



DEED dated this 21 day of JULY 20 15

BETWEEN: **CHINESE JOINT VENTURE CO. PTY LTD ACN**
("the Principal")

AND: **AUSTRALIAN CONSTRUCTION & DEVELOPMENT
COMPANY PTY LTD ACN 123 252 844** ("the
Contractor")

**AGREEMENT FOR A CONSTRUCTION CONTRACT
WITH VARIATIONS**

**For 24 Townhouse Residences "The Sanctuary" and
Recreation Facilities
At Kirribilli Heights Community Titles Scheme,
Ridgeline Way Highland Park**

ASTILLS LAWYERS
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SOUTHPORT QLD 4215

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DATED this 71 day of JULY 2015

BETWEEN: **CHINESE JOINT VENTURE CO. PTY LTD ACN C/-**
Jamiesons Chartered Accountants 66 Marine Parade
Southport in the State of Queensland ("the Principal")

AND: **AUTRALIAN CONSTRUCTION & DEVELOPMENT COMPANY PTY LTD ACN 123 252 844** 479 Springwood Road Daisy Hill in the State of Queensland ("the Contractor")

INTRODUCTION:-

- A. The Principal has the control of the Site being the proposed Stage 2 of the progressively developed Community Titles Scheme 37540 "Kirribilli Heights" at Ridgeline Drive Highland Park. Stage 2 will be known as The Sanctuary and will comprise 24 Townhouses and Recreation Facilities ("Works").
- B. The Principal and the Contractor have agreed to enter into a Lump Sum Contract to Design and Construct the Works ("Construction Contract").
- C. The terms of the Construction Contract are contained in the Annexure.
- D. The parties have agreed to vary the Construction Contract in the terms contained in this Agreement.

THE PARTIES NOW AGREE:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Any words, phrases or expressions specifically defined in the Construction Contract will unless the context otherwise requires have the same meaning and interpretation when used in this agreement.

"Construction Contract" means the Design and Construct Contract - Lump Sum DECON 2 2005 Version made between the Principal and the Contractor and dated on or about the Date of this agreement and the Contract Documents.

"Quantity Surveyor" means Mitchell Brandtmann ACN 139 208 905.

"Surveyor" means Gassman Development Perspectives Pty.Ltd. ACN 010 752 388

1.2 Interpretation

- (a) The singular includes the plural and vice versa.
- (b) Words of one gender include other genders.
- (c) Person includes an individual firm or body corporate.
- (d) Any schedules form part of this agreement.

- (e) Headings are for convenience only and will not affect the construction of this agreement.
- (f) The terms of this agreement are in addition to and (where applicable) in substitution for the terms of the Construction Contract

2. CONTRACT DOCUMENTS

The Contract Documents referred to in the Construction Contract include but are not limited to:-

3. PRIME COST ITEMS AND PROVISIONAL SUMS

The Parties agree that there are no Prime Cost Items and Provisional Sums and Clause 10.5 of the Construction Contract does not apply.

4. FIXED PRICE CONTRACT

- 4.1 The Parties agree that the Contractor has had the opportunity to confer with the Architects Engineers Surveyors and Geotechnical experts and carefully study the Building Plans so that (other than latent conditions referred to in Clause 3.3 of the Construction Contract), the Contract Sum is fixed in the sum of \$XXXXXXXXXX (inclusive of GST) and the Contractor assumes the responsibility for the design and to construct and bring the Works to Practical Completion for the Contract Sum.
*PL
2050,000-00
JAP*
- 4.2 The Contractor is and remains responsible for all construction means, methods, techniques, sequences and procedures employed and to be employed by it in and about the execution of the Works and for coordinating all portions of and the execution of all portions of the works.
- 4.3 Unless otherwise stipulated the Contractor shall provide at his own expense everything necessary for the proper execution and completion of the Works and for the proper performance by the Contractor of his obligations under the Construction Contract.
- 4.4 The scope of the Works shall include all the Works specifically referred to in the Construction Contract and all variations that are agreed in writing and all minor items of work obviously to be inferred therefrom for the proper execution and completion of the Works and for the proper performance by the Contractor of his obligations under the Construction Contract.

5. PROGRESS PAYMENTS

- 5.1 A certificate from the Quantity Surveyor or other consultant approved by the Principal and the Contractor certifying the:
 - (a) **Quality and value:** the quality and value of the Project to the date of such certificate, since either the date of commencement of the Project or the date of the last such certificate;
 - (b) **Cost to date:** the total cost of the Project completed to the date of that certificate;

- (c) **Cost to complete:** the amount of money required to complete the Project as at the date of that certificate (which amount must not be greater than the Undrawn Amount of the Contract Sum at that time);
 - (d) **Sub-contractors' payments:** that all claims for payment by any sub-contractor engaged for the Project have been met and paid up to date;
 - (e) **No contract variations:** that there have been no material variations to the construction contract relating to the Project other than those consented to by the parties; and
 - (f) **Other matters:** such other matters as the Quantity Surveyor may reasonably require from time to time.
- 5.2 The obligation of the Principal to make the final payment under the Construction Contract is subject to receipt by the Principal of:
- (a) a certificate from the Quantity Surveyor or other consultant approved by the parties certifying completion of the Project;
 - (b) a survey report from the Surveyor or other consultant approved by the parties certifying completion of the Project in accordance with the relevant plans and specifications and the provisions of all relevant legislation; and
 - (c) a certificate enabling the lawful occupancy of the Project.

6. INCONSISTENCY

In the event of any inconsistency between the provisions of this agreement and the Construction Contract then the provisions of this agreement will prevail and the application of the provisions of the Construction Contract will only to the extent of the inconsistency be excluded.

7. UNDUE INFLUENCE, INDEPENDENT LEGAL AND OTHER ADVICE

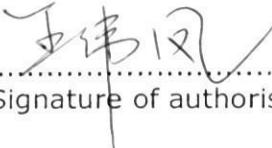
The parties acknowledge that their concurrence to this agreement has not been brought about by any representation, inducement or coercion by any other party to this agreement and the parties acknowledge that each of them has had the opportunity to receive independent legal and other advice and have taken such legal and other advice as it considers appropriate.

8. SUPPLEMENTAL

This agreement is supplemental to and in variation of the Construction Contract.

EXECUTED AS A DEED

EXECUTED by **CHINESE JOINT VENTURE CO.PTY LTD ACN XXX XXX XXX**
in accordance with Section 127 of the *Corporations Act 2001 (Cth)*



.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office Held

.....
Name of authorised person (print)

.....
Name of authorised person (print)

EXECUTED by **AUSTRALIAN CONSTRUCTION & DEVELOPMENT COMPANY PTY LTD ACN 123 252 844** in accordance with Section 127 of the *Corporations Act 2001 (Cth)*



.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office Held

.....
Name of authorised person (print)

.....
Name of authorised person (print)

User Guide

0181

DECON 2 2005 Version

Design and Construct Contract – Lump Sum

User Guide

building australia



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Master Builders Australia issues this User Guide to assist members in understanding the DECON 2 Contract. It does not constitute legal advice. It is for general guidance purposes only and is not a substitute for learning the Contract itself. While all care has been taken in its preparation, Master Builders Australia, its directors, officers and the author accept no responsibility for the completeness, accuracy or currency of this User Guide.

