

# **BUILDING CONTRACT**

## **MEMORANDUM OF AGREEMENT AND CONDITIONS OF CONTRACT**

MADE and entered into by and between:

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(hereinafter referred to as the OWNER);

and

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(hereinafter referred to as the BUILDER)

WHEREAS the OWNER is desirous of having a home constructed on:-

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(hereinafter referred to as the PROPERTY)

### **1. DEFINITIONS**

1.1 The "CONTRACT SUM" shall mean the amount of R\_\_\_\_\_ (inclusive of VAT and the NHBRC levy) payable to the BUILDER for the construction of the home.

1.2 The "ANTICIPATED OCCUPATION DATE" shall mean \_\_\_\_\_

1.3 The "COMPLETION DATE" shall mean the date on which the home has been completed for occupation and the OWNER has been handed the keys of the home or has been given written notice that the home has been completed (whichever is the earlier).

1.4 The "BUILDER'S ADDRESS" shall mean \_\_\_\_\_

1.5 The "OWNER'S ADDRESS" shall mean \_\_\_\_\_

- 1.6 "SERVICES" shall mean water and electricity supply, sewerage and roads to the boundary of the PROPERTY.

## **2. INTRODUCTION**

- 2.1 The BUILDER has agreed to construct a home for the OWNER on the PROPERTY for the CONTRACT SUM.
- 2.2 The CONTRACT SUM shall (if applicable) be secured in terms of the mortgage bond referred to in the agreement of sale.
- 2.3 The CONTRACT SUM shall not be subject to increase unless commencement of the home is delayed by the OWNER beyond six (6) months after the date of signature hereof; (In the event of such delay, the contract sum shall be increased by the amount equivalent to the consumer price index change from the date of signature hereof to the date of commencement of the building.)

## **3. AGREEMENT**

- 3.1 The BUILDER and the OWNER agree that the construction of the home shall be undertaken and completed by the BUILDER within a period of 12 months from the date hereof.
- 3.2 The construction shall be carried out in accordance with this agreement which shall include:
- 3.2.1 the general building and design requirements set out in Annexure "C";
- 3.2.2 the building plans as set out in Annexure "F";
- 3.2.3 the specifications as set out in Annexure "G".

## **4. PAYMENT**

- 4.1 The CONTRACT SUM:
- 4.1.1 shall be secured in terms of the mortgage bond referred to in the agreement of sale or a bank guarantee, or cash paid into trust to the BUILDER'S attorney, or any other security acceptable to the BUILDER prior to commencement of the construction of the home;

- 4.1.2 shall be payable in periodic payments to the BUILDER only on signature by the OWNER of draw forms in respect of work completed in terms of clause 4.2 or in terms of clause 4.5.
- 4.2 The periodic payment of the CONTRACT SUM in respect of work completed shall be made as follows:
  - 4.2.1 25% When the floor slab is cast.
  - 4.2.2 25% When the buildings are roof height.
  - 4.2.3 25% When the windows and doors have been fitted.
  - 4.2.4 25% On the COMPLETION DATE.
- 4.3 Where cash is payable, same shall be paid to the BUILDER'S Conveyancer, who is irrevocably authorised:
  - 4.3.1 to invest it in an interest-bearing account for the OWNER
  - 4.3.2 to release funds in accordance with Clause 4.1.2 and 4.2.
- 4.4 Where the PROPERTY is bonded, the OWNER irrevocably cedes and assigns the proceeds from the said mortgage bond to the BUILDER and undertakes to sign, upon request to do so, draw forms including the final draw form.
- 4.5 In respect of progress draws where a dispute arises in respect of the amount that the BUILDER is entitled to draw, or payment is not made timeously, a certificate by an engineer or quantity surveyor to the effect that building constructions works to the value indicated on the said certificate have been erected on the PROPERTY shall be final and binding on both parties. The costs of issuing such certificate shall be for the OWNER'S account and shall be payable on demand.

## **5. DRAWINGS AND SPECIFICATIONS**

After the signing hereof the original building plans and specifications shall remain in the custody of the BUILDER for the duration of the contract. The working drawings shall be effected by the BUILDER or his agent unless otherwise specified herein.

## **6. BUILDER'S OBLIGATION**

The BUILDER shall:

- 6.1 provide everything necessary for the construction of the home, to the reasonable satisfaction of the OWNER and substantially in accordance with the building plans and specifications;

- 6.2 Take out all risk insurance in respect of the building of the home from the commencement of building operations until the COMPLETION DATE.

