



# A.N.T. Renovations Pty. Ltd.

INSURANCE REPAIR SPECIALISTS

T 03 9720 7450 F 03 9720 3274

ABN 18 006 596 998 DB-U39250

## TRADING TERMS AND CONDITIONS

### 1.0 DEFINITIONS

- 1.1 **Act** means the *Domestic Building Contracts Act 1995*;
- 1.2 **Builder** means A.N.T. RENOVATIONS PTY LTD (ABN 18 006 596 998) of Unit 2, 603 Boronia Road, Wantirna, Victoria;
- 1.3 **Commencement Date** means the date on which the Builder commences work on the Property pursuant to this Contract;
- 1.4 **Contract** means this Contract for Works between the Builder and the Customer, including all Specifications, plans and annexures;
- 1.5 **Completion** means when the Works detailed in the Specifications have been completed on the Property or, if the Works require a building permit, then on the issuing of a Certificate of Occupancy or Certificate of Final Inspection for the Works;
- 1.6 **Customer** means the owner and registered proprietor(s) of the Property upon which the Builder is completing works and whose name and address is recorded herein;
- 1.7 **Insurer** means the Customer's insurer who has directed and authorised the Builder to complete the Works on the Property;
- 1.8 **Make Safe Works** means works which are intended to be temporary in nature and have been instructed to the Builder by the Insurer to endeavor to ameliorate immediate danger on the Property;
- 1.9 **Prime Cost** means an item (eg. a fixture or a fitting) that either has not yet been selected or whose price is not known at the time the Contract is entered into and for the cost of supply and delivery of which the Builder must make a reasonable allowance in this Contract;
- 1.10 **Property** means the property upon which the Builder has been directed to complete works;
- 1.11 **Provisions Sum** means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under the Contract for which the Builder, after making all reasonable inquiries, cannot give a definite amount at the time the Contract is entered into;
- 1.12 **Specifications** means the specifications described in this Contract;
- 1.13 **Works** means the building works that the Builder has been directed to complete on the Property as detailed in the Specifications and any other works directly agreed between the parties in writing.

### 2.0 GENERAL

- 2.1 These Terms and Conditions:
- 2.1.1 apply to building works and any other services provided by the Builder to the exclusion of all other terms and conditions whatsoever, whether contained or implied in or from any other correspondence or other communication with the Customer;
- 2.1.2 shall be deemed incorporated into any contract agreed between the Builder and the Customer;
- 2.1.3 shall prevail over all other conditions or representations raised or put by the Customer to the Builder to the extent of any inconsistency (except where waived by the Builder in writing);
- 2.1.4 may be changed at any time by the Builder (in writing);
- 2.1.5 shall not be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australia Consumer Law, the *Competition and Consumer Act 2010* or any other succeeding legislation) and which by law cannot be excluded, restricted or modified.
- 2.2 The parties acknowledge that the Builder is obliged to provide the Customer with a five business day Cooling Off notice pursuant to s.34 of the Act and that the Builder hereby does so by referring the Customer to the following website: [www.antrenovations.com.au/coolingoffnotice](http://www.antrenovations.com.au/coolingoffnotice) and the notice shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the notice and acknowledges receipt by signing this Contract.
- 2.3 The parties acknowledge that the Builder is obliged to provide the Customer with a Checklist pursuant to s.31(1)(r) of the Act and that the Builder hereby does so by referring the Customer to the following website: [www.antrenovations.com.au/checklist](http://www.antrenovations.com.au/checklist) and the checklist shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the checklist and acknowledges receipt by signing this Contract.
- 2.4 The parties acknowledge that the Builder is obliged to provide the Customer with the warranties in s.8 and s.20 of the Act pursuant to s.31(1)(q) of the Act and that the Builder hereby does so by referring the Customer to the following website: [www.antrenovations.com.au/dbcawarrantieslist](http://www.antrenovations.com.au/dbcawarrantieslist) and the list shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the list of the Act's warranties and acknowledges receipt by signing this Contract.