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CONTRACTOR'S FORMS Con 8

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

FINAL NOTICE

No:

Project:

Project no:

Date issued:

To Principal:

In Accordance with Clause 11.1, as of (insert date) the Defects Liability Period has expired / rectification of all defects has been completed (*delete where not applicable*)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

Note to Contractor;

You must give the Principal a Final Account (Form Con 9) at the same time as you give this notice to the Principal.

CONTRACTOR'S FORMS Con 9

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

FINAL ACCOUNT

No:

Project:

Project no:

Date issued:

To Principal:

Amount of this final claim including GST, due to Contractor is

\$.....

The amount of GST included in the payment is

\$.....

(Add/subtract retention, if applicable)

\$.....

Total:

\$.....

THIS ACCOUNT MUST BE PAID WITHIN 10 DAYS.

Note To Principal:

Payment of this account discharges the Contractor's obligations under the agreement and is conclusive evidence of your satisfaction with the works.

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

Section 1 - GENERAL

Clause	Contents
1.1	Definitions and Interpretation
1.2	Contractor's Obligation
1.3	Principal's Obligation
1.4	Evidence of Title
1.5	Evidence of Capacity to Pay
1.6	Principal's Representative
1.7	Assignment
1.8	Applicable Law

Clause 1.1 Definitions and Interpretation

This clause provides definitions of a number of the terms used in the Agreement. If you are unsure of the meaning of a word this is the section to go to first.

Clause 1.2 Contractor's Obligation

The Contractor must do the work as laid down in the Agreement. The Agreement will generally include all of the documents relevant to the design and construction of the project.

Clause 1.3 Principal's Obligation

The Principal has 4 obligations under the Agreement;

- To pay the Contract Sum as specified in **Schedule 6**.
- To give all directions without delay and within a time which does not cause delay for the Contractor.
- To provide all necessary information to the Contractor so that the project can be completed within the timeframe laid down by the Agreement.
- To act in a reasonable manner and in good faith.

Clause 1.4 Evidence of Title

The Principal must give the Contractor evidence to prove that the Principal owns the site where the Works are taking place or evidence to prove that the Principal has the authority to enter into a contract with the Contractor to do the Works on the site.

The Principal must provide this evidence within 10 days of the date of the Agreement. **Form Prin 1**.

This is important because the Contractor does not have to begin the Works until receiving this evidence (See **Section 9**). In addition, if the Principal does not provide the evidence the Contractor can terminate the Agreement. (See **Clause 12.4**)

Clause 1.5 Evidence of Capacity to Pay

Within 10 days of the date of the Agreement the Principal must provide the Contractor with evidence that the Principal can pay the Contract Sum. **Form Prin 1.**

This is important as if the evidence is not provided the Contractor does not have to commence the Works. (See **Section 9**) In addition, if the Principal does not provide the evidence the Contractor can terminate the Agreement. (See **Clause 12.4**)

If at any time, the Contractor becomes concerned that the Principal might not be able to pay the Contract Sum, the Contractor can request written evidence of the Principal's ability to pay. The Principal must comply within 10 days. **Form Con 2.**

Clause 1.6 Principal's Representative

The Principal can appoint a representative to perform any of the Principal's duties under the Agreement.

If the Principal decides to appoint a representative the Principal must inform the Contractor in writing without delay that the person has been appointed and what they will be responsible for. **Form Prin 1.**

In addition the Principal must make sure that the person acts diligently, fairly and reasonably. The Principal must inform the Contractor of any change to the person who is the representative or their powers or duties.

Clause 1.7 Assignment

Assignment is when

a party to a contract signs over their rights and responsibilities under the contract to another person.

The Agreement only allows assignment if the other party to the Agreement has given their written consent which is not to be unreasonably withheld.

Clause 1.8 Applicable Law

If there are any disputes which have to be resolved by a Court, the law of the State or Territory where the Works are being carried out is the law which will be applied.

This means that if the Principal has a head office in Melbourne but the work is being done in Albury New South Wales the law of New South Wales will apply and any court hearings would take place in that State.

Section 2 - DOCUMENTS

Clause	Contents
2.1	Copies
2.2	Discrepancies
2.3	Copyright

Clause 2.1 Copies

The Principal must give the Contractor a full set of signed documents and 3 copies of the Project Requirements.

Clause 2.2 Discrepancies

If the Contractor finds something in the documents which affects the carrying out of the Works the Contractor must seek a direction from the Principal without delay. **Form Con 1**.

If the Principal does not give a direction within a reasonable time then the Contractor can decide how to continue.

If this means an additional or reduced cost then the cost must be treated as a Variation and **Clause 10.4** applies.

No	Action	Clause	Form No
1	Contractor finds error, omission, discrepancy in documents.	2.2.1	
2	It will affect the carrying out of the Works	2.2.1	
3	Contractor to seek direction from Principal Promptly.	2.2.1	Con 1
4	Principal fails to give direction within reasonable time	2.2.2	
5	Contractor can decide how to continue with the Works.	2.2.2	
6	If a change to the cost results, treat it as a Variation	2.2.3 10.4	Con 11

Clause 2.3 Copyright

DECON 2 provides two alternatives for the ownership of copyright in the Design Documents.

Note:

You must strike out the clause which does **not** apply.

Clause 2.3.1 The first alternative leaves ownership of the copyright with the Contractor who then allows the Principal to use the Design Documents for the construction of the project and for maintenance, repair and alteration in the future.

If the Principal defaults in any of the ways laid down in **Clause 12.4** the Contractor can withdraw the right to use the design by written notice to the Principal. **Form Con 3**.

Clause 2.3.2 The second alternative gives ownership of the copyright to the Principal who then allows the Contractor to use the design documents for the construction of the project.

In addition, this alternative provides for both the Contractor and the Principal to give assurances to each other that they have not breached any intellectual property right owned by another person and to provide indemnities to each other in case they have done so.

Section 3 - THE SITE

Clause	Contents
3.1	Principal's Responsibility
3.2	Principal's Site Warranty
3.3	Latent Conditions
3.4	Site Access and Possession

Clause 3.1 Principal's Responsibility

The Principal is responsible for providing all legal, survey, geotechnical, engineering reports and other particulars regarding the site and is responsible if there are any inaccuracies.

Clause 3.2 Principal's Site Responsibility

The Principal must guarantee that the site is appropriate for the structure to be built on.

If the Contractor discovers that the site is not appropriate the Contractor may terminate the Agreement and receive payment for all of the Works completed as at the date of the discovery, plus overheads and profit as specified in **Schedule 9**.

Note:

The Agreement does not allow damages for breach of the Agreement in these circumstances.

Clause 3.3 Latent Conditions

Latent Conditions are defined in **Clause 1.1** as

Physical conditions on the Site or its surroundings, including sub-surface conditions, and artificial things which differ materially from those which could reasonably have been anticipated by the Contractor at the time the Contractor provided a lump sum price.

Note:

The definition only covers things which the Contractor could not reasonably have been expected to have known about at the time the Contractor tendered a lump sum price.

Clause 3.3.1 If the Contractor finds Latent Conditions the Contractor must *immediately* notify the Principal in writing. **Form Con 3.**

The Principal must then direct the Contractor as to what action should be taken. **Form Prin 2.**

Clause 3.3.2 If the Latent Condition results in extra cost to the Contractor the extra cost must be treated as a Variation and **Clause 10.4** applies

No	Action	Clause	Form No
1	Contractor finds Latent Condition	3.3.1	
2	Contractor notifies Principal in writing immediately	3.3.1	Con 3
3	Principal directs Contractor	3.3.1	Prin 2
4	If extra cost, treat it as a Variation	3.3.2 10.4	Con 11

Clause 3.4 Site Access and Possession

The Principal must allow the Contractor to have access to the site from the date of the Agreement. In addition, if the Contractor requests it, the Principal must immediately allow the Contractor to have control over when and if others can enter the site.

