
ACT Residential Building Contract for Alterations and Additions

OWNERS: Kate Inman
Matthew Sutherland

JOB: 1101

SITE: 4 Dungowan Street
Hawker
ACT 2614

Owner Copy



To verify your builder is a HIA member email enquiry@hia.com.au

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DS DS DS
H M SH

Explanatory notes for the owner

Welcome to your HIA Plain English Contract!

Please read the following notes about important clauses found in the Contract.

These notes are not part of the contract

Before you sign the contract please check that:

- the builder's licence is current;
- the builder's licence covers the type of work described in the contract;
- the name on the builder's licence is the same as the name on the contract; and
- the builder is a HIA member.

Where this contract is for residential building work of a value greater than \$12,000 and being work for which a building permit is required under the Building Act, the builder must effect housing indemnity insurance cover as required by the Building Act before commencing any of the work.

About the contract

1. The contract and the attachments

In Attachment A of this contract you and the builder must fill in the details left blank. If necessary you should also add some details in the other attachments.

If you do not use an attachment, please cross it out and initial it.

Some words in this contract have special meaning (see Clause 2).

2. Plans and specifications

Plans and specifications are also part of the contract. You and the builder must sign and date them. You both must keep a copy of this contract and of the plans and specifications.

3. Deposit

The deposit requested by the builder may only be as much as the law allows. In the ACT the maximum amount that you can recover under the insurance scheme for a deposit is \$10,000.00.

4. Extensions of time

Sometimes the builder may need to extend the time for completing the work. If there are any extensions the builder must tell you in writing.

5. Maintenance service period

You must notify the builder in writing of any defects which become apparent within 65 days after the date of practical completion.

6. Sums allowed for supply and installing goods

Please check that the allowances for provisional sums and prime cost items are clearly stated and realistic.

7. Progress payments

Please ensure that you understand what progress payments are and when you must pay them. Your progress payments should not be for more than the value of building works already finished.

8. Information you must give the builder before work begins

Before building works start you need to give the builder the following essential information:

- proof that you own the property (eg a certificate of title or rates notice);
- approval from your lending authority;
- proof that the mortgage documents have been signed, if there is to be a mortgage; and
- other proof that you can pay the contract price.

9. What can change the contract price?

The contract price can change – up or down – because of:

- discrepancies or errors in the documents;
- adjustments to provisional sums (eg excavations, sewer and storm water connections);
- adjustments to prime cost items (eg toilets, baths, sinks etc);
- delays;
- variations for unforeseen circumstances (eg rock, fill or underground water on the site);

- changes to government charges and taxes;
- changes to statutory authority or local government requirements; and
- variations requested by you.

10. Variations

If there are variations, you and the builder must both sign a separate written document called a Variation Notice prior to any additional work being carried out.

11. Initialling the pages of the contract

You and the builder must initial the bottom of each page of the contract and any changes, attachments, plans and specifications.

12. In the event of a dispute your options are:

- resolution in accordance with Territory laws;
- negotiation: you and your builder must first try to resolve the dispute by discussion;
- mediation: both parties go to a mediator or mediation service to reach a compromise;
- arbitration: both parties go to a private arbitrator, who decides one way or the other;
- expert determination; or
- litigation: going to court.

The HIA strongly recommends that you and the builder try to resolve any dispute by negotiation or mediation.

If you do not understand any part of the contract or these notes, please consult your builder and see your solicitor for further advice.

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Owner Copy

Schedule 1. Details owner and builder must complete (Clause 1)

Item

1. **Date** 30-Jun-2023 29-Jun-2023

This contract is dated the:

2. **The owner(s)**

Owner 1

NAME Kate Inman
ADDRESS 4 Dungowan Street
SUBURB Hawker **STATE** ACT **POSTCODE** 2614
ABN **ACN**
WORK **HOME**
FAX **MOBILE** 0418 477 668

EMAIL katemichelleinman@gmail.com

Owner 2

NAME Matthew Sutherland
ADDRESS 4 Dungowan Street
SUBURB Hawker **STATE** ACT **POSTCODE** 2614
ABN **ACN**
WORK **HOME**
FAX **MOBILE** 0415 170 123

EMAIL Mattsutherland123@gmail.com

3. **The builder**

NAME Turnkey Creations Pty Ltd
ADDRESS Po Box 2265
SUBURB Canberra City **STATE** ACT **POSTCODE** 2601
ABN 67155832732 **ACN** 155832732
WORK 1300979658 **HOME** 0407237765
FAX 1300979657 **MOBILE** 0407237765

EMAIL info@cgfb.com.au
BUILDER'S LICENCE NUMBER 2012767
HIA MEMBER NUMBER 589190 **HIA MEMBERSHIP EXPIRY** August 2023

4. **The land** (Clause 2)

THE LAND IS AT:
BLOCK 32 **SECTION** 24

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DIVISION Hawker
CERTIFICATE OF TITLE
Street Address:
ADDRESS 4 Dungowan Street
SUBURB Hawker

STATE ACT POSTCODE 2614

Mortgages
Mortgage 1

BANK
AMOUNT
BRANCH
CONTACT NAME

5. **Encumbrances, covenants and easements** (Clause 4)

The land containing the site is affected by the following encumbrances, covenants, easements and caveats. Please specify the substance of each encumbrance, covenant, easement and caveat and give details of any registrations where registered at the Registrar General's Office.

6. **Contract price** (Clause 2)

PRICE EXCLUDING GST: \$320,000.25
GST ON THE ABOVE AMOUNT: \$32,000.02
THE CONTRACT PRICE IS GST INCLUSIVE \$352,000.27

7. **Sources of funds** (Clauses 4, 10)

The contract price will be funded by:

TOTAL FUNDS

8. **Planning and building approvals** (Clause 7)

(If no person stated then the builder)

THE PERSON TO OBTAIN AND PAY FOR ALL PLANNING AND BUILDING APPROVALS IS:
Turnkey Creations Pty Ltd Trading as Canberra Granny Flat Builders

9. **Completion time** (Clauses 2, 6, 22)

THE BUILDING WORKS MUST REACH THE STAGE OF PRACTICAL COMPLETION NO MORE THAN
120 days
AFTER COMMENCEMENT, SUBJECT TO CLAUSE 22.

10. **Builder's margin for adjustments and ending the contract**

(Clauses 17, 18, 21, 25)

THE BUILDER'S MARGIN IS 20.00%

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11. **Interest on late and outstanding payments by the owner**

(Clause 12.3)

(If no rate stated, that applicable to unpaid judgements of the ACT Supreme Court)

IF ANY PAYMENTS ARE LATE, THE OWNER MUST PAY INTEREST TO THE BUILDER AT 14.00%

12. **Liquidated damages** (Clause 23.6)

Note: *this item should be deleted when the owner remains in residence on the land.*

(if nothing stated \$1)

\$1,750.00 PER WEEK CALCULATED ON A DAILY BASIS

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13. **Progress Payments** (Clause 12)

The stages at which progress claims are to be made must be clearly stated in this schedule

Stage	Percent	Amount
Deposit Should not exceed \$10,000	2.84%	\$9,996.81
Planning Approvals Submitted Planning approval plans and documents have been submitted for planning approval	7.16%	\$25,203.22
Floor System Complete Structural floor system is complete with services to floor level	20.00%	\$70,400.05
Wall and Roof Frames Complete Wall and roof frames are complete and braced	15.00%	\$52,800.04
Close Up Complete The building is lockable and watertight. Windows, wall cladding, roof coverings, eaves and external doors are installed	15.00%	\$52,800.04
Fixings Complete Interior doors and trims are complete. Excludes joinery cabinets.	15.00%	\$52,800.04
Painting Complete Interior and exterior painting is complete.	15.00%	\$52,800.04
Project Completion Project walk through has been conducted and owners have signed off on their satisfaction with the project	10.00%	\$35,200.03
Total	100.00%	\$352,000.27

14. **Administration fee** (Clause 21.3)

THE OWNER MUST PAY

\$.00

AS AN ADMINISTRATION FEE.

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Schedule 2. Special Conditions (Clause 3)

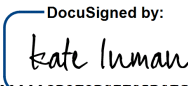
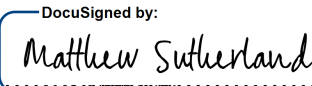
Access to the building site by the owners and associated visitors will require a written request and authorisation by the builder including a site induction after the stage that site fencing has been installed.

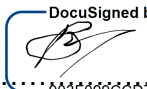
Access to the site by any external contractors will require a written request and authorisation by the builder including a site induction after the stage that site fencing has been installed. Contractors will also be required to provide a copy of public liability insurance and white cards for all workers who intend to access the site.

Owners will be responsible to inform their home and contents insurer of the work to be completed on the property. At the stage the project is handed over/completed owners are responsible to inform their insurer the work is complete.

This agreement is to be read in conjunction with the Customer Project Proposal and the Site Scope Proposal, signed date..30-Jun-2023 29-Jun-2023

Owners Name(s)..... Kate Inman Matthew Sutherland

Owners Signature(s).....  
2B8E6D47E45D4EC... 4A42494B7D434EA...