### 3.0 WORKS

- 3.1 The Builder shall complete all works set out in the Contract as detailed herein and instructed to it by the Customer or the Insurer or otherwise agreed with the Customer in writing. The Works to be completed shall be subject to all necessary preconditions, limits and exclusions as set out in this Contract.
- 3.2 The parties agree that the Works shall not be varied without the express written agreement of the Builder and, where necessary, the due written authorisation of the party who has instructed the Builder to complete the Works.
- 3.3 In the event that the Builder has completed Make Safe Works on the Property, then the Customer acknowledges and agrees that such works are wholly temporary in nature and, upon the completion of such Make Safe Works, that the Customer shall forthwith arrange for the issues addressed by the Make Safe Works to be permanently remedied in liaison with the Insurer. The Customer agrees that it is the Customer's obligation to permanently resolve the Make Safe Works and hereby releases the Builder from any liability associated with the Make Safe Works completed by the Builder.
- 3.4 The parties agree that the Builder shall commence the Works within twenty-eight days of receiving and agreeing on full instructions and specifications from the Insurer or the Customer, subject to any necessary permits and other preconditions set out in this Contract being met and the reasonable availability of the Builder's employees and contractors.
- 3.5 The Builder shall do all things that it is reasonably possible for the Builder to do to ensure that the Works will start as soon as possible and shall provide the Customer with two days notice prior to the actual commencement of works.
- 3.6 The Builder shall, on notifying the Customer of the date of the actual commencement of works, provide the Customer with the number of days, weeks or months which may be required to complete the Works. This completion date is hereby incorporated into the Contract pursuant to s.31(1)(i) of the Act. The parties further agree that, pursuant to s.32(3) of the Act, the completion date may be delayed by inclement weather, practical operational issues, the requirements of the Insurer (if applicable), the requirements of government authorities and any practical issues or discoveries made at the Property by the Builder once works have commenced.
- 3.7 In the event that, during the course of completing the Works, the Builder discovers additional damage to or issues with the Property which were not addressed by the Works, then the Customer acknowledges and agrees that the Builder shall be entitled to cease works pending either the Customer liaising with its Insurer to address such additional damage as a variation by the Insurer or the Customer otherwise agreeing that the Builder should address the additional damage or issues as a variation to the Works (subject to a separate written variation) at the Customer's cost.

Postal Address P.O. Box 6170, WANTIRNA VIC 3152

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#### 4.0 PAYMENT

- 4.1 The parties confirm and agree that the cost of the Works carried out by the Builder pursuant to this Contract shall be paid by the party directing the Works (being the Customer or the Insurer), excluding any variation works agreed between the Builder and the Customer in writing which shall be paid by the Customer pursuant to this Clause 4.0.
- 4.2 The Customer shall pay the Builder the cost of agreed variation works, which are not the responsibility of the Insurer (where applicable), within seven (7) days of being issued with a Tax Invoice by the Builder.
- 4.3 In the event that Customer variation works are agreed, the Builder may in its absolute discretion require payment of a deposit at the time the Customer instructs the Builder to proceed with such works subject to the Act.
- 4.4 The Customer agrees that all payments are to be made without retention or set off and warrants that the Customer has adequate funds to pay for such variation works.
- 4.5 In the event of there being any payments, in whole or in part, remaining unpaid beyond the terms for payment in Clause 4.2, then the Builder in its absolute discretion may charge interest on that outstanding amount at a rate of two (2) per cent per annum above the rate set out pursuant to Section 2 of the *Penalty Interest Rates Act 1983* during the period such unpaid balance remains unpaid and such interest will be added to the said balance due from the Customer and calculated on a daily basis.

#### 5.0 PRIME COST AND PROVISIONAL SUM

- 5.1 The Customer acknowledges that this Contract may contain Prime Cost or Provisional Sum items as detailed herein and identified separately in the specifications for the Works.
- 5.2 Where relevant, the Customer shall provide the Builder with written instruction with respect to Prime Cost and Provisional Sum items as requested by the Builder. Failing the provision of written instructions, the Customer acknowledges and agrees that the Builder shall make a selection at its discretion on such items and the Customer releases the Builder from any liability associated with that selection.
- 5.3 The parties agree that once Customer or the Builder has made all selections required for Prime Cost or Provisional Sum items, then the cost of the Works shall be deemed varied by the impact of those items.