Section 4 - SUBCONTRACTS

Clause	Contents
4.1	Subcontracting
4.2	Novation

4.1 Subcontracting

The Contractor cannot subcontract the whole of the Works but may subcontract any part of the Works.

However, if the Contractor subcontracts part of the Works the Contractor is still bound by the terms of the Agreement in respect of those works.

4.2 Novation

Novation occurs when,
a contract between two parties is cancelled on the understanding that one or all of the parties to the old contract and another party will enter into a new contract.

If the Agreement specifically states that a new contract must be entered into for a particular Preliminary Design and the Principal directs the Contractor, (**Form Prin 2**) the parties must execute a Deed of Novation with the subcontractor or consultant.

A Deed of Novation can be found in **Schedule 30**. Note that the Deed will need to be finalised by completing/deleting Clause 4.

Section 5 - DESIGN

Clause	Contents
5.1	Principal's Warranty
5.2	Rejection of Design
5.3	Contractor's Design Obligations
5.4	Contractor's Design Warranty

Clause 5.1 Principal's Warranty

In this clause the Principal guarantees that the Principal's Project Requirements are suitable and adequate for the project.

Clause 5.2 Rejection of Design

If the Principal directs the Contractor to change a design (**Form Prin 2**) the work involved in the redesign must be treated as a Variation under **Clause 10.4**.

Clause 5.3 Contractor's Design Obligations

In designing the Works the Contractor has 4 obligations;

- To make sure the design follows the Principal's Project Requirements as laid down in **Schedules 1, 2 & 3**.
- To do everything possible to submit and obtain all licences, permits, consents, determinations and approvals necessary to complete the project within the time specified in **Schedule 10**.
- If designs need to be submitted once the Works have started, to do so without delay.
- To make sure that the design complies with all legal requirements.

Clause 5.4 Contractor's Design Warranty

This clause gives legal status to the 4 obligations in **Clause 5.3** above.

The Contractor guarantees that the work involved with the design will follow the Principal's Project Requirements as laid down in **Schedules 1, 2 and 3**.

Section 6 - EXECUTION OF THE WORKS

Clause	Contents
6.1	Compliance With Drawings And Specifications
6.2	Superintendence
6.3	Requirements Of Authorities
6.4	Changes In Requirements Of Authorities
6.5	Progress Surveys
6.6	Variations
6.7	Materials And Workmanship

6.8	Quality Assurance
6.9	Goods Supplied By Principal
6.10	Defects Liability

Clause 6.1 Compliance with Drawings and Specifications

The Contractor must carry out and complete the Works in the manner laid down in the Design Documents.

Clause 6.2 Superintendence

The Contractor must appoint a suitably qualified person to be in charge while the Works are carried out.

Clause 6.3 Requirements of Authorities

Clause 6.3.1 The Contractor must comply with the requirements of all Commonwealth, State, Territorial and Local Government Departments, bodies, instrumentalities and other public authorities which in any way have jurisdiction over, affect or are applicable to the project.

The Contractor must also pay any fees and charges and give and comply with any notices required by these authorities.

Clause 6.3.2 If the Principal or the Contractor find a discrepancy between the Contract Documents and the requirements of any of the authorities they must *immediately* give a written notice explaining the discrepancy to the other party. **Form Con 3, Prin 3.**

Clause 6.3.3 Within 5 days of issuing or receiving the notice referred to in **Clause 6.3.2** the Principal must give a written direction to the Contractor explaining how to continue with the Works. **Form Prin 2.**

Clause 6.3.4 If the direction referred to in **Clause 6.3.3** results in extra cost to the Contractor, the extra cost must be treated as a Variation and **Clause 10.4** applies.

No	Action	Clause	Form No
1	A discrepancy between the requirements of an authority and the documents is discovered.	6.3.2	
2	Written notice immediately given to the other party	6.3.2	Con 3 Prin 3
3	Within 5 days Principal must give written direction to Contractor	6.3.3	Prin 2
4	If extra cost, treat it as a Variation	6.3.4 10.4	Con 11

Clause 6.4 Changes In Requirements of Authorities

If the Contractor has tendered the lump sum price to the Principal and one of the authorities specified in **Clause 6.3.1** changes their requirements, the cost of complying with that change must be treated as a Variation and **Clause 10.4** applies.

Clause 6.5 Progress Surveys

If the Principal wants progress checks or surveys to take place the Principal must advise the Contractor in writing. **Form Prin 3.**

The Contractor must tell the Principal when the Works reach the stage where the progress check or survey can be made.

The Principal pays for the cost of the check or survey.

Clause 6.6 Variations

The Principal may direct the Contractor to carry out a Variation if it is within the general scope of the Works and before the date for Practical Completion. (See below **Clause 9.3** for the date for Practical Completion.) The direction must be in writing. **Form Prin 2.**

Clause 6.7 Materials and Workmanship

Clause 6.7.2 If the Contractor is not reasonably able to supply materials or labour the Contractor must promptly notify the Principal. **Form Con 3.**

Within 5 days the Principal must give a direction to the Contractor which provides details as to how the Principal wants the Contractor to continue with the Works. **Form Prin 2.**

If the Principal does not give the direction to the Contractor, the Contractor can decide how to continue with the Works.

Clause 6.7.3 If the Agreement provides for testing, the Principal can direct that any work or material which is accessible be tested provided it takes place before the date for Practical Completion. (See below **Clause 9.3** for the date for Practical Completion.)

The Principal must pay for the cost of the check or survey unless:

- the testing has become necessary because the Contractor has breached the Agreement, or
- the testing shows that the work or materials used were not the ones specified in the Agreement, or
- the cost of testing has been included in the Contract Sum.

Clause 6.7.4 If testing takes place all parties are allowed to watch the testing take place and/or have their own independent tests done.

Clause 6.8 Quality Assurance

The Contractor must comply with any Quality Assurance program and allow the Principal to come onto the site to monitor and audit.

Clause 6.9 Goods Supplied By Principal

The Contractor is not legally responsible for materials or goods specified or supplied by the Principal.

Clause 6.10 Defects Liability

The Contractor must fix any defects which are present at the date of Practical Completion without delay.

If the Contractor does not fix the defects the Principal can give written notice to the Contractor that unless the defects are fixed within a reasonable time the work will be carried out by someone else. **Form Prin 3.**

The Contractor will have to pay the cost if the Principal has to get someone else to fix the defects.

Section 7 - SEPARATE SUBCONTRACTS

Clause	Contents
7.1	Excluded Work

Clause 7.1 Excluded Work

If any work is to be excluded from the Agreement it must be detailed in **Schedule 12** and the Principal must make sure that the people doing the work cooperate with and do not interfere with or disrupt the Contractor.