Builders Signature..... 
903F099CCD73442...

Owner Copy



Schedule 3. Exclusions (Clause 3)

The **owner** acknowledges that the **builder** will not be responsible for the supply and installation of materials, goods or the provision of services that are listed below. Nor will the **builder** be responsible for the rectification of any defective or unfinished work of the owner.

Removal and associated costs of any asbestos containing material that is not reasonably visible during the preparation and planning process, that is found during site work.

Removal of any tree stumps, waste or other contamination that is not reasonably visible before the preparation and planning process, that is found during site work.

Upgrades to existing property infrastructure that is not included in the project proposal Unless detailed in the Customer Project Proposal

Security of pets from entering the fenced site area.

Excavation in rock has not been included.

Owner Copy



Schedule 4. Prime Cost Items (Clause 17)

Item	Allowance
Bricks \$1.40 per brick x 451.5	\$632.10
Floor Coverings - Bedrooms and Study - \$60m ² x 27m ²	\$1,620.00
Floor Coverings- Living Areas - \$100m ² x 26m ² Carpet or Vinyl @ \$100m ² Timber, Bamboo or Laminate @ \$100m ² Floor Tiles \$40 m ² Supply + \$60m ² Installation = \$100 m ²	\$2,600.00
Wall Tiles - \$40m ² x 31m ² Includes bathrooms, ensuites and separate toilets walls (shower recess, bath and skirting tile)	\$1,240.00
Vanity Hand Basin Splashback Tiles - \$50m ² x 0m ² Includes vanity hand basins in bathrooms, ensuites and separate toilets	\$0.00
Kitchen Splashback Tiles - \$40 m ² x 4m ²	\$160.00
Laundry Splashback Tiles - \$40m ² x 0m ²	\$0.00
Floor Tiles - \$40m ² x 8m ²	\$320.00
Interior Lighting - \$30 each x 6	\$180.00
Exterior Sensor Lights - \$100 each x 1	\$100.00
Exterior Lighting - \$30 each x 0	\$0.00
Bathroom Accessories - \$200 each x 1	\$200.00
Toilet Suite - \$400 each x 1	\$500.00
Vanity Hand Basin- \$500 each x 1	\$500.00
Separate Toilet Hand Basin - \$200 each x 0	\$0.00
Vanity Hand Basin Tapware - \$180 each x 1	\$180.00
Separate Toilet Hand Basin Tapware - \$150 each x 0	\$0.00
Separate Toilet Accessories - \$50 each x 0	\$0.00
Shower Tapware - \$150 each x 1	\$150.00
Shower Head and Rail - \$300 each x 1	\$300.00
Bath - \$600 each x 0	\$0.00
Bath Tapware - \$200 each x 0	\$0.00
Laundry Tapware - \$150 each x 1	\$150.00
Laundry Sink - \$250 each x 1	\$250.00
Kitchen Tapware - \$200 each x 1	\$200.00
Kitchen Sink - \$250 each x 1	\$250.00
Oven - \$800 each x 1	\$800.00
Cooktop - \$600 each x 1	\$600.00
Rangehood - \$300 each x 1	\$300.00
Dishwasher - \$700 each x 1	\$700.00
Total	\$11,932.10

Owner Copy



Owner Copy



Initials: ^{DS} ^{DS} ^{DS}
[Handwritten initials: K, M, B]

Schedule 5. Provisional Sums (Clause 18)

Item	Allowance
Total	

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Signatures

This **contract** is made between the **Owner** and the **Builder**.
The **schedules** form part of this **contract**.
The **Owner** has read and understood this **contract**.

Owner 1

NAME Kate Inman

SIGNATURE

DocuSigned by:
Kate Inman
2B8E9D47E45D4EC...

WITNESS'S SIGNATURE

DocuSigned by:
Jason Yeung
9B2C69BC457D497...

WITNESS'S NAME AND ADDRESS

Jason Yeung

48/120 Thynne Street Bruce, ACT 2617

Owner 2

NAME Matthew Sutherland

SIGNATURE

DocuSigned by:
Matthew Sutherland
204230F487D434E...

WITNESS'S SIGNATURE

DocuSigned by:
Jason Yeung
9B2C69BC457D497...

WITNESS'S NAME AND ADDRESS

Jason Yeung

48/120 Thynne Street Bruce, ACT 2617

Owner Copy



Builder

NAME Bentan Honeywood

SIGNATURE

DocuSigned by:

903F099CCD73842...

Signed for and on behalf of: Turnkey Creations Pty Ltd

WITNESS'S SIGNATURE

DocuSigned by:

9826609C457D48...

WITNESS'S NAME AND ADDRESS

Jason Yeung

48/120 Thynne Street Bruce, ACT 2617

Please note

1. Where a company is signing: 'by A. Smith, director' or 'Signed for and on behalf of XYZ Pty Ltd'.
2. Where a partnership is signing: 'B. Bloggs in partnership with A. Bloggs and C. Bloggs'

Owner Copy



Deed of guarantee and indemnity

Interpretation

BUILDER IS
OWNER IS

Guarantors

ADDRESS LINE 1
ADDRESS LINE 2
SUBURB

STATE

POSTCODE

Contract is that between the **Builder** and the **Owner** dated:

Background

The **Guarantor** executed this Deed at the **Owner's** request.

The **Guarantor** is aware of the **Owner's** obligations under the **Contract**.

Operative

1. Guarantee

The **Guarantor** guarantees to the **Builder**, the fulfilment of the **Owner's** obligations under the **Contract** including but not limited to the due payment of all moneys arising out of the subject matter of the **Contract**.

2. Indemnity

The **Guarantor** indemnifies the **Builder** against any claim, loss or damage arising out of the subject matter of the **contract** caused by or resulting from any non-fulfilment of the **Owner's** obligations under the **Contract**.

3. Principal Debtor

The **Guarantor** is deemed to be a principal debtor jointly and severally liable with the **Owner** to discharge the **Owner's** obligations under the **Contract**.

4. No Merger

The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. No Release

The **Guarantor** is not discharged by:

- any variation to the **Contract** including a variation to the building works;
- any delay or claim by the **Builder** to enforce a right against the **Owner**; and
- any forbearance given to the **Owner** to perform the **Owner's** obligations under the **Contract**.

6. Severability

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

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7. When More Than One Guarantor

If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

8. Waiver of Rights

The **Guarantor** waives all rights as surety inconsistent with any of the terms of this Deed or to the detriment or disadvantage of the **Builder**.

Guarantor's Statement

I/we understand the nature, terms and extent of the guarantee and indemnity provided by me/us and further acknowledge that I/we have obtained legal advice prior to executing this Deed.

Signed as a Deed

SIGNATURE

WITNESS'S NAME AND ADDRESS

.....
.....
.....

SIGNATURE

DATE

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The contract

Clause 1. Details owner and builder must complete

See Schedules 1-5 of this contract.

Clause 2. Definitions

In this contract:

the **builder's margin** for adjustments to prime cost items, provisional sums, variations and termination means the builder's margin identified in Item 10 of Schedule 1.

the contract means the agreement set out in these conditions of contract (including Schedules 1-5) and in the signed plans and signed specifications attached to this contract, signed by both the builder and the owner.

building works means the work to be done on the site by the builder under **the contract**.

the contract price means the amount to be paid by the owner to the builder, set out in Item 6 of Schedule 1 or as adjusted in accordance with **the contract**.

days means working days and does not include weekends and public holidays.

existing building means any building or structure on **the land** which affects or will be affected by the **building works** or on which the **building works** are to be carried out and includes services to an **existing building**.

the land means the land identified in Item 4 of Schedule 1.

lending authority means the person, corporation or institution lending all or part of **the contract price** to the owner.

the site means the whole or that part of **the land** reasonably required by the builder for the carrying out and completion of the **building works**.

commencement means commencing work with the preparation of **the site**.

completion time is stated in Item 9 of Schedule 1.

rock means material that could not be readily excavated by a backhoe.

practical completion means that the **building works** have reached the stage where the builder certifies that they have been completed in accordance with **the contract**, except for minor omissions and, where applicable, has done all that the builder is required to do under **the contract** to enable a certificate of occupancy to be obtained.

statutory authority means the Local Government or any State, Territory or Federal Government agency that has the power to affect the **building works**.

Clause 3. The building works

1. The builder must finish the **building works** according to **the contract**, and all relevant laws and statutory requirements.

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2. Special conditions of contract are listed in Schedule 2.
3. Items excluded from **the contract** are listed in Schedule 3.

Clause 4. Essential information

1. The owner must give the following essential information to the builder within 90 **days** after **the contract** is signed:
 - (a) details of any easements, covenants, encumbrances and caveats affecting **the land**; and
 - (b) written proof that the owner owns **the land** (eg a certificate of title or a rates notice) or is otherwise entitled to build on **the land**; and
 - (c) written proof that the owner can pay the builder (eg a letter from a **lending authority**); and
 - (d) written proof that any loan has been approved by the **lending authority**, and that any mortgage papers have been signed; or
 - (e) evidence of funds held in a bank account, term deposit, etc. if a lending authority is not being used; and
 - (f) all necessary building and planning approvals, unless the builder obtains them under Clause 7; and
 - (g) proof that all other statutory obligations of the owner are satisfied.
2. If the owner does not give the builder all essential information under Clause 4(1) within 90 **days** after **the contract** is signed the builder may give the owner a written notice to end **the contract** and in which case the builder is entitled to retain the deposit or an amount calculated in accordance with Clause 25.8, whichever is the greater.