#### 6.0 INSURANCE

- 6.1 In the event that this Contract is a major domestic building contract which requires complying warranty insurance (as required by the Act, any Regulation of the Act or Ministerial Order under the Act), then but not otherwise this Clause 6.0 shall apply. The parties agree that this Clause 6.0 shall be struck out and agreed as left blank in all other circumstances.
- 6.2 Where the Builder is required to obtain complying warranty insurance, then the parties agree that prior to the commencement of any works the Builder shall obtain such complying insurance for the Works and shall provide a copy of the insurance policy to the Customer. In providing the policy to the Customer, the type of policy, the policy number and the details of the insurer shall be deemed incorporated into the terms of this Contract in compliance with the Act.

#### 7.0 ACCESS

- 7.1 The Customer hereby grants the Builder an irrevocable license to assess the Property and remain therein to complete the Works for such time and until such time as the Builder requires to complete the Works.

#### 8.0 WARRANTIES AND LIABILITY

- 8.1 The parties acknowledge the warranties provided pursuant to the Act and agree that the Builder shall not be liable for any breach of warranty if the breach was known or reasonably should have been known by the Customer when this Contract was executed.
- 8.2 The only conditions and warranties which are binding on the Builder in respect of the state, quality or condition of the goods or services provided to the Customer are those imposed and required to be binding by statute (including the Act and the Australian Consumer Law, the *Competition and Consumer Act 2010* or any other succeeding legislation). Except as expressly provided herein, the Builder shall not be liable to the Customer for any liability, (including liability in negligence) loss or damage of whatsoever nature, consequential or otherwise, howsoever suffered or incurred by the Customer, caused by or resulting directly or indirectly from the goods or services provided.

#### 9.0 DISPUTE RESOLUTION

- 9.1 In the event that the Builder has been directed to complete the Works by the Insurer and the Customer has any dispute with the Builder with respect to this Contract, the Works or any other matter, the Customer agrees and warrants that, prior to taking any action, the Customer shall contact its Insurer to discuss the issues in dispute and the Builder shall have the right to address the notified issues with the Insurer.
- 9.2 In the event that the Insurer does not address the dispute or in any other circumstance, then the parties agree that the dispute shall be referred for mediation to a mediator as may be agreed by the parties or failing agreement then by a suitably qualified and experienced mediator appointed by the president (or his/her delegate) of the Law Institute of Victoria (or such like or succeeding institution). This provision shall not prevent a party from applying to a competent court for urgent injunctive or other relief nor shall it limit the Builder from pursuing any debt owed to it as it sees fit.

#### 10.0 AUTHORITY TO VARY TERMS

- 10.1 No manager, employee, servant, agent or representative, other than a Director or Directors, of the Builder has any authority to vary this Contract and without limiting the generality of the foregoing no warranty, representation, promise, agreement, term or condition whether express or implied made by any such person shall be deemed to be included in or form part of this Contract or operate in any way collateral to this Contract other than those warranties, representations, promises, agreements, terms or conditions which expressly appear herein or which are implied by law and not excluded under Clause 8.0.

#### 11.0 MISCELLANEOUS

- 11.1 Any delay in or failure by the Builder to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver thereof or of any rights the Builder may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 11.2 If any provision of this Contract shall be determined by any statute or any court having jurisdiction in relation thereto to be illegal, invalid, void, voidable or unenforceable the legality validity or enforceability of the remainder of this Contract shall not be affected and the illegal, invalid, void, voidable or unenforceable provision shall be deemed deleted herefrom to the same extent and effect as if never incorporated herein but the remainder of this Contract shall continue in full force and effect.
- 11.3 This Contract shall survive any accepted repudiation or other termination of the contract to supply goods or services existing between the Builder and the Customer.
- 11.4 This Contract shall be governed and interpreted according to the laws of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.

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