**Section 8 – INSURANCE AND INDEMNITY
(First Alternative - Contractor to Insure)**

Clause	Contents
C8.1	Liability for Damage to Property
C8.2	Liability for Injury to Persons
C8.3	Insurance of the Works
C8.4	Public Liability
C8.5	Workers' Compensation & Employers' Liability Insurance
C8.6	Settlement of Claims
C8.7	Periods of Insurance
C8.8	Occupation

Note 1:

There are two parts to Section 8. The first part, which has clauses beginning with C, applies if the Contractor is responsible for taking out the insurance. The second part which has clauses beginning with P, applies if the Principal is responsible for taking out the insurance.

Note 2: You must strike out the Part which does not apply.

C8.1 Liability for Damage to Property

This clause holds the Contractor liable for all property damage.

Note:

If the Principal is responsible for any of the damage the Contractor's liability is reduced.

C8.2 Liability for Injury to Persons

This clause holds the Contractor liable for all injury to or death of persons connected with the project.

Note:

If the Principal is responsible for any of the circumstances leading to the injury or death, the Contractor's liability is reduced.

C8.3 Insurance of The Works

The Contractor must take out insurance covering the Works.

Wherever possible, the policy must name the Principal and all subcontractors working on the project as having an interest in the policy.

C8.4 Public Liability

The Contractor must take out Public Liability insurance for an amount not less than the amount set out in **Schedule 13**.

C8.5 Workers' Compensation & Employers' Liability Insurance

The Contractor must take out Workers' Compensation & Employers' Liability Insurance which must include the interests and liabilities of the Principal.

C8.6 Settlement of Claims

If an insurance claim is settled the Contractor is *immediately* entitled to receive payment for works done and materials supplied.

Either party can request that the remainder of the money be paid into a joint bank account. The Contractor must then reinstate the Works and repair damage.

With some exceptions the Contractor is entitled to receive the balance of the money for reinstatement work.

If demolition and removal of debris costs more than the policy allows, the Principal must pay the difference.

C8.7 Periods of Insurance

The insurances must be current from the time the Principal makes the site available to the Contractor until the Works reach Practical Completion.

If work is being done to fix defects, the Public Liability, Workers' Compensation and Employers' Liability insurances must be current until the final certificate is issued.

C8.8 Occupation

If the Principal or any person authorised by the Principal occupies the site or uses the site before Practical Completion the Principal must take out insurance for injury and death to persons and damage to property arising from that use.

Section 8 – INSURANCE AND INDEMNITY (Second Alternative - Principal to Insure)

Clause	Contents
P8.1	Liability for Damage to Property
P8.2	Liability for Injury to Persons
P8.3	Insurance of the Works
P8.4	Public Liability
P8.5	Workers' Compensation & Employers' Liability Insurance
P8.6	Exclusions, Conditions and Excesses
P8.7	Procedure as to Claims
P8.8	Settlement of Claims
P8.9	Periods of Insurance
P8.10	Occupation
P8.11	Policies

P8.1 Liability for Damage to Property

This clause holds the Contractor liable for all property damage.

Note:

If the Principal is responsible for any of the damage the Contractor's liability is reduced.

P8.2 Liability for Injury to Persons

This clause holds the Contractor liable for all injury to or death of persons connected with the project.

Note:

If the Principal is responsible for any of the circumstances leading to the injury or death, the Contractor's liability is reduced.

P8.3

Insurance of The Works

The Principal must take out insurance covering the Works.

The policy must name the Contractor and, wherever possible, all subcontractors working on the project as having an interest in the policy.

P8.4

Public Liability

The Principal must take out Public Liability insurance for an amount not less than the amount set out in **Schedule 14**.

P8.5

Workers' Compensation & Employers' Liability Insurance

The Contractor must take out Workers' Compensation & Employers' Liability Insurance which, where applicable, must include the interests and liabilities of the Principal.

P8.6

Exclusions, Conditions and Excesses

When the Principal takes out Public Liability Insurance and insurance for the Works there may be excesses and exclusions. The excesses are set out in **Schedule 14**.

The Contractor can take out additional insurance to cover these excesses and exclusions.

P8.7

Procedure as to Claims

This clause contains technical details which apply when making a claim.

P8.8

Settlement of Claims

If an insurance claim is settled the Contractor is *immediately* entitled to receive payment for works done and materials supplied.

The Contractor must reinstate the Works and replace or repair destroyed or damaged goods or materials.

With some exceptions the Contractor is entitled to receive the balance of the money for reinstatement work.

If demolition and removal of debris costs more than the policy allows, the Principal must pay the difference.

If the Principal terminates the Agreement under **Section 12** the remaining insurance money becomes the Contractor's.

P8.9

Periods of Insurance

The insurances must be current from the time the Principal makes the site available to the Contractor until the Works reach Practical Completion.

If work is being done to fix defects the Public Liability, Workers' Compensation and Employers' Liability insurances must be current until the final certificate is issued.

P8.10 Occupation

If the Principal or any person authorised by the Principal occupies the site or uses the site before Practical Completion the Principal must take out insurance for injury and death to persons and damage to property arising from that use.

P8.11 Policies

The Principal guarantees that at the time the site is made available to the Contractor all insurances that are the Principal's responsibility are in place.

If the Contractor asks, the Principal must provide evidence of insurances and if this is not provided the Contractor can take out the insurances and add the premiums to the Contract Sum.

The Principal can also ask the Contractor to provide evidence of insurances.

Section 9 - TIME

Clause	Contents
9.1	Date for Building Commencement
9.2	Number of Days for Practical Completion
9.3	Practical Completion
9.4	Delays

Clause 9.1 Date for Building Commencement

The Contractor has 20 days in which to commence the Works once the following have all occurred:

- The Principal provides evidence of ownership or authority. (**Clause 1.4**)
- The Principal provides evidence that the Contract Sum can be paid. (**Clause 1.5**)
- The Authorities have provided all approvals needed before the Works can start.
- The Agreement is signed
- The Principal hands over control of the site to the Contractor.

Clause 9.2 Number of Days for Practical Completion

Practical Completion is defined in **Clause 1.1** as

the stage of being reasonably fit for use and occupation.

This is an important date as once the Works reach Practical Completion the risk of damage loss or theft transfers to the Principal (**Clause 9.3.6**)

and Liquidated Damages can apply if the work is not completed. (**Clause 10.7**)

Schedule 15 lays down the number of days the Contractor has to reach Practical Completion from the date the Contractor actually starts the Works, which may be within the 20 day period in **Clause 9.1**.

If the Contractor has not begun the Works by the time the 20 day period has expired, the time for Practical Completion in **Schedule 15** begins to run from the day after the 20 day period expires.

Clause 9.3 Practical Completion

Clause 9.3.1 The Contractor must give the Principal a written notice when the Contractor believes the Works have reached Practical Completion.

This is called a **Notice of Practical Completion**. **Form Con 4**.

Clause 9.3.2 If the Principal believes that work is still needed, the Principal can give the Contractor a written notice containing details of what still needs to be done. **Form Prin 3**.

The notice must be given within 10 days of the Principal receiving the Notice of Practical Completion from the Contractor.

If the Principal does not give the Contractor a written notice then the Works are taken to have reached Practical Completion even if the Principal believes things still need to be done. **Clause 9.3.4**

Clause 9.3.3 If the Contractor receives a written notice from the Principal, the Contractor must do what the Principal has written in the notice within a reasonable time.

Once the additional work has been done the Contractor must give the Principal Notice of Practical Completion (**Form Con 4**) and the Defects Liability Period runs from the date of this notice.

