

# HALEBERRY PTY LTD T/A PERSONAL INDEPENDENCE PROVIDERS TERMS AND CONDITIONS

## 1. BUILDER'S OBLIGATIONS

The Builder will carry out and complete the works in a workmanlike manner in accordance with the terms and conditions of the agreement.

The Builder will supply materials free from defects. The builder is not liable for any damage or defect caused by misuse, abuse, wear and tear, normal shrinkage or movement of materials supplied by the Owner; nor does the Builder warrant the suitability, merchantability or fitness for purpose of any goods supplied by the Owner.

## 2. PAYMENT

The Owner must pay the Builder the contract price in accordance with item 4 of the Particulars. Payment terms for each payment is strictly seven (7) days

## 3. ACCESS

The Owner must provide uninterrupted access to the site for the Builder to measure and quote, deliver materials and carry out the Works. The Owner must provide adequate access to the Builder and Sub-contractors to appropriate facilities including but not limited to water, electricity, toilet and washing facilities.

## 4. CHECK MEASUREMENTS

The Builder will measure the site where works are to be completed and may be required to modify the plans and specifications in order to conform to existing site measurements. The Builder will conduct a measurement check within 10 days from the date the site becomes ready for the Works to be carried out.

## 5. BUILDER'S RIGHT TO RECTIFY

The Builder will rectify any defective works which the Owner by notice in writing notifies the Builder within seven (7) days of the date such defect is noticed. Rectification works will be carried out by the Builder 28 days of the receipt of such notice.

## 6. COLOUR VARIATION

The Builder will make its best endeavours to match the colour of grain of timber, marble, granite, laminate or other surfaces selected by the Owner.

The Builder will not be liable for any variation in colour materials which can arise from time to time depending on product availability.

## 7. SURPLUS MATERIALS

Unless by prior agreement with the Owner, the Builder will use only new materials or recycled timber supplied by the Owner. Unless prior agreement with the Owner, demolished materials will become the property of the Builder. Surplus materials supplied by the Builder also remain the property of the Builder.

## 8. PROVISIONAL SUMS AND APPLIANCES

Other than by prior agreement with the Owner the Builder is not responsible for the installation of any appliances or the connection of any required services.

## 9. DELAY

The Builder is not responsible for any loss or damage caused by delay that is beyond the control of the Builder including (but not limited to) any failure by the Owner to:

- a. select fittings and fixtures
- b. ensure the site is ready for the works to commence; or
- c. notify the Builder the site is ready

In the event of delay the commencement and completion dates (where appropriate) will be amended accordingly.

## 10. SAMPLES AND PRODUCTS ON DISPLAY

Subject to clause 6, the Builder will make every endeavour to ensure materials used correspond as far as is practicable with any sample products displayed or shown to the Owner.

## 11. VARIATIONS

In the event the Owner requires a Variation to the works notice in writing must be given to the Builder particularising the Variation.

If the Builder holds the belief that the Variation will

- Not require a variation to any permit
- Not cause any delay
- Not add more than 2% to the original agreement price then the Builder may carry out the Variation to the agreement price with such increase to be included in the final payment to be made as set out in item 4 of the agreement particulars

In any other case the Builder must give the Owner a notice in writing stating either:

That the Builder refuses or is unable to carry out the Variation; or

That the Builder is able to carry out the Variation and:

- a) the effect the Variation will have on the works and whether any variation to any permit will be required;
- b) in the event the Variation may cause a delay, the Builder will estimate the length of the delay;
- c) the Builder will calculate the price of the Variation and the effect it will have on the agreement price including administrative costs and the agreement price will be increased accordingly with such increase to be included in the final payment to be made as set out in item 4 of the agreement particulars.

In the event the Builder suggest or recommends a Variation it must give the Owner notice in writing stating the details of the Variation and the reasons for it. The parties must then agree in writing to any such variation.

## 12. UNFORSEEN CIRCUMSTANCES

The Builder is not responsible for any unforeseen problems encountered with the site which have the effect of delaying or hindering the carrying out of the works. In the event that additional work is required due to unforeseen problems the Builder may request a Variation. The Owner will be responsible for meeting the costs of and incidental to such Variation

## 13. FORCE MAJEURE

The Builder shall not be liable to the Owner for any loss or damage directly or indirectly arising out of or in connection with failure to perform any term of this agreement where such failure is caused by a cause beyond the Builder's control including, but not limited to, storm, tempest, fire, flood, earthquake or act of God.

## 14. WORK CARRIED OUT BY OWNER

In the event that the Owner provides plumbing and/or electrical services, or requires installation of appliances the Owner must have the site ready for the installation of such services and/or appliances at least 24 hours prior to the required installation time. The Builder shall not be liable for any loss or damage suffered by the Owner in relation to any delay caused by the Owner's failure to comply with this clause. Whilst all care will be taken by the Builder in the installation of goods supplied by the Owner the Builder does not warrant the suitability, merchantability or fitness for purpose of such goods.

## 15. SUBCONTRACTORS

The Builder reserves the right to engage sub-contractors to carry out any of the works. The Owner shall refrain from giving instructions to any sub-contractors or other workers on the site.

## 16. RISK

The Owner shall be responsible for insurance cover for loss and damage to fixtures, fittings, appliances and material once delivered to the site.

## 17. DEFAULT INTEREST

Time shall be of the essence in the performance of this agreement. In the event the Owner fails to make progress of final payments in accordance with this agreement the Builder shall be entitled to charge interest on unpaid sums at the rate for the time being fixed under the *Penalty Interest Rates Act 1983*.

## 18. TERMINATION

If either party is in breach of the agreement the, subject clause 20, the other party may give written notice of such breach to the defaulter requiring that party to rectify the breach within 14 days. In the event that such notice is not complied with the party giving the notice may forthwith terminate this agreement.

## 19. COMPLETION

Upon completion of the works the Owner will do all things and sign all necessary documents to ensure that the Builder is paid within seven (7) days.

## 20. INSOLVENCY

In the event either party becomes insolvent the other party may by notice in writing terminate this agreement forthwith.

## 21. GOVERNING LAW

This agreement is to be governed by and construed in accordance with the law of the State of Victoria.

## 22. EXCLUSION OF LIABILITY

To the extent permitted by law the Builder shall not be liable to the Owner, its servants, agents, or contractors for any loss damage or injury to property or persons (including but not limited to loss of profit or business or other direct, indirect, special, consequential or incidental damages) resulting from, arising out of, or in connection with the Builder's performance or non-performance of this agreement including by reason of the Builder's negligence.

## 23. SEVERABILITY

In the event that any of the terms of this agreement are contrary to law they are to be read down and/or severed so that this agreement is consistent with such law and any such illegality shall not void the totality of the agreement.

## 24. STATUTORY WARRANTIES

To the extent required by the *Domestic Building Contracts Act 1995* the Builder gives the following warranties:

- a) the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in this agreement.
- b) all materials to be supplied by the Builder for use in the work will be suitable for the purpose for which they are intended and that unless stated in this agreement will be new;
- c) the works will be carried out in accordance with the laws of the State of Victoria
- d) the works will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified in this agreement;
- e) if the works consist of an erection or construction of a home, or renovation, alteration, extension, improvement or repair to a home to a stage suitable for occupation, the home will be suitable for such occupation at the completion of the works;
- f) any provisional sum included in this agreement will be calculated with reasonable care and skill taking account of all of the information reasonably available at the date of this agreement including the nature and location of the site.

These warranties expire 6.5 years from the date of the certificate of occupancy or certificate of final inspection.