Clause 5. When the builder must start

Unless the parties otherwise agree in writing, the builder must commence the **building works** within 15 **days** of receiving all of the essential information in Clause 4.

Clause 6. When the builder must finish

1. The **building works** must reach the stage of **practical completion** by the **completion time**.
2. The **completion time** may be extended in certain circumstances (see Clause 22).

Clause 7. Planning and building approvals

1. The person identified in Item 8 of Schedule 1 will obtain and pay for all planning and building approvals.
2. If the builder is named in Item 8 of Schedule 1, the owner agrees to sign all documents and do all acts as requested by the builder to enable the builder to obtain all necessary permissions, consents and authorities on behalf of the owner.
3. The person identified in Item 8 of Schedule 1 must obtain all approvals within 90 **days** of signing the **contract**.

Clause 8. Documentation and copyright

1. The owner indemnifies the builder for any claim for breach of copyright or moral rights, if the builder carries out the building work according to plans which are:
 - (a) supplied by the owner;
 - (b) prepared under the instruction of the owner; or
 - (c) prepared from sketches supplied by the owner.
2. The builder owns the copyright in any documents prepared by the builder.

Clause 9. The contract price

1. The owner must pay the builder **the contract price** in the manner stated elsewhere in **the contract** (see Clauses 12 and 23).
2. **The contract price** may vary (see Clauses 12.3, 13, 17, 18, 19, 21 and 22).
3. If there is more than one owner, the obligations in **the contract** apply to each of them individually and to all of them as a group.

Clause 10. Security of money

Unless otherwise agreed, the owner must deposit that part of **the contract price** not supplied by the **lending authority**, into a separate bank account in the name of the owner. The owner and the builder must be joint signatories to this account.

Clause 11. Deposit

The owner must pay the builder the deposit set out in Item 13 of Schedule 1, at the time when **the contract** is signed.

Clause 12. Progress payments

- | | | |
|--|----|---|
| <i>Progress claims</i> | 1. | The builder must give the owner a written claim for each progress payment at each stage set out in Item 13 of Schedule 1. |
| <i>Progress payments</i> | 2. | The owner must make progress payments on completion of each of the stages set out in Item 13 of Schedule 1. Payment must be made within 5 days after receiving a progress claim from the builder. |
| <i>Interest on late payment and suspension of building works</i> | 3. | If the owner does not make a progress payment or any payment after it becomes due, the builder is entitled: <ol style="list-style-type: none"> (a) to interest on the unpaid amount, at the rate set out in Item 11 of Schedule 1. This is calculated from the date when the payment was due until the date when the payment is made; and (b) to suspend the building works in accordance with the suspension of the building works under Clause 24. The builder must notify the owner in writing of the intention to suspend the building works due to non-payment of a progress payment claim. The builder is to recommence the building works within a reasonable time after the owner has given the builder written notice that the outstanding amount has been paid in full. |

Clause 13. Survey of the site

1. If the boundaries of **the land**, the location of **the site** or the siting of the **building works** are unclear, the builder must write to the owner asking the owner to arrange and pay for a survey.
2. If the owner does not engage a surveyor within 5 **days** after receiving the letter, the builder may do so. If the builder engages a surveyor, this is deemed a variation to **the contract** (see Clause 21).

Clause 14. Access to the site

1. The owner gives the builder exclusive access to and possession of **the site** to carry out the **building works**.
2. The builder has the owner's authority to allow or refuse anyone access, and may order unauthorised people from **the site**.
3. The owner and any authorised officer of the **lending authority**, may go on to **the site** to inspect the work at a reasonable time during normal working hours, as long as it does not delay the progress of the **building works**.
4. The builder retains ownership of all supplied materials which are not used in the **building works**. The builder also owns all recovered and demolished material. The builder will remove all unused, recovered and demolished materials from **the site**.
5. Where it is agreed that the owner will remain in residence in an **existing building** during the **building works** the owner:
 - (a) must give the builder free and uninterrupted access to **the site**;
 - (b) must secure any animals so that they do not interfere with, or prevent access to, **the site**; and
 - (c) is responsible for the care of all household items, floor coverings and fittings.
6. The owner and the owner's agents, contractors and invitees must comply with the builder's occupational health and safety requirements.

Clause 15. Insurance and risk

1. The builder must insure for loss or damage to the **building works** by accident, theft, fire, explosion, lightning, hail, storm and tempest, vandalism, civil commotion and against personal injury, death, property loss or damage arising from **the building works**. If so requested by the owner, the insurance policy must note the names of the owner and the **lending authority**.
2. The builder must obtain public liability insurance in relation to the **building works** to a minimum cover of \$5 million for any one claim.
3. The builder must show proof of these insurances if the owner so requests.
4. The builder must have workers' compensation insurance for the builder's own employees.
5. The builder is not responsible for any loss or liability arising from something done or not done by the owner. The builder is also not responsible for any loss or damage caused by war or terrorism.
6. Unless otherwise stated elsewhere in **the contract**, the builder is not responsible for:
 - (a) loss or damage to the owner's property or for property for which the owner is responsible that is left on **the site**;



(b) subject to paragraph (c) below, any defect, structural deficiency, settlement or deterioration in the **existing building** except to the extent that it is caused by the builder failing to take reasonable care in the carrying out of the **building works**;

(c) damage to ceilings in the **existing building** except to the extent that it is caused by the builder failing to take reasonable care in carrying out the **building works**, but then only to the extent of repairing and excluding any repainting;

(d) damage to paths, gardens, driveways, trees, lawns and other landscaping;

(e) the restoration of areas affected by **the building works** to their original condition.

7. The owner must:

(a) keep and maintain until the date of **practical completion**, a home and contents insurance policy which includes public liability cover over the **existing building, the site** and all of the owner's property on **the land** including cover against fire, burglary, storm and tempest; and

(b) before the builder commences the **building works**, notify the insurer of that insurance policy that the **building works** are to be carried out.

Clause 16. Guarantor(s)

1. The guarantor(s) guarantees that the owner, at the times agreed to in **the contract**, will punctually perform all obligations under **the contract**.
2. The guarantor(s) indemnifies the builder. This means that the guarantor(s) must pay back to the builder any money the builder pays out for loss or damage that:
 - (a) is caused by the owner not paying the guaranteed money on time; or
 - (b) arises from legal action, claims, compensation costs or legal fees or expenses; or
 - (c) is caused by the owner not doing everything the owner promises to do under **the contract**.
3. This guarantee and indemnity continues until the builder receives all of this money.
4. If there is more than one guarantor the obligations in **the contract** apply to them individually and to all of them as a group.
5. This guarantee and indemnity shall not be discharged, released or otherwise affected by:
 - (a) a variation to **the contract**;
 - (b) waiver by the builder of any breach, failure or default of the owner; or
 - (c) anything which, under the law relating to sureties, would have such effect, but for this provision.

Clause 17. Prime cost items

1. Prime costs are allowances for the supply only of goods included in **the contract price**. These are listed in Schedule 4. Each prime cost item must have the allowance listed next to it.



2. The owner must select such a prime cost item or an item required for a provisional sum item in sufficient time to ensure that there is no delay as required by the builder to the **building works**. If an item selected by the owner is unavailable and the owner fails to give timely directions regarding the selection of an alternative item, the builder may select a comparable alternative item.
3. The price of each prime cost item must be calculated separately.
4. If the actual cost is less than the prime cost item allowance, the difference is deducted from **the contract price**.
5. If the actual price is more than the prime cost item allowance, the total difference and the **builder's margin** applied to that difference is added to **the contract price**.
6. Payment for any adjustments to **the contract price** under this clause must be made at the next progress payment stage.

Clause 18. Provisional sums

1. Provisional sums are allowances included in **the contract price** for work including the supply and installation of goods and services which cannot be entirely foreseen, defined or detailed at the time of signing **the contract**. These are listed in Schedule 5. Each provisional sum item must have the allowance listed next to it.
2. The price of each provisional sum item must be calculated separately.
3. If the actual price is less than the provisional sum item allowance, the difference is deducted from **the contract price**.
4. If the actual price is more than the provisional sum item allowance, the total of the difference and **the builder's margin** applied to that difference is added to **the contract price**.
5. Payment for any adjustments to **the contract price** under this clause must be made at the next progress payment stage.

Clause 19. Goods and services supplied by the owner

1. The goods and services supplied by the owner stated in Schedule 3 must be suitable for inclusion into the **building works** and supplied or completed in the time reasonably nominated by the builder. If not, the builder may supply the goods or services and this is a deemed variation (see Clause 21).
2. The owner indemnifies the builder for loss or damage caused by:
 - (a) the owner's delay in supplying or completing the goods and services; and
 - (b) the goods and services supplied by the owner being unsuitable.