Note:

The length of the **Defects Liability Period** is specified in **Schedule 11**.

Clause 9.3.5 If the date of Practical Completion has not already been established and the Principal occupies or takes control of the Works or any part of the Works without the written agreement of the Contractor, the date the Principal took possession becomes the date of Practical Completion.

No	Action	Clause	Form No
1	Contractor gives Notice of Practical Completion to Principal.	9.3.1	Con 4
2	If Principal believes work is still needed, Principal issues written notice within 10 days of receipt of Notice of Practical Completion.	9.3.2	Prin 3

3	If Principal does not issue written notice works are taken to have reached Practical Completion.	9.3.4	
4	Contractor must comply with notice within a reasonable time	9.3.3	
5	Once work is completed the Contractor issues further Notice of Practical Completion	9.3.3	Con 4
6	Defects liability period begins to run	9.3.3	

Clause 9.4 Delays

- Clause 9.4.1 If delays occur and the delay is not the fault of the Contractor, the time for Practical Completion can be extended for a reasonable period of time providing the Contractor gives written notice to the Principal without delay.
- Clause 9.4.2 The written notice should state the reason for the delay and a date when Practical Completion can be reached. **Form Con 6.**
- Clause 9.4.3 Within 10 days of receiving notice of delay from the Contractor, the Principal must give the Contractor a reasonable revised date for Practical Completion. **Form Prin 4.**
- Clause 9.4.4 If the Principal does not give a revised date within 10 days, the date for Practical Completion is deemed to be the date contained in the Contractor's notice.

Section 10 - PAYMENT AND ADJUSTMENT OF THE CONTRACT SUM

Clause	Contents
10.1	Progress Claims
10.2	Progress Payments
10.3	Interest on Overdue Payments
10.4	Valuation of Variations
10.5	Prime Cost Items or Provisional Sums
10.6	Costs of Delays
10.7	Liquidated Damages
10.8	Security to be Provided by Contractor
10.9	Form of Security
10.10	Bank Guarantee
10.11	Retention Fund
10.12	Recourse to Security
10.13	Charge

Clause 10.1 Progress Claims

Schedule 17 gives the times when the Contractor can submit claims to the Principal for progress payment. These are called **Progress Claims**. **Form Con 5.** Con 5 may need to be amended to address State requirements for security of payments legislation. Check with your legal adviser.

Clause 10.1.1 Progress Claims can be made for money due or the value of work which has been carried out and also for goods and materials which are intended for the Works, provided they have not been delivered earlier than necessary, are owned by the Contractor and are stored properly and protected at or near to the site.

Clause 10.1.2 If the Principal wants written evidence of wages owing to the Contractor's employees the Principal must make a written request to the Contractor at least 3 days before the time for Progress Claims in **Schedule 17. Form Prin 5.**

Clause 10.2 Progress Payments

Schedule 18 gives the times for payment of Progress Claims.

Within this period of time the Principal must assess the Progress Claim and either pay the Contractor the full amount of the Progress Claim or pay an amount that the Principal considers the Contractor is entitled to and give the Contractor written details of the difference between the claimed amount and the amount the Principal considers to be payable. **Form Prin 6.**

Once payment has been made for goods or materials they become the Principal's property.

Clause 10.3 Interest on Overdue Payments

Schedule 19 gives the interest the Contractor can claim if the Principal does not pay on time.

Clause 10.4 Valuation of Variations

Variation is defined in **Clause 1.1** as any

- (i) *change in the Principal's requirements which makes necessary the alteration or modification of the design, quality or quantity of the Project as described by or referred to in the Principal's Project Requirements or in the design documents including:*
 - (a) *increases or decreases in or omissions from the Project;*
 - (b) *changes in the character or quality of the material or Works;*
 - (c) *changes in the levels, lines, position or dimensions of any part of the Works; or*
 - (d) *the execution of additional work; and/or*
- (ii) *addition, alteration or omission of any obligation or restriction imposed by the Principal in the Principal's Project Requirements or as stated in the design documents or this Agreement in regard to:*
 - (a) *access to the Site or any specific parts of the Site;*
 - (b) *limitations of working space;*
 - (c) *limitations of working hours; or*
 - (d) *the execution or completion of the work in any specific order.*

Unless the Principal and the Contractor make another agreement in writing, the Contractor can decide the value of Variations. **Form Con 3.**

Any increase is added to the Contract Sum along with the percentage given in **Schedule 20** and any decrease is taken off the Contract Sum.

Clause 10.5 Prime Cost Items or Provisional Sums

Details of Prime Cost Items or Provisional Sums are contained in **Schedule 21.**

When the Contractor requests directions regarding the selection and/or supply of Prime Cost Items or Provisional Sums the Principal must give the Contractor directions without delay.

Any sum which is not used must be taken off the Contract Sum and any extra amount spent is added to the Contract Sum along with the percentage given in **Schedule 22.**

Clause 10.6 Costs of Delays

The Contractor is entitled to payment for any loss or expense resulting from delay or disruption provided it is caused by one or more of the following:

- a Variation
- a latent condition
- compliance with any changed or unforeseen requirement, condition, notice or order of any Authority
- delay in the issue of any necessary Approval by an Authority
- a breach by the Principal
- an act of prevention by the Principal
- delay caused by the Principal,

If the delay is caused by one of these events the Contractor must give the Principal written notice of the amount of the loss and details of what has been lost. **Form Con 7.**

If the Principal does not dispute the notice in writing (**Form Prin 6**) within 10 days the Contract Sum must be adjusted by the amount in the Contractor's notice.

Clause 10.7 Liquidated Damages

The Contractor may become liable to pay Liquidated Damages if the Works do not reach Practical Completion by the time for Practical Completion under **Clause 9.2** or if an extension has been given, by the extended time.

Schedule 23 contains the amount agreed for Liquidated Damages and the Principal cannot claim more than this amount for losses which result from delays.

Clause 10.8 Security to be Provided by Contractor

The Contract requires the Contractor to provide security.

Clause 10.9 Form of Security

The Contractor can provide security in the form of a Bank Guarantee, a Retention Fund or both.

The Contractor can substitute one form of security for another and if this occurs the Principal must release and return the other security.

Clause 10.10 Bank Guarantee

More than one guarantee can be used to make up the full amount of the security which must be kept until Practical Completion has been reached as laid down in **Clause 9.3**.

When Practical Completion has been reached the Principal must authorise the reduction of the security by half or release the full amount of the security if the Contractor provides a further security worth half the previous security.

Clause 10.11 Retention Fund

If the Contractor provides security in the form of a Retention Fund the Principal must withhold the percentage given in **Schedule 25** from Progress Payments provided the amount does not exceed the amount in **Schedule 24**.

Note:

For the purposes of this clause the Contract Sum excludes GST.

Within 5 days of a Progress Payment being made the Principal must deposit the amounts retained into a trust account in the joint names of the Principal and the Contractor. In addition the Principal must provide evidence of the deposit to the Contractor within 5 days of the deposit being made.

If through no fault of the Contractor, the Agreement is frustrated or terminated, the Contractor is entitled to the money held in the Retention Fund.

The Contractor's half share of the funds plus interest must be given to the Contractor within 5 days of the date of Practical Completion.

Clause 10.12 Recourse to Security

The Principal must give the Contractor 5 days notice before taking any action to draw on the security. Form **Prin 3**.

