Adjudication

127. If the Dispute notified in the Notice of Dispute remains unresolved after two (2) Days, the Party referring the Dispute must complete a Notice of Request for Adjudication and a Notice of Adjudication and send a copy to the other Party and to BuildSafe® and request BuildSafe®, as its agent, to secure the appointment of an adjudicator to determine the matter.

128. The Adjudication will be conducted in accordance with the Construction Contracts Act 2002.

129. In the event of any Dispute arising in relation to whether or not the Contract Works have reached Practical Completion or Completion, the Parties agree that the requirement for the adjudicator to give reasons for the determination may be dispensed with.

**Arbitration**

130. Any Dispute arising out of, or in connection with the Contract, or the subject matter of the Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Building Disputes Tribunal (**Arbitration Agreement**).

131. Where the Principal enters into the Contract other than in trade, the Arbitration Agreement is enforceable against the Principal only if the Principal, by way of a separate written agreement, certifies that having read and understood the Arbitration Agreement, the Principal agrees to be bound by it.

**MISCELLANEOUS**

**Indemnity by Contractor**

132. The Contractor must indemnify the Principal against any loss or liability arising from damage to any property or personal injury to anyone or illness or death of anyone that arises from the Contractor carrying out the Contract Works. However, the Contractor’s liability to indemnify the Principal is reduced proportionally to the extent that the Principal, or anyone for whom the Principal is responsible, contributed to the loss or liability.

**Compliance with Laws**

133. In carrying out the Contract Works, the Principal and the Contractor must comply with all statutes, regulations, and by-laws of public authorities having jurisdiction over the Contract Works.

**Governing Laws**

134. The Contract shall be governed by the laws of New Zealand.

**Assignment**

135. The Contract can only be sub-let or assigned if both Parties agree in writing and with the consent of BuildSafe®. Such consent shall not be unreasonably withheld or delayed.

**Waiver**

136. Neither Party shall be considered to have waived or released any of its rights under the Contract except by agreement in writing.

**Notices**

137. Any document which is to be given to, or served on the Principal or the Contractor under the Contract or the Construction Contracts Act 2002 (or any Regulation made thereunder) shall be sufficiently served if it is:

- (a) handed to that person or their Representative, or delivered to the address stated in the Contract Agreement or as subsequently agreed in writing, in which case such service shall take effect on the day the document is handed or delivered to the addressee; or
- (b) sent by email to the email address stated in the Contract Agreement or as subsequently agreed in writing, in which case such service will take effect on the day the email is received at the addressee’s electronic address.

- 138. Where any notice, communication or document is given by email, the sender shall retain evidence of the origin, destination and time of sending each email.
- 139. If, after reasonable efforts, physical delivery of a document cannot be effected, a document shall be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of the attempt to deliver it.
- 140. The communication will be deemed to have been received on the day it is so delivered.

**Personal Information**

- 141. Any personal information given by one Party to the other must be kept private unless expressly agreed otherwise in writing. The personal information shall only be used for the purpose for which it is given.

**Goods and Services Tax**

- 142. All sums are inclusive of Goods and Services Tax (GST) unless otherwise stated or set out in Schedule 1 or Schedule 2 to the Contract Agreement for each of the trade/item prices.