Clause 20. Builder's employees or subcontractors

The owner or an authorised officer of **the lending authority** must not give directions to the builder's employees, subcontractors or suppliers without the builder's written consent. This applies on the **site** and anywhere else.

Clause 21. Variation to the building works

1. Deemed variations will be necessary if:
 - (a) **statutory authorities** require them;



- (b) the law has changed since the date of **the contract**;
- (c) there are differences or errors in the plans and specifications provided by the owner;
- (d) **the site** needs to be surveyed (see Clause 13);
- (e) the builder does not receive goods and services supplied by the owner on time (See Clause 19);
- (f) the surface or sub-soil conditions of **the land** (including **rock**) or an **existing building** will not support or is likely to affect the **building works**;
- (g) specified materials become unavailable; or
- (h) something happens that the builder could not reasonably have foreseen.

In each of these cases the price for the variation, including an amount for **the builder's margin**, is added to **the contract price**. Payment for the variation must be made at the next progress stage.

Variation by agreement

2. The owner and the builder may agree in writing to vary the **building works**.

Variation requested by the owner

3. If the owner asks for a variation, the builder must reply in writing to the owner within **5 days** of the request, or as soon as is reasonably practicable. The owner is, at the builder's election, to pay the administration fee stated in Item 14 of Schedule 1 for any variation requested by the owner.

4. The builder has the right to refuse a variation.

5. The builder and the owner must both agree in writing to the variation, its details and how much it will cost or save prior to commencement of the variation work.

Payment for variations to the building works

6. The price or cost of the variation, as the case may be, is added to or deducted from **the contract price**. Payment for the variation must be made at the next progress payment stage (unless a different time is stated in the variation agreement). Any credit to the owner is to be made to the final progress claim.

Owner Copy

Clause 22. Delays and extensions of time

1. The **completion time** will be extended if the **building works** are delayed because of:
- (a) a variation;
 - (b) any suspension of the **building works** beyond the builder's control or under **the contract**;
 - (c) bad weather conditions that affect the **building works**;
 - (d) disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are out of the builder's control;
 - (e) civil commotion or industrial action affecting the work of sub-contractors, tradespeople, a manufacturer or a supplier of materials for the **building works**;
 - (f) anything done or not done by the owner;
 - (g) delays in getting any approvals that are out of the builder's control;
 - (h) the industry shutdown during the **25 day** period beginning on or about 22 December each year;
 - (i) delay in the supply of materials selected by the owner;
 - (j) an "act of God", fire, earthquake or explosion;



- (k) any discrepancy in the plans and specifications which is not the fault of the builder; or
- (l) the need for a survey of **the site or the land**.
- Procedure for an extension of time* 2. The builder must notify the owner in writing within **5 days** of becoming aware that the **building works** will be delayed. The builder must set out in the notice the reasons for the delay and how much extra time is needed.
- Cost of an extension of time* 3. Except for the industry shutdown referred to in Clause 22.1(h), the builder shall be entitled to an increase in **the contract price**, but only if the delay results in an increase to the costs of the builder. The builder must include this amount in the next progress claim.

Clause 23. Practical completion

1. When the **building works** have reached the stage of **practical completion**, the builder must give the owner a notice of **practical completion** and the final progress claim.
2. Within **5 days**, the owner and the builder must meet together to inspect the **building works**. The owner must give the builder a written and signed list of any work required by **the contract** which the owner claims is defective or unfinished and which is to be rectified or done for **practical completion** to be reached. If the owner fails to do so within **5 days**, the owner must immediately pay the amount of the final progress claim.
3. The builder must promptly rectify the listed defective or unfinished work in accordance with **the contract**.
- Handing over the keys* 4. When the builder has rectified the listed defective or unfinished work necessary to reach the stage of **practical completion**, the builder must notify the owner. The owner must pay the final progress payment in full within **5 days** of receiving the notice.
- When the owner pays the final progress payment, the builder must hand any keys for the **building works** to the owner.
- Possession without consent* 5. The owner must not take possession of the **building works** without the builder's consent until all outstanding money owed to the builder is paid.
- Damages for late completion of building works* 6. The owner may be entitled to liquidated damages if the **building works** are not finished by the **completion time**. These damages are calculated by the extra time taken to finish the work, at the rate set out in Item 12 of Schedule 1. If the rate set out is zero or nil, then the owner is not entitled to damages.
- Maintenance services period* 7. Within **65 days** after the date of **practical completion**, the owner must provide the builder with a written list of the claimed defects if any, in the **building works**. The builder must within **15 days** after the expiry of the **65 day** period rectify the defects resulting from work or materials not being in accordance with **the contract**.
8. Where the builder is required to rectify claimed defects as notified by the owner, the owner must allow reasonable access to the property for these works to be completed. Access to the property will need to be provided at suitable times as reasonably required by the builder in order to rectify the defects.

Owner Copy

Clause 24. Suspending the building works

1. If the owner breaches **the contract**, the builder may suspend the **building works** by notifying the owner in writing. This right is additional to that in Clause 12.3.



2. If the owner corrects the breach within 5 **days** of the builder's notice, the **building works** must resume within a reasonable timeframe of the builder being notified of the owner's correction of the breach.

Clause 25. Ending the contract

*Ending the contract
for owner's breach*

1. If the owner breaches **the contract** the builder may suspend the **building works** and must notify the owner of the breach in writing by certified mail or personal service.
2. The builder may end **the contract** if:
 - (a) 10 **days** have passed since the builder gave notice of the breach;
 - (b) the owner is still in breach of **the contract**; and
 - (c) the builder notifies the owner in writing by certified mail or personal service that **the contract** is at an end.
3. If the owner disputes the builder's notice before **the contract** is ended, the owner must notify the builder in writing by certified mail or personal service. The builder may suspend the **building works** and the dispute must be taken to dispute resolution (see Clause 26).

*Ending the contract
for builder's breach*

4. If the builder breaches **the contract**, the owner must notify the builder of the breach in writing by certified mail or personal service.
5. The owner may end **the contract** if:
 - (a) 10 **days** have passed since the owner gave notice of the breach;
 - (b) the builder is still in breach of **the contract**; and
 - (c) the owner notifies the builder in writing by certified mail or personal service that **the contract** is at an end.
6. If the builder disputes the owner's notice before **the contract** is ended, the builder must notify the owner in writing by certified mail or personal service. The builder may suspend the **building works** and the dispute must be taken to dispute resolution (see Clause 26).

*Other ways to end
the contract*

7. The owner or the builder may also end **the contract** by written agreement or by sending the other written notice by certified mail or personal service:
 - (a) if the other becomes bankrupt or goes into liquidation;
 - (b) if a deemed variation makes **the contract price** rise by more than 10 percent; or
 - (c) if planning or building approvals cannot be obtained within the time specified in Clause 7.

*Moneys owed by the
owner to the builder*

8. If **the contract** is ended, then the owner must pay as a debt due and payable:
 - (a) the cost of the **building works** to date;
 - (b) the cost of any materials on **the site** or already ordered from suppliers;
 - (c) the cost of leaving **the site**;
 - (d) **the builder's margin**, applied to the total of (a) plus (b) plus (c);
 - (e) default interest on any unpaid monies under Clause 12.3(a); and
 - (f) all other costs and losses incurred by the builder as a consequence of this contract being ended.
9. Nothing in this Clause prejudices the right of a party to recover damages or exercise any other right or remedy against the other party for breach (including repudiatory breach) of contract.

Owner Copy



Clause 26. Dispute resolution

- Notice of dispute*
1. If there is a dispute between the owner and the builder, either one must promptly give the other written notice of the dispute.
- Procedure for dispute resolution*
2. Disputes must be resolved according to Territory laws that govern the resolution of building disputes.
 3. The owner and the builder must meet within **7 days** to discuss the matters in dispute and attempt to resolve them by negotiation, mediation or other agreed method.

Clause 27. Notices

1. A notice is received when delivered in person, transmitted by facsimile or sent by post and **2 days** have passed after it is sent.
2. This does not include notices that must be sent by certified mail.
3. The owner and the builder must promptly notify each other if they change address.

Clause 28. Assignment and sub-letting

1. The owner and the builder may only assign their rights and obligations under **the contract**, with the written agreement of the other.
2. The builder may sub-contract any part of the **building works**, but the builder remains responsible for all the **building works**.

Clause 29. Manufacturer's warranty

The builder is not responsible for defective goods or services covered by manufacturer's or supplier's warranty.

Clause 30. Security over site

1. The owner charges the land constituting **the site** with the due payment to the builder of all monies that will and/or may become payable under **the contract** or otherwise in connection with carrying out the **building works**.
2. The owner irrevocably authorises and consents to the builder lodging a caveat in respect of the land constituting **the site** to protect the builder's interest and the charge created under **the contract**.

Clause 31. General

1. Except as provided at law or in equity or elsewhere in **the contract**, none of the provisions of the contract may be varied, waived, discharged or released, except with the prior written consent of the parties.
2. Any provision in **the contract** which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of **the contract**.