Clause 10.13 Charge

The Principal agrees that the land described in **Schedule 7** is security for all money which may be due to the Contractor under the Agreement.

Section 11 - FINAL ACCOUNT AND FINAL PAYMENT

Clause	Contents
11.1	Final Notice
11.2	Final Account
11.3	Release of Approvals
11.4	Effect of Final Certificate

Clause 11.1 Final Notice

When the Defects Liability Period as specified in **Schedule 11** has ended or the Contractor has fixed defects as a result of a notice from the Principal, the Contractor must give the Principal a **Final Notice**. **Form Con 8**.

Within 5 days of receiving the Final Notice the Principal must release all remaining security.

Clause 11.2 Final Account

The Contractor must give the Principal a **Final Account (Form Con 9)** at the same time as the Contractor gives the Principal the Final Notice.

The Principal must pay the Final Account within 10 days

Clause 11.3 Release of Approvals

The Principal can give the Contractor a written notice asking for the approvals used in the Works (**Form Prin 3**) and if the Final Account has been paid the Contractor must give them to the Principal.

Clause 11.4 Effect of Final Certificate

If the Principal believes that there is still work to be done when the Final Notice is issued the Principal must give a written notice to the Contractor within 15 days. **Form Prin 3**.

Provided there has not been a mistake, fraud or dishonesty in the calculations, if the Principal pays the Final Account this is taken to mean that the Principal agrees that all work has been completed and the Principal is satisfied with the Works.

No	Action	Clause	Form No
1	Defects rectified or Defects Liability Period ends.	11.1	
2	Contractor gives written Final Notice and Final Account to Principal.	11.1 11.2	Con 8 Con 9

3	If Principal believes work is still to be done Principal must issue written notice within 15 days.	11.4	Prin 3
4	Principal must release security within 5 days and pay Final Account within 10 days	11.1 11.2	

Section 12 - DETERMINATION

Clause	Contents
12.1	Determination if Loss or Damage Occurs
12.2	Determination by Principal
12.3	Procedure Upon Determination by Principal
12.4	Determination by Contractor
12.5	Determination For Insolvency
12.6	Frustration

Determination means "*ending or terminating a contract*".

Clause 12.1 Determination if Loss or Damage Occurs

If there is substantial loss or damage to the Works, either party can terminate the contract by giving written notice to the other party. **Form Con 3 Prin 3.**

The other party can use Section 13 and ask for Arbitration to decide if this is fair. The Arbitrator will decide if the loss or damage is enough to justify terminating the contract and also the amount either party should pay.

Clause 12.2 Determination By Principal

The Principal can terminate the Agreement if the Contractor does *any* of the following:

- Commits a **substantial** breach of the Agreement. (**Substantial** means *more than a mere technical breach*.)
- Does not undertake the Works competently and carefully
- Suspends the project without a good reason
- Refuses or does not
 - Follow requirements of Authorities. (**Clause 6.3**)
 - Remove or fix defects affecting the Works.
- Does something which makes the Principal reasonably believe that the Contractor will not complete the project
- Does not fix a problem within 10 days of receiving a written notice from the Principal about the problem. **Form Prin 3.**

To terminate the Agreement, the Principal must send the Contractor a written notice by **certified mail**. **Form Prin 3.**

Clause 12.3 Procedure Upon Determination by Principal

If the Principal terminates the Contract, the Contractor must give any Design Documents to the Principal.

If the Principal engages another Contractor to finish the project the Principal must keep records of the cost of finishing the project.

If the cost is greater than it would have been with the first Contractor, the first Contractor is liable to pay the extra to the Principal either as a debt or out of the security. If the cost is less, then the Principal is liable to pay the difference to the first Contractor.

Clause 12.4 Determination by Contractor

The Contractor can terminate the Agreement if the Principal is responsible for any of the following:

- Commits a **substantial** breach of the Agreement. (**Substantial** means *more than a mere technical breach.*)
- Does not give the Contractor evidence of title or the authority to construct the work on the Site (**Clause 1.4**)
- Does not give the Contractor evidence of ability to pay (**Clause 1.5**)
- Does not give the Contractor evidence of ability to pay within 10 days of a notice issued under **Clause 1.5.2**.
- Does not pay the Contractor a Progress Payment on time
- Does not deposit the security as required by **Clause 10.11.2**
- Does not provide that any Retention Fund needs two signatures for withdrawal.
- Does not give the Contractor evidence of payment as required by **Clause 10.11.3**.
- Attempts to or actually converts any of the security into cash without the Contractor's agreement.

The Contractor must send the Principal a written notice by **certified mail** informing the Principal of what the Contractor believes to be the breach of the Agreement and *immediately* suspend work on the project. **Form Con 3.**

If the Principal continues the action for more than 10 days after receiving the notice, the Contractor can terminate the Agreement by sending the Principal another written notice by **certified mail**. **Form Con 3.**

Clause 12.5 Determination for Insolvency

If either party becomes insolvent or financially unable to continue to perform their obligations the other party can terminate the Agreement by written notice. **Form Con 3, Prin 3.**

Clause 12.6 Frustration

Frustration means that

the parties can no longer do what they agreed to do because of some outside event that they could not have foreseen when they entered into the agreement.

If the Agreement is frustrated the Principal must pay the Contractor for all of the work done and all costs as at the date the Agreement became frustrated as well as the security and the reasonable cost of removing the Contractor's construction plant.

Section 13 DISPUTE RESOLUTION

Clause	Contents
13.1	Notice of Dispute
13.2	Conference
13.3	Arbitration
13.4	Expert Determination
13.5	Other Remedies not Precluded

Clause 13.1 Notice of Dispute

If there is a dispute, either party can give the other party a written Notice of Dispute which explains what the dispute is about and gives details. **Form Con 10, Prin 7.**

While the dispute is resolved the parties must continue to do the work.

Clause 13.2 Conference

Within 14 days of receiving the Notice of Dispute, representatives of each of the parties who have authority to agree to a solution must get together and try to resolve the dispute. Anything said in the conference cannot be mentioned outside of the conference or relied on in court proceedings.

If the dispute is not resolved within 28 days of receiving the notice, the dispute must be referred to arbitration unless the party who originally gave the notice of dispute gives another written notice within the 28 day period (**Form Con 3, Prin 3.**) saying that they want the dispute resolved by Expert Determination. (See below)

Clause 13.3 Arbitration

If the dispute goes to arbitration the arbitrator will be the person nominated by the organisation listed in **Schedule 26**.

Clause 13.4 Expert Determination

If the dispute is to be resolved by Expert Determination the expert will be the person nominated by the organisation mentioned in **Schedule 26** and each party is responsible for their own costs and for half of the expert's fee.

The expert's determination must be in writing and binds the parties.

Clause 13.5 Other Remedies not Precluded

The dispute resolution section does not stop either of the parties issuing court proceedings for payment of money owed under the Agreement or for an injunction or other court remedy to protect their rights.

No	Action	Clause	Form No
1	Dispute arises. Party gives written notice identifying dispute and giving details.	13.1.1	Con 10 Prin 7
2	Parties must continue to perform Agreement.	13.1.2	
3	Parties must confer within 14 days.	13.2.1	
4	If dispute not resolved within 28 days of first notice - refer to arbitration.	13.2.2	
5	May be referred to Expert Determination by giving of written notice within 28 days of first notice.	13.2.2	Con 3 Prin 3

Section 14 - NOTICES

Clause	Contents
14.1	Address for Notices
14.2	Date of Service of Notices

Clause 14.1 Address for Notices

Notices must be delivered by one of the methods laid down in **Clause 14.1**. These include by hand, pre-paid post and facsimile.

The address must be the one in **Schedule 27**.

Note:

Some Clauses require **certified mail**, e.g. Section 12.

Clause 14.2 Date of Service of Notices

The date of receipt of the document is specified in the Agreement as follows:

- | | |
|------------------------|--|
| • If delivered by hand | The day it is delivered. |
| • If sent by post | Three days after the day it is posted. |
| • If sent by facsimile | The date on the fax confirmation. |

This is important as a number of clauses give specific time limits for notice to be given or documents to be provided.

Section 15 - SEPARABLE PARTS

Schedule 28 lists the *Separable Parts* which are agreed upon before the Agreement is signed.

In addition, the Contractor can request that a part of the Works be treated as a Separable Part once the work has begun and before the date for Practical Completion.

If the Principal occupies a part of the Works before Practical Completion the part automatically becomes a Separable Part.

Schedule 29 lists the security which applies to each Separable Part. If no security is listed in **Schedule 29** the security for each Separable Part is worked out based on the proportion of the value of the Separable Part to the value of the whole of the Works.

Section 16 – GOODS AND SERVICES TAX

Clause 1.1 This clause requires the Principal to pay GST which is included in the contract sum.

Clause 1.2 Through this clause the Contractor provides warranties about three matters related to GST compliance. The first is that the Contractor has included in the contract sum and will include in each claim for payment under the Agreement the correct amount of GST. The second warranty is that the Contractor is a GST registered entity. The third warranty is that the Contractor will provide a proper tax invoice for each claim for payment under the Agreement.

Clause 1.3 This clause says that all other payments made under the Contract must include the correct GST amount.

SCHEDULES

Schedules 1-3

Arguably, these are the most important parts of the contract as they should set out in **great detail** the Principal's Project Requirements. These will form the basis for:

- Clear and detailed understanding of the project requirements
- Completion and signing off the final design
- Claims for additional costs due to changes in the Project Requirements
- Claims for additional time delays incurred due to variance from the Principal's Project Requirements

The proper completion of these schedules in particular will assist in minimising disputes over the scope of works forming the project.

Note:

If additional pages are used instead of the actual pages contained in the Schedules the blank pages must be crossed with a line through the page and the additional pages which do apply should be initialled by both parties.

Note: Schedules should always be completed.

FORMS

The commentary refers to forms which should be used where specified.

Contractor's Forms

No	Title	Clause
Con 1	Contractor's Request for Direction	2.2
Con 2	Contractor's Request to Principal	1.5
Con 3	Contractor's Notice to Principal	2.3.1, 3.3.1, 6.3.2, 10.4, 12.1, 12.5, 13.2
Con 4	Notice of Practical Completion	9.3.3
*Con 5	Progress Claim	10.1
Con 6	Notice of Delay	9.4.2
Con 7	Notice to Principal of Cost of Delay	10.6
Con 8	Final Notice	11.1
*Con 9	Final Account	11.2
Con 10	Section 13 Notice of Dispute	13
Con 11	Contractor's Valuation of Variation	10.4

Principal's Forms

No	Title	Clause
Prin 1	Principal's Notice Providing Information	1.4, 1.5, 1.6
Prin 2	Principal's Direction to Contractor	3.3.1, 4.2, 5.2, 6.3.3, 6.6, 6.7.2
Prin 3	Principal's Notice to Contractor	6.3.2, 6.5, 6.10, 9.3.2, 10.12, 11.3, 11.4, 12.1, 12.2, 13.2
Prin 4	Notice of Revised Date for Practical Completion	9.4.3
Prin 5	Principal's Request to Contractor	10.2
Prin 6	Notice of Dispute	10.2, 10.6
Prin 7	Section 13 Notice of Dispute	13

*Check against compliance with State security of payment legislation.

FORMS

- **Principal's Forms**
- **Contractor's Forms**

PRINCIPAL'S FORMS Prin 1

Design and Construct Contract - Lump Sum

**DECON-2
2005**

[Insert your company details here]

PRINCIPAL'S NOTICE PROVIDING INFORMATION

No:

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause Number the following information is provided (insert details here)

.....(signature) for
Principal

Distribution: **Original:** Contractor **Copies:** File Other

Note to Principal:

This form can be used for the provision of any information including under clauses 1.4, 1.5, 1.6.

PRINCIPAL'S FORMS Prin 2

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

PRINCIPAL'S DIRECTION TO CONTRACTOR

No:

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause number you are directed as follows:
(insert details here)

.....(signature) for

Principal

Distribution: Original: Contractor

Copies: File Other

Note to Principal:

This form can be used for any direction including directions under Clauses 3.3.1, 4.2, 5.2, 6.3.3, 6.6, 6.7.2.

PRINCIPAL'S FORMS Prin 3

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

PRINCIPAL'S NOTICE TO CONTRACTOR

No:

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause you are notified as follows (*insert details*):

.....(signature) for

Principal

Distribution: Original: Contractor Copies: File Other

Note to Principal:

This form can be used for any notice including notices under Clauses 6.3.2, 6.5, 6.10.2, 9.3.2, 10.12, 11.3, 11.4, 12.1.1, 12.2.2, 12.5, 13.2.2.

PRINCIPAL'S FORMS Prin 4

Design and Construct Contract - Lump Sum

**DECON-2
2005***[Insert your company details here]***NOTICE OF REVISED DATE FOR PRACTICAL COMPLETION****No:**

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause 9.4.3 the revised date for Practical Completion is now(insert date here)

(signature) for

*Principal***Distribution:** Original: Contractor **Copies:** File Other **Note to Principal:**

You must give notice to the Contractor within 10 days of receiving a Notice of Delay from the Contractor.

PRINCIPAL'S FORMS Prin 5

Design and Construct Contract - Lump Sum

**DECON-2
2005***[Insert your company details here]***PRINCIPAL'S REQUEST TO CONTRACTOR****No:**

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause(insert Clause number) please provide the following information:

.....(signature) for

*Principal***Distribution:** Original: Contractor **Copies:** File Other **Notice to Principal:**

This form may be used for any request including a request under Clause 10.1.2.

[Insert your company details here]

NOTICE OF DISPUTE**No:**

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause(insert Clause number) you are notified that we wish to dispute the Progress Claim issued on(insert date) / claim for cost of delay issued on insert date} (delete where not applicable)

Insert detailed explanation.

.....(signature) for
Principal

Distribution: Original: Contractor Copies: File Other **Note to Principal:**

There are strict time limits for notifying of a dispute. Check the terms of the Agreement.
This form can be used to notify any disputes including disputes under Clauses 10.2, 10.6.

[Insert your company details here]

SECTION 13 NOTICE OF DISPUTE**No:**

Project:

Project no:

Date issued:

To Contractor:

In accordance with Clause 13.1 you are notified of a dispute in respect of (*insert details which clearly identify the nature of the dispute*)

You are required to send a person with authority to resolve the dispute to meet with us within 14 days of receiving this notice.

Note to the parties:

You must continue to perform your obligations under the Agreement whilst the dispute is resolved.