DS DS DS
H M SH

ACT Residential Building Contract for Alterations and Additions

OWNERS: Kate Inman
Matthew Sutherland
JOB: 1101
SITE: 4 Dungowan Street
Hawker
ACT 2614

Builder Copy



To verify your builder is a HIA member email enquiry@hia.com.au

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Explanatory notes for the owner

Welcome to your HIA Plain English Contract!

Please read the following notes about important clauses found in the Contract.

These notes are not part of the contract

Before you sign the contract please check that:

- the builder's licence is current;
- the builder's licence covers the type of work described in the contract;
- the name on the builder's licence is the same as the name on the contract; and
- the builder is a HIA member.

Where this contract is for residential building work of a value greater than \$12,000 and being work for which a building permit is required under the Building Act, the builder must effect housing indemnity insurance cover as required by the Building Act before commencing any of the work.

About the contract

1. The contract and the attachments

In Attachment A of this contract you and the builder must fill in the details left blank. If necessary you should also add some details in the other attachments.

If you do not use an attachment, please cross it out and initial it.

Some words in this contract have special meaning (see Clause 2).

2. Plans and specifications

Plans and specifications are also part of the contract. You and the builder must sign and date them. You both must keep a copy of this contract and of the plans and specifications.

3. Deposit

The deposit requested by the builder may only be as much as the law allows. In the ACT the maximum amount that you can recover under the insurance scheme for a deposit is \$10,000.00.

4. Extensions of time

Sometimes the builder may need to extend the time for completing the work. If there are any extensions the builder must tell you in writing.

5. Maintenance service period

You must notify the builder in writing of any defects which become apparent within 65 days after the date of practical completion.

6. Sums allowed for supply and installing goods

Please check that the allowances for provisional sums and prime cost items are clearly stated and realistic.

7. Progress payments

Please ensure that you understand what progress payments are and when you must pay them. Your progress payments should not be for more than the value of building works already finished.

8. Information you must give the builder before work begins

Before building works start you need to give the builder the following essential information:

- proof that you own the property (eg a certificate of title or rates notice);
- approval from your lending authority;
- proof that the mortgage documents have been signed, if there is to be a mortgage; and
- other proof that you can pay the contract price.

9. What can change the contract price?

The contract price can change – up or down – because of:

- discrepancies or errors in the documents;
- adjustments to provisional sums (eg excavations, sewer and storm water connections);
- adjustments to prime cost items (eg toilets, baths, sinks etc);
- delays;
- variations for unforeseen circumstances (eg rock, fill or underground water on the site);

- changes to government charges and taxes;
- changes to statutory authority or local government requirements; and
- variations requested by you.

10. Variations

If there are variations, you and the builder must both sign a separate written document called a Variation Notice prior to any additional work being carried out.

11. Initialling the pages of the contract

You and the builder must initial the bottom of each page of the contract and any changes, attachments, plans and specifications.

12. In the event of a dispute your options are:

- resolution in accordance with Territory laws;
- negotiation: you and your builder must first try to resolve the dispute by discussion;
- mediation: both parties go to a mediator or mediation service to reach a compromise;
- arbitration: both parties go to a private arbitrator, who decides one way or the other;
- expert determination; or
- litigation: going to court.

The HIA strongly recommends that you and the builder try to resolve any dispute by negotiation or mediation.

If you do not understand any part of the contract or these notes, please consult your builder and see your solicitor for further advice.

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The builder	1
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Schedule 1. Details owner and builder must complete (Clause 1)

Item

1. **Date** 30-Jun-2023 29-Jun-2023

This contract is dated the:

2. **The owner(s)**

Owner 1

NAME Kate Inman
ADDRESS 4 Dungowan Street
SUBURB Hawker **STATE** ACT **POSTCODE** 2614
ABN **ACN**
WORK **HOME**
FAX **MOBILE** 0418 477 668

EMAIL katemichelleinman@gmail.com

Owner 2

NAME Matthew Sutherland
ADDRESS 4 Dungowan Street
SUBURB Hawker **STATE** ACT **POSTCODE** 2614
ABN **ACN**
WORK **HOME**
FAX **MOBILE** 0415 170 123

EMAIL Mattsutherland123@gmail.com

3. **The builder**

NAME Turnkey Creations Pty Ltd
ADDRESS Po Box 2265
SUBURB Canberra City **STATE** ACT **POSTCODE** 2601
ABN 67155832732 **ACN** 155832732
WORK 1300979658 **HOME** 0407237765
FAX 1300979657 **MOBILE** 0407237765

EMAIL info@cgfb.com.au
BUILDER'S LICENCE NUMBER 2012767
HIA MEMBER NUMBER 589190 **HIA MEMBERSHIP EXPIRY** August 2023

4. **The land** (Clause 2)

THE LAND IS AT:
BLOCK 32 **SECTION** 24

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DIVISION Hawker
 CERTIFICATE OF TITLE
Street Address:
 ADDRESS 4 Dungowan Street
 SUBURB Hawker

STATE ACT POSTCODE 2614

Mortgages
Mortgage 1

BANK
 AMOUNT
 BRANCH
 CONTACT NAME

5. **Encumbrances, covenants and easements** (Clause 4)

The land containing the site is affected by the following encumbrances, covenants, easements and caveats. Please specify the substance of each encumbrance, covenant, easement and caveat and give details of any registrations where registered at the Registrar General's Office.

6. **Contract price** (Clause 2)

PRICE EXCLUDING GST:	\$320,000.25
GST ON THE ABOVE AMOUNT:	\$32,000.02
THE CONTRACT PRICE IS GST INCLUSIVE	\$352,000.27

7. **Sources of funds** (Clauses 4, 10)

The contract price will be funded by:

TOTAL FUNDS

8. **Planning and building approvals** (Clause 7)

(If no person stated then the builder)

THE PERSON TO OBTAIN AND PAY FOR ALL PLANNING AND BUILDING APPROVALS IS:
 Turnkey Creations Pty Ltd Trading as Canberra Granny Flat Builders

9. **Completion time** (Clauses 2, 6, 22)

THE BUILDING WORKS MUST REACH THE STAGE OF PRACTICAL COMPLETION NO MORE THAN
 120 days
 AFTER COMMENCEMENT, SUBJECT TO CLAUSE 22.

10. **Builder's margin for adjustments and ending the contract**

(Clauses 17, 18, 21, 25)

THE BUILDER'S MARGIN IS 20.00%

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11. **Interest on late and outstanding payments by the owner**

(Clause 12.3)

(If no rate stated, that applicable to unpaid judgements of the ACT Supreme Court)

IF ANY PAYMENTS ARE LATE, THE OWNER MUST PAY INTEREST TO THE BUILDER AT 14.00%

12. **Liquidated damages** (Clause 23.6)

Note: *this item should be deleted when the owner remains in residence on the land.*

(if nothing stated \$1)

\$1,750.00 PER WEEK CALCULATED ON A DAILY BASIS

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13. **Progress Payments** (Clause 12)

The stages at which progress claims are to be made must be clearly stated in this schedule

Stage	Percent	Amount
Deposit Should not exceed \$10,000	2.84%	\$9,996.81
Planning Approvals Submitted Planning approval plans and documents have been submitted for planning approval	7.16%	\$25,203.22
Floor System Complete Structural floor system is complete with services to floor level	20.00%	\$70,400.05
Wall and Roof Frames Complete Wall and roof frames are complete and braced	15.00%	\$52,800.04
Close Up Complete The building is lockable and watertight. Windows, wall cladding, roof coverings, eaves and external doors are installed	15.00%	\$52,800.04
Fixings Complete Interior doors and trims are complete. Excludes joinery cabinets.	15.00%	\$52,800.04
Painting Complete Interior and exterior painting is complete.	15.00%	\$52,800.04
Project Completion Project walk through has been conducted and owners have signed off on their satisfaction with the project	10.00%	\$35,200.03
Total	100.00%	\$352,000.27

14. **Administration fee** (Clause 21.3)

THE OWNER MUST PAY

\$.00

AS AN ADMINISTRATION FEE.

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Schedule 2. Special Conditions (Clause 3)

Access to the building site by the owners and associated visitors will require a written request and authorisation by the builder including a site induction after the stage that site fencing has been installed.

Access to the site by any external contractors will require a written request and authorisation by the builder including a site induction after the stage that site fencing has been installed. Contractors will also be required to provide a copy of public liability insurance and white cards for all workers who intend to access the site.

Owners will be responsible to inform their home and contents insurer of the work to be completed on the property. At the stage the project is handed over/completed owners are responsible to inform their insurer the work is complete.

This agreement is to be read in conjunction with the Customer Project Proposal and the Site Scope Proposal, signed date... 30-Jun-2023 29-Jun-2023

Kate Inman Matthew Sutherland

Owners Name(s).....

Owners Signature(s).....
DocuSigned by: Kate Inman 2B8E6D47E45D4EC... DocuSigned by: Matthew Sutherland 4A42494B7D424E6...

Builders Signature.....
DocuSigned by: [Signature] 963F096GCD73442...

Builder Copy



Schedule 3. Exclusions (Clause 3)

The **owner** acknowledges that the **builder** will not be responsible for the supply and installation of materials, goods or the provision of services that are listed below. Nor will the **builder** be responsible for the rectification of any defective or unfinished work of the owner.

Removal and associated costs of any asbestos containing material that is not reasonably visible during the preparation and planning process, that is found during site work.

Removal of any tree stumps, waste or other contamination that is not reasonably visible before the preparation and planning process, that is found during site work.

Upgrades to existing property infrastructure that is not included in the project proposal Unless detailed in the Customer Project Proposal

Security of pets from entering the fenced site area.

Excavation in rock has not been included.

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Schedule 4. Prime Cost Items (Clause 17)

Item	Allowance
Bricks \$1.40 per brick x 451.5	\$632.10
Floor Coverings - Bedrooms and Study - \$60m ² x 27m ²	\$1,620.00
Floor Coverings- Living Areas - \$100m ² x 26m ² Carpet or Vinyl @ \$100m ² Timber, Bamboo or Laminate @ \$100m ² Floor Tiles \$40 m ² Supply + \$60m ² Installation = \$100 m ²	\$2,600.00
Wall Tiles - \$40m ² x 31m ² Includes bathrooms, ensuites and separate toilets walls (shower recess, bath and skirting tile)	\$1,240.00
Vanity Hand Basin Splashback Tiles - \$50m ² x 0m ² Includes vanity hand basins in bathrooms, ensuites and separate toilets	\$0.00
Kitchen Splashback Tiles - \$40 m ² x 4m ²	\$160.00
Laundry Splashback Tiles - \$40m ² x 0m ²	\$0.00
Floor Tiles - \$40m ² x 8m ²	\$320.00
Interior Lighting - \$30 each x 6	\$180.00
Exterior Sensor Lights - \$100 each x 1	\$100.00
Exterior Lighting - \$30 each x 0	\$0.00
Bathroom Accessories - \$200 each x 1	\$200.00
Toilet Suite - \$400 each x 1	\$500.00
Vanity Hand Basin- \$500 each x 1	\$500.00
Separate Toilet Hand Basin - \$200 each x 0	\$0.00
Vanity Hand Basin Tapware - \$180 each x 1	\$180.00
Separate Toilet Hand Basin Tapware - \$150 each x 0	\$0.00
Separate Toilet Accessories - \$50 each x 0	\$0.00
Shower Tapware - \$150 each x 1	\$150.00
Shower Head and Rail - \$300 each x 1	\$300.00
Bath - \$600 each x 0	\$0.00
Bath Tapware - \$200 each x 0	\$0.00
Laundry Tapware - \$150 each x 1	\$150.00
Laundry Sink - \$250 each x 1	\$250.00
Kitchen Tapware - \$200 each x 1	\$200.00
Kitchen Sink - \$250 each x 1	\$250.00
Oven - \$800 each x 1	\$800.00
Cooktop - \$600 each x 1	\$600.00
Rangehood - \$300 each x 1	\$300.00
Dishwasher - \$700 each x 1	\$700.00
Total	\$11,932.10

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Builder Copy



Initials: ^{DS} ^{DS} ^{DS} *MSH*

Schedule 5. Provisional Sums (Clause 18)

Item	Allowance
Total	

Builder Copy



Signatures

This **contract** is made between the **Owner** and the **Builder**.
The **schedules** form part of this **contract**.
The **Owner** has read and understood this **contract**.

Owner 1

NAME Kate Inman

SIGNATURE  DocuSigned by:
Kate Inman
288E6D47E43D4EC...

WITNESS'S SIGNATURE  DocuSigned by:
Jason Yeung
9B2C808C457D497...

WITNESS'S NAME AND ADDRESS

Jason Yeung

48/120 Thynne Street Bruce, ACT 2617

Owner 2

NAME Matthew Sutherland

SIGNATURE  DocuSigned by:
Matthew Sutherland
7A42494B7C438E...

WITNESS'S SIGNATURE  DocuSigned by:
Jason Yeung
9B2C808C457D497...

WITNESS'S NAME AND ADDRESS

Jason Yeung

48/120 Thynne Street Bruce, ACT 2617

Builder Copy



Builder

NAME Bentan Honeywood

SIGNATURE 
 903F099CCD73442...
 Signed for and on behalf of: Turnkey Creations Pty Ltd

WITNESS'S SIGNATURE 
 9B2C808C457D497...

WITNESS'S NAME AND ADDRESS

Jason Yeung
.....
48/120 Thynne Street Bruce, ACT 2617
.....
.....

Please note

- 1. Where a company is signing: 'by A. Smith, director' or 'Signed for and on behalf of XYZ Pty Ltd'.
- 2. Where a partnership is signing: 'B. Bloggs in partnership with A. Bloggs and C. Bloggs'

Builder Copy



Deed of guarantee and indemnity

Interpretation

BUILDER IS
OWNER IS

Guarantors

ADDRESS LINE 1
ADDRESS LINE 2
SUBURB

STATE

POSTCODE

Contract is that between the **Builder** and the **Owner** dated:

Background

The **Guarantor** executed this Deed at the **Owner's** request.

The **Guarantor** is aware of the **Owner's** obligations under the **Contract**.

Operative

1. Guarantee

The **Guarantor** guarantees to the **Builder**, the fulfilment of the **Owner's** obligations under the **Contract** including but not limited to the due payment of all moneys arising out of the subject matter of the **Contract**.

2. Indemnity

The **Guarantor** indemnifies the **Builder** against any claim, loss or damage arising out of the subject matter of the **contract** caused by or resulting from any non-fulfilment of the **Owner's** obligations under the **Contract**.

3. Principal Debtor

The **Guarantor** is deemed to be a principal debtor jointly and severally liable with the **Owner** to discharge the **Owner's** obligations under the **Contract**.

4. No Merger

The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. No Release

The **Guarantor** is not discharged by:

- any variation to the **Contract** including a variation to the building works;
- any delay or claim by the **Builder** to enforce a right against the **Owner**; and
- any forbearance given to the **Owner** to perform the **Owner's** obligations under the **Contract**.

6. Severability

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

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7. When More Than One Guarantor

If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

8. Waiver of Rights

The **Guarantor** waives all rights as surety inconsistent with any of the terms of this Deed or to the detriment or disadvantage of the **Builder**.

Guarantor's Statement

I/we understand the nature, terms and extent of the guarantee and indemnity provided by me/us and further acknowledge that I/we have obtained legal advice prior to executing this Deed.

Signed as a Deed

SIGNATURE

WITNESS'S NAME AND ADDRESS

.....
.....
.....

SIGNATURE

DATE

Builder Copy



The contract

Clause 1. Details owner and builder must complete

See Schedules 1-5 of this contract.

Clause 2. Definitions

In this contract:

the **builder's margin** for adjustments to prime cost items, provisional sums, variations and termination means the builder's margin identified in Item 10 of Schedule 1.

the contract means the agreement set out in these conditions of contract (including Schedules 1-5) and in the signed plans and signed specifications attached to this contract, signed by both the builder and the owner.

building works means the work to be done on the site by the builder under **the contract**.

the contract price means the amount to be paid by the owner to the builder, set out in Item 6 of Schedule 1 or as adjusted in accordance with **the contract**.

days means working days and does not include weekends and public holidays.

existing building means any building or structure on **the land** which affects or will be affected by the **building works** or on which the **building works** are to be carried out and includes services to an **existing building**.

the land means the land identified in Item 4 of Schedule 1.

lending authority means the person, corporation or institution lending all or part of **the contract price** to the owner.

the site means the whole or that part of **the land** reasonably required by the builder for the carrying out and completion of the **building works**.

commencement means commencing work with the preparation of **the site**.

completion time is stated in Item 9 of Schedule 1.

rock means material that could not be readily excavated by a backhoe.

practical completion means that the **building works** have reached the stage where the builder certifies that they have been completed in accordance with **the contract**, except for minor omissions and, where applicable, has done all that the builder is required to do under **the contract** to enable a certificate of occupancy to be obtained.

statutory authority means the Local Government or any State, Territory or Federal Government agency that has the power to affect the **building works**.

Clause 3. The building works

1. The builder must finish the **building works** according to **the contract**, and all relevant laws and statutory requirements.

Builder Copy



2. Special conditions of contract are listed in Schedule 2.
3. Items excluded from **the contract** are listed in Schedule 3.

Clause 4. Essential information

1. The owner must give the following essential information to the builder within 90 **days** after **the contract** is signed:
 - (a) details of any easements, covenants, encumbrances and caveats affecting **the land**; and
 - (b) written proof that the owner owns **the land** (eg a certificate of title or a rates notice) or is otherwise entitled to build on **the land**; and
 - (c) written proof that the owner can pay the builder (eg a letter from a **lending authority**); and
 - (d) written proof that any loan has been approved by the **lending authority**, and that any mortgage papers have been signed; or
 - (e) evidence of funds held in a bank account, term deposit, etc. if a lending authority is not being used; and
 - (f) all necessary building and planning approvals, unless the builder obtains them under Clause 7; and
 - (g) proof that all other statutory obligations of the owner are satisfied.
2. If the owner does not give the builder all essential information under Clause 4(1) within 90 **days** after **the contract** is signed the builder may give the owner a written notice to end **the contract** and in which case the builder is entitled to retain the deposit or an amount calculated in accordance with Clause 25.8, whichever is the greater.