.....(signature) for
Principal

Distribution: Original: Contractor

Copies: File Other

CONTRACTOR'S FORMS Con 1

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

CONTRACTOR'S REQUEST FOR DIRECTION

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause Number please provide a direction to resolve the following matter (*insert details here*).

.....(signature) for
Contractor

Distribution: Original: Principal Copies: File Other

Note to Contractor:

This form may be used for any request for direction including a request under Clause 2.2.

CONTRACTOR'S FORMS Con 2

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

CONTRACTOR'S REQUEST TO PRINCIPAL

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clauseyou are requested to provide the following; (*insert details*)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies:

File Other

Note to Contractor:

This form can be used for any request including a request under Clause 1.5.2.

CONTRACTOR'S FORMS Con 3

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

CONTRACTOR'S NOTICE TO PRINCIPAL

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clauseyou are notified as follows; (insert details)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

Note to Contractor:

This form can be used for any notice including notices under Clauses 2.3.1, 3.3.1, 6.3.2, 6.7.2, 12.1.1, 12.4.1, 12.5, 13.2.

CONTRACTOR'S FORMS Con 3

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

CONTRACTOR'S NOTICE TO PRINCIPAL

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause you are notified as follows; (*insert details*)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

Note to Contractor:

This form can be used for any notice including notices under Clauses 2.3.1, 3.3.1, 6.3.2, 6.7.2, 12.1.1, 12.4.1, 12.5, 13.2.

CONTRACTOR'S FORMS Con 4

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

NOTICE OF PRACTICAL COMPLETION

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause number 9.3.1 / 9.3.3 (*delete where not applicable*) you are notified that the works have reached Practical Completion as at(insert date works reached Practical Completion)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

CONTRACTOR'S FORMS Con 5

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

PROGRESS CLAIM

No:

Project:

Project no:

Date issued:

To Principal:

- | | |
|---|---------|
| 1. The value of work completed to date is | \$..... |
| 2. Other monies due are | \$..... |
| 3. The GST applicable to this net amount is | \$..... |
| 4. Total for this claim including GST is | \$..... |

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

CONTRACTOR'S FORMS Con 6

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

NOTICE OF DELAY

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause 9.4.2 we advise that as of(insert date here) the works are being delayed.

The likely period of the delay is.....(insert date) and therefore the works will now reach Practical Completion on(insert date).

The cause of the delay is as follows; (insert details of cause of delay)

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other

CONTRACTOR'S FORMS Con 7

Design and Construct Contract - Lump Sum

DECON-2
2005

[Insert your company details here]

NOTICE TO PRINCIPAL OF COST OF DELAY

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause 10.6 you are advised that the works have been delayed as a result of a variation; a latent condition; a dispute with an adjoining or neighbouring owner or resident; compliance with any changed or unforeseen requirement, condition, notice or order of any Authority; delay in the issue of any necessary Approval by an Authority; a breach by or act of prevention on the part of the Principal, *(insert details of the act)*; a delay caused by the Principal *(delete where not applicable)*

(insert details of the delay);

The cost of the delay is as follows: *(insert details of items of loss and expense)*

Note to Principal.

If you do not dispute the amounts in this notice within 10 days the Contract Sum will be adjusted accordingly.

.....(signature) for
Contractor

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Note to Contractor:

You must give notice to the Principal within a reasonable time of the delay occurring.

INTRODUCTION

Preamble

DECON 2 is a Design and Construct contract which is used when the contractor provides all of the services necessary to complete a building project including provision of the design.

DECON 2 provides a broad contractual framework and establishes the legal rights and obligations of each party and their powers and duties under the contract.

Domestic Building Work

Without special conditions that are tailored to State and Territory domestic building legislation DECON 2 is not suitable for use in domestic building work.

Time Limits

DECON 2 provides a number of critical times which (excluding times for dispute resolution) are laid down for ease of reference in the table below.

Days are defined in Clause 1.1.2. Note that the definition is different for different sections of the contract.

Promptly is defined in Clause 1.1.1 and means as soon as practicable and action must be taken without delay.

The date of the Agreement should be written on the Signing Page of the Agreement.

Critical Dates Table

Clause	Event	Principal	Contractor
1.3.2	Give directions	Promptly	
1.4	Give evidence of title	Within 10 days of the date of the Agreement	
1.5.1	Give evidence of capacity to pay	Within 10 days of the date of the Agreement.	
1.5.2	Meet request for evidence of capacity to pay	Within 10 days of the request	
1.6	Inform of appointment of representative	Promptly	
2.2.1	Notify error or discrepancy in documents		Promptly
3.3.1	Notify Latent Condition		Immediately
5.3.2	Submission of designs once works have started.		Promptly

Clause	Event	Principal	Contractor
6.3.2	Notify discrepancy between documents and requirements of authorities	Immediately	Immediately
6.3.3	Direction as to how to proceed following notification under 6.3.2	Within 5 days of receipt of notice.	
6.7.2	Notification that materials or workmanship not available.		Promptly
6.7.2	Direction if materials or workmanship not available	Within 5 days of receipt of notice.	
6.10	Remedy defects		Promptly
9.1	Date for Building Commencement		Within 20 days of all of the events listed in Clause 9.1
9.3.2	Notice of matters to be done for Practical Completion	Within 10 days of receipt of Notice of Practical Completion	
9.3.3	Do all things necessary for Practical Completion		Within reasonable period.
9.4.2	Notice of delay		Promptly
9.4.3	Give revised date for Practical Completion	Within 10 days of receiving notice of delay from Contractor.	
10.5.1	Direction regarding Prime Cost Items or Provisional Sums	Promptly	
10.6	Notice of cost of delay		Within reasonable time
10.11.3	Deposit security in trust account	Within 5 days of Progress payment being made	
10.11.3	Evidence of deposit of security into trust account	Within 5 days of deposit being made	
10.12	Notice before drawing on security	5 days	
11.1	Release of remaining security	Within 5 days of receipt of Final Notice	
11.2	Pay Final Account	Within 10 days of issue of Final Notice and Account	
11.4	Dispute Final Notice	Within 15 days after giving Final Notice	
12.1.1	Refer to Arbitration	Within 10 days of Section 13 Notice.	Within 10 days of Section 13 Notice.
12.2.2.5	Remedy default		Within 10 days of receipt of written notice.

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Design and Construct Contract - Lump Sum

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2005

[Insert your company details here]

SECTION 13 NOTICE OF DISPUTE

No:

Project:

Project no:

Date issued:

To Principal:

In accordance with Clause 13.1 you are notified of a dispute in respect of (*insert details which clearly identify the nature of the dispute*)

You are required to send a person with authority to resolve the dispute to meet with us within 14 days of receiving this notice.

Note to the parties;

You must continue to perform your obligations under the Agreement whilst the dispute resolution process takes place.

.....(signature) for
Contractor

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Design and Construct Contract - Lump Sum

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2005

[Insert your company details here]

CONTRACTOR'S VALUATION OF VARIATION

No:

Project:

Project no:

Date issued:

To Principal:

A variation has occurred as follows: *(insert details of variation)*

In accordance with Clause 10.4 the variation has been valued as follows:

- | | |
|---|----------|
| 1. The value of pricing work is | \$ |
| 2. The cost of the delay is calculated as | \$ |
| 3. Additional expenses as a result of the delay | \$ |
| 4. Other monies due | \$ |
| Total for this variation including GST is : | \$ |

.....(signature) for
Contractor

Distribution: Original: Principal

Copies: File Other