Clause 5. When the builder must start

Unless the parties otherwise agree in writing, the builder must commence the **building works** within 15 **days** of receiving all of the essential information in Clause 4.

Clause 6. When the builder must finish

1. The **building works** must reach the stage of **practical completion** by the **completion time**.
2. The **completion time** may be extended in certain circumstances (see Clause 22).

Clause 7. Planning and building approvals

1. The person identified in Item 8 of Schedule 1 will obtain and pay for all planning and building approvals.
2. If the builder is named in Item 8 of Schedule 1, the owner agrees to sign all documents and do all acts as requested by the builder to enable the builder to obtain all necessary permissions, consents and authorities on behalf of the owner.
3. The person identified in Item 8 of Schedule 1 must obtain all approvals within 90 **days** of signing the **contract**.



Clause 8. Documentation and copyright

1. The owner indemnifies the builder for any claim for breach of copyright or moral rights, if the builder carries out the building work according to plans which are:
 - (a) supplied by the owner;
 - (b) prepared under the instruction of the owner; or
 - (c) prepared from sketches supplied by the owner.
2. The builder owns the copyright in any documents prepared by the builder.

Clause 9. The contract price

1. The owner must pay the builder **the contract price** in the manner stated elsewhere in **the contract** (see Clauses 12 and 23).
2. **The contract price** may vary (see Clauses 12.3, 13, 17, 18, 19, 21 and 22).
3. If there is more than one owner, the obligations in **the contract** apply to each of them individually and to all of them as a group.

Clause 10. Security of money

Unless otherwise agreed, the owner must deposit that part of **the contract price** not supplied by the **lending authority**, into a separate bank account in the name of the owner. The owner and the builder must be joint signatories to this account.

Clause 11. Deposit

The owner must pay the builder the deposit set out in Item 13 of Schedule 1, at the time when **the contract** is signed.

Clause 12. Progress payments

- | | | |
|--|----|---|
| <i>Progress claims</i> | 1. | The builder must give the owner a written claim for each progress payment at each stage set out in Item 13 of Schedule 1. |
| <i>Progress payments</i> | 2. | The owner must make progress payments on completion of each of the stages set out in Item 13 of Schedule 1. Payment must be made within 5 days after receiving a progress claim from the builder. |
| <i>Interest on late payment and suspension of building works</i> | 3. | If the owner does not make a progress payment or any payment after it becomes due, the builder is entitled: <ol style="list-style-type: none"> (a) to interest on the unpaid amount, at the rate set out in Item 11 of Schedule 1. This is calculated from the date when the payment was due until the date when the payment is made; and (b) to suspend the building works in accordance with the suspension of the building works under Clause 24. The builder must notify the owner in writing of the intention to suspend the building works due to non-payment of a progress payment claim. The builder is to recommence the building works within a reasonable time after the owner has given the builder written notice that the outstanding amount has been paid in full. |

Clause 13. Survey of the site

1. If the boundaries of **the land**, the location of **the site** or the siting of the **building works** are unclear, the builder must write to the owner asking the owner to arrange and pay for a survey.
2. If the owner does not engage a surveyor within 5 **days** after receiving the letter, the builder may do so. If the builder engages a surveyor, this is deemed a variation to **the contract** (see Clause 21).

Clause 14. Access to the site

1. The owner gives the builder exclusive access to and possession of **the site** to carry out the **building works**.
2. The builder has the owner's authority to allow or refuse anyone access, and may order unauthorised people from **the site**.
3. The owner and any authorised officer of the **lending authority**, may go on to **the site** to inspect the work at a reasonable time during normal working hours, as long as it does not delay the progress of the **building works**.
4. The builder retains ownership of all supplied materials which are not used in the **building works**. The builder also owns all recovered and demolished material. The builder will remove all unused, recovered and demolished materials from **the site**.
5. Where it is agreed that the owner will remain in residence in an **existing building** during the **building works** the owner:
 - (a) must give the builder free and uninterrupted access to **the site**;
 - (b) must secure any animals so that they do not interfere with, or prevent access to, **the site**; and
 - (c) is responsible for the care of all household items, floor coverings and fittings.
6. The owner and the owner's agents, contractors and invitees must comply with the builder's occupational health and safety requirements.

Clause 15. Insurance and risk

1. The builder must insure for loss or damage to the **building works** by accident, theft, fire, explosion, lightning, hail, storm and tempest, vandalism, civil commotion and against personal injury, death, property loss or damage arising from **the building works**. If so requested by the owner, the insurance policy must note the names of the owner and the **lending authority**.
2. The builder must obtain public liability insurance in relation to the **building works** to a minimum cover of \$5 million for any one claim.
3. The builder must show proof of these insurances if the owner so requests.
4. The builder must have workers' compensation insurance for the builder's own employees.
5. The builder is not responsible for any loss or liability arising from something done or not done by the owner. The builder is also not responsible for any loss or damage caused by war or terrorism.
6. Unless otherwise stated elsewhere in **the contract**, the builder is not responsible for:
 - (a) loss or damage to the owner's property or for property for which the owner is responsible that is left on **the site**;



(b) subject to paragraph (c) below, any defect, structural deficiency, settlement or deterioration in the **existing building** except to the extent that it is caused by the builder failing to take reasonable care in the carrying out of the **building works**;

(c) damage to ceilings in the **existing building** except to the extent that it is caused by the builder failing to take reasonable care in carrying out the **building works**, but then only to the extent of repairing and excluding any repainting;

(d) damage to paths, gardens, driveways, trees, lawns and other landscaping;

(e) the restoration of areas affected by **the building works** to their original condition.

7. The owner must:

(a) keep and maintain until the date of **practical completion**, a home and contents insurance policy which includes public liability cover over the **existing building, the site** and all of the owner's property on **the land** including cover against fire, burglary, storm and tempest; and

(b) before the builder commences the **building works**, notify the insurer of that insurance policy that the **building works** are to be carried out.

Clause 16. Guarantor(s)

1. The guarantor(s) guarantees that the owner, at the times agreed to in **the contract**, will punctually perform all obligations under **the contract**.
2. The guarantor(s) indemnifies the builder. This means that the guarantor(s) must pay back to the builder any money the builder pays out for loss or damage that:
 - (a) is caused by the owner not paying the guaranteed money on time; or
 - (b) arises from legal action, claims, compensation costs or legal fees or expenses; or
 - (c) is caused by the owner not doing everything the owner promises to do under **the contract**.
3. This guarantee and indemnity continues until the builder receives all of this money.
4. If there is more than one guarantor the obligations in **the contract** apply to them individually and to all of them as a group.
5. This guarantee and indemnity shall not be discharged, released or otherwise affected by:
 - (a) a variation to **the contract**;
 - (b) waiver by the builder of any breach, failure or default of the owner; or
 - (c) anything which, under the law relating to sureties, would have such effect, but for this provision.

Clause 17. Prime cost items

1. Prime costs are allowances for the supply only of goods included in **the contract price**. These are listed in Schedule 4. Each prime cost item must have the allowance listed next to it.



2. The owner must select such a prime cost item or an item required for a provisional sum item in sufficient time to ensure that there is no delay as required by the builder to the **building works**. If an item selected by the owner is unavailable and the owner fails to give timely directions regarding the selection of an alternative item, the builder may select a comparable alternative item.
3. The price of each prime cost item must be calculated separately.
4. If the actual cost is less than the prime cost item allowance, the difference is deducted from **the contract price**.
5. If the actual price is more than the prime cost item allowance, the total difference and the **builder's margin** applied to that difference is added to **the contract price**.
6. Payment for any adjustments to **the contract price** under this clause must be made at the next progress payment stage.

Clause 18. Provisional sums

1. Provisional sums are allowances included in **the contract price** for work including the supply and installation of goods and services which cannot be entirely foreseen, defined or detailed at the time of signing **the contract**. These are listed in Schedule 5. Each provisional sum item must have the allowance listed next to it.
2. The price of each provisional sum item must be calculated separately.
3. If the actual price is less than the provisional sum item allowance, the difference is deducted from **the contract price**
4. If the actual price is more than the provisional sum item allowance, the total of the difference and **the builder's margin** applied to that difference is added to **the contract price**.
5. Payment for any adjustments to **the contract price** under this clause must be made at the next progress payment stage.

Clause 19. Goods and services supplied by the owner

1. The goods and services supplied by the owner stated in Schedule 3 must be suitable for inclusion into the **building works** and supplied or completed in the time reasonably nominated by the builder. If not, the builder may supply the goods or services and this is a deemed variation (see Clause 21).
2. The owner indemnifies the builder for loss or damage caused by:
 - (a) the owner's delay in supplying or completing the goods and services; and
 - (b) the goods and services supplied by the owner being unsuitable.

Clause 20. Builder's employees or subcontractors

The owner or an authorised officer of **the lending authority** must not give directions to the builder's employees, subcontractors or suppliers without the builder's written consent. This applies on the **site** and anywhere else.

Clause 21. Variation to the building works

1. Deemed variations will be necessary if:
 - (a) **statutory authorities** require them;



- (b) the law has changed since the date of **the contract**;
- (c) there are differences or errors in the plans and specifications provided by the owner;
- (d) **the site** needs to be surveyed (see Clause 13);
- (e) the builder does not receive goods and services supplied by the owner on time (See Clause 19);
- (f) the surface or sub-soil conditions of **the land** (including **rock**) or an **existing building** will not support or is likely to affect the **building works**;
- (g) specified materials become unavailable; or
- (h) something happens that the builder could not reasonably have foreseen.

In each of these cases the price for the variation, including an amount for **the builder's margin**, is added to **the contract price**. Payment for the variation must be made at the next progress stage.

Variation by agreement

2. The owner and the builder may agree in writing to vary the **building works**.

Variation requested by the owner

3. If the owner asks for a variation, the builder must reply in writing to the owner within **5 days** of the request, or as soon as is reasonably practicable. The owner is, at the builder's election, to pay the administration fee stated in Item 14 of Schedule 1 for any variation requested by the owner.

4. The builder has the right to refuse a variation.

5. The builder and the owner must both agree in writing to the variation, its details and how much it will cost or save prior to commencement of the variation work.

Payment for variations to the building works

6. The price or cost of the variation, as the case may be, is added to or deducted from **the contract price**. Payment for the variation must be made at the next progress payment stage (unless a different time is stated in the variation agreement). Any credit to the owner is to be made to the final progress claim.

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Clause 22. Delays and extensions of time

1. The **completion time** will be extended if the **building works** are delayed because of:
- (a) a variation;
 - (b) any suspension of the **building works** beyond the builder's control or under **the contract**;
 - (c) bad weather conditions that affect the **building works**;
 - (d) disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are out of the builder's control;
 - (e) civil commotion or industrial action affecting the work of sub-contractors, tradespeople, a manufacturer or a supplier of materials for the **building works**;
 - (f) anything done or not done by the owner;
 - (g) delays in getting any approvals that are out of the builder's control;
 - (h) the industry shutdown during the **25 day** period beginning on or about 22 December each year;
 - (i) delay in the supply of materials selected by the owner;
 - (j) an "act of God", fire, earthquake or explosion;



- (k) any discrepancy in the plans and specifications which is not the fault of the builder; or
- (l) the need for a survey of **the site or the land**.
- Procedure for an extension of time* 2. The builder must notify the owner in writing within **5 days** of becoming aware that the **building works** will be delayed. The builder must set out in the notice the reasons for the delay and how much extra time is needed.
- Cost of an extension of time* 3. Except for the industry shutdown referred to in Clause 22.1(h), the builder shall be entitled to an increase in **the contract price**, but only if the delay results in an increase to the costs of the builder. The builder must include this amount in the next progress claim.

Clause 23. Practical completion

1. When the **building works** have reached the stage of **practical completion**, the builder must give the owner a notice of **practical completion** and the final progress claim.
 2. Within **5 days**, the owner and the builder must meet together to inspect the **building works**. The owner must give the builder a written and signed list of any work required by **the contract** which the owner claims is defective or unfinished and which is to be rectified or done for **practical completion** to be reached. If the owner fails to do so within **5 days**, the owner must immediately pay the amount of the final progress claim.
 3. The builder must promptly rectify the listed defective or unfinished work in accordance with **the contract**.
 4. When the builder has rectified the listed defective or unfinished work necessary to reach the stage of **practical completion**, the builder must notify the owner. The owner must pay the final progress payment in full within **5 days** of receiving the notice.
When the owner pays the final progress payment, the builder must hand any keys for the **building works** to the owner.
 5. The owner must not take possession of the **building works** without the builder's consent until all outstanding money owed to the builder is paid.
 6. The owner may be entitled to liquidated damages if the **building works** are not finished by the **completion time**. These damages are calculated by the extra time taken to finish the work, at the rate set out in Item 12 of Schedule 1. If the rate set out is zero or nil, then the owner is not entitled to damages.
 7. Within **65 days** after the date of **practical completion**, the owner must provide the builder with a written list of the claimed defects if any, in the **building works**. The builder must within **15 days** after the expiry of the **65 day** period rectify the defects resulting from work or materials not being in accordance with **the contract**.
 8. Where the builder is required to rectify claimed defects as notified by the owner, the owner must allow reasonable access to the property for these works to be completed. Access to the property will need to be provided at suitable times as reasonably required by the builder in order to rectify the defects.
- Handing over the keys*
- Possession without consent*
- Damages for late completion of building works*
- Maintenance services period*

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Clause 24. Suspending the building works

1. If the owner breaches **the contract**, the builder may suspend the **building works** by notifying the owner in writing. This right is additional to that in Clause 12.3.



2. If the owner corrects the breach within 5 **days** of the builder's notice, the **building works** must resume within a reasonable timeframe of the builder being notified of the owner's correction of the breach.

Clause 25. Ending the contract

*Ending the contract
for owner's breach*

1. If the owner breaches **the contract** the builder may suspend the **building works** and must notify the owner of the breach in writing by certified mail or personal service.
2. The builder may end **the contract** if:
 - (a) 10 **days** have passed since the builder gave notice of the breach;
 - (b) the owner is still in breach of **the contract**; and
 - (c) the builder notifies the owner in writing by certified mail or personal service that **the contract** is at an end.
3. If the owner disputes the builder's notice before **the contract** is ended, the owner must notify the builder in writing by certified mail or personal service. The builder may suspend the **building works** and the dispute must be taken to dispute resolution (see Clause 26).

*Ending the contract
for builder's breach*

4. If the builder breaches **the contract**, the owner must notify the builder of the breach in writing by certified mail or personal service.
5. The owner may end **the contract** if:
 - (a) 10 **days** have passed since the owner gave notice of the breach;
 - (b) the builder is still in breach of **the contract**; and
 - (c) the owner notifies the builder in writing by certified mail or personal service that **the contract** is at an end.
6. If the builder disputes the owner's notice before **the contract** is ended, the builder must notify the owner in writing by certified mail or personal service. The builder may suspend the **building works** and the dispute must be taken to dispute resolution (see Clause 26).

*Other ways to end
the contract*

7. The owner or the builder may also end **the contract** by written agreement or by sending the other written notice by certified mail or personal service:
 - (a) if the other becomes bankrupt or goes into liquidation;
 - (b) if a deemed variation makes **the contract price** rise by more than 10 percent; or
 - (c) if planning or building approvals cannot be obtained within the time specified in Clause 7.

*Moneys owed by the
owner to the builder*

8. If **the contract** is ended, then the owner must pay as a debt due and payable:
 - (a) the cost of the **building works** to date;
 - (b) the cost of any materials on **the site** or already ordered from suppliers;
 - (c) the cost of leaving **the site**;
 - (d) **the builder's margin**, applied to the total of (a) plus (b) plus (c);
 - (e) default interest on any unpaid monies under Clause 12.3(a); and
 - (f) all other costs and losses incurred by the builder as a consequence of this contract being ended.
9. Nothing in this Clause prejudices the right of a party to recover damages or exercise any other right or remedy against the other party for breach (including repudiatory breach) of contract.

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Clause 26. Dispute resolution

- Notice of dispute*
1. If there is a dispute between the owner and the builder, either one must promptly give the other written notice of the dispute.
- Procedure for dispute resolution*
2. Disputes must be resolved according to Territory laws that govern the resolution of building disputes.
 3. The owner and the builder must meet within **7 days** to discuss the matters in dispute and attempt to resolve them by negotiation, mediation or other agreed method.

Clause 27. Notices

1. A notice is received when delivered in person, transmitted by facsimile or sent by post and **2 days** have passed after it is sent.
2. This does not include notices that must be sent by certified mail.
3. The owner and the builder must promptly notify each other if they change address.

Clause 28. Assignment and sub-letting

1. The owner and the builder may only assign their rights and obligations under **the contract**, with the written agreement of the other.
2. The builder may sub-contract any part of the **building works**, but the builder remains responsible for all the **building works**.

Clause 29. Manufacturer's warranty

The builder is not responsible for defective goods or services covered by manufacturer's or supplier's warranty.

Clause 30. Security over site

1. The owner charges the land constituting **the site** with the due payment to the builder of all monies that will and/or may become payable under **the contract** or otherwise in connection with carrying out the **building works**.
2. The owner irrevocably authorises and consents to the builder lodging a caveat in respect of the land constituting **the site** to protect the builder's interest and the charge created under **the contract**.

Clause 31. General

1. Except as provided at law or in equity or elsewhere in **the contract**, none of the provisions of the contract may be varied, waived, discharged or released, except with the prior written consent of the parties.
2. Any provision in **the contract** which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of **the contract**.