**7. OCCUPATION**

- 7.1 Occupation of the home shall be given on the ANTICIPATED OCCUPATION DATE.
- 7.2 In the event that the BUILDER is unable to provide occupation on the ANTICIPATED OCCUPATION DATE, he shall be entitled to extend such date for a period of up to one (1) month by giving the OWNER at least fourteen (14) days written notice of the new ANTICIPATED OCCUPATION DATE.
- 7.3 From the COMPLETION DATE the home shall be at the OWNER'S sole risk and benefit.
- 7.4 Where registration has not been effected before occupation of the home the OWNER shall pay monthly in advance occupational interest of 1% of the PROPERTY and contract sum to the Seller and BUILDER respectively. The OWNER shall however be obliged to refund a pro rata share thereof where the outstanding amount is settled during the month.

**8. EXTRA WORKS**

In the event that any mortgagee or the local authority or the OWNER or any other body or party at any time for any reason, whether before, during or after the construction of the home requires any alteration, variation or amendment to the building plans and/or specifications involving the BUILDER in any additional expense, then the cost of complying with the alteration, variation or amendment shall be borne and paid for by the OWNER. Where additional work or expense is incurred by the BUILDER due to the above or to soil or site conditions discovered after commencement of construction, the extra costs arising from such work or expense shall also be paid by the OWNER. All amounts payable in terms hereof shall be payable on demand.

**9. OWNERS VARIATION ORDERS**

Variation orders requested by the OWNER shall be of no effect unless reduced to writing. The costs of these variation orders shall be paid in cash at the time of signing thereof.

**10. INSTRUCTIONS**

The OWNER shall not have the right, either personally or through an agent, to issue instructions directly to the BUILDER's workmen or any other party engaged in the construction.

## **11. COSTS**

The OWNER is responsible for the following costs:

11.1 Interim interest on money drawn from the mortgage bond (if applicable).

11.2 Insurance costs over the completed home from the COMPLETION DATE.

## **12. MAINTENANCE PERIOD**

12.1 Provided the OWNER has settled his account in full or has made arrangements, acceptable to the BUILDER, for the settlement of his account, the BUILDER:

12.1.1 undertakes to repair any roof leaks occurring within 12 (twelve) months after the COMPLETION DATE.

12.1.2 undertakes to repair any material or latent defects resulting from defective workmanship and arising within a period of 90 (ninety) days from the COMPLETION DATE.

12.2 The BUILDER shall only be obliged to make one visit to undertake the said maintenance and the OWNER shall prepare a list(s) of items requiring attention at the expiry of the 90 (ninety) day period which will be repaired at the discretion of the BUILDER within a reasonable period of being advised of such defects.

12.3 Where the list(s) of items requiring attention is not delivered to the BUILDER within 100 (one hundred) days of the COMPLETION DATE, the BUILDER shall have no obligation to rectify such items.

## **13. SUSPENSIVE CONDITIONS**

13.1 This contract is entered into subject to the following conditions being met :-

13.1.1 the fulfilment of all suspensive conditions in the agreement of sale concluded with the OWNER in respect of the PROPERTY (if applicable) ;

13.1.2 the registration of the mortgage bond referred to in the deed of sale of the PROPERTY (if applicable);

13.1.3 the approval of working drawings by the local authority;

13.1.4 the provision of SERVICES.

13.2 In the event that any of the above conditions are not fulfilled within one hundred and eighty (180) days from the date hereof, this agreement shall be of no force and effect.

**14. WHOLE AGREEMENT**

This agreement constitutes the entire agreement between the parties and no amendment, variation, alteration or deletion shall be valid and binding upon the parties unless reduced to writing and signed and initialled by both parties.

**15. DOMICILIUM CITANDI ET EXECUTANDI**

The OWNER chooses domicilium citandi et executandi at the OWNER'S ADDRESS and the BUILDER chooses domicilium citandi et executandi at the BUILDER'S ADDRESS.

**16. LATE PAYMENTS**

Where registration of the PROPERTY has been effected and payments are not made on the due date thereof, they shall bear interest at a rate of 4% above the prime lending rate of the BUILDER'S Bank, as from the due date of such payment.

**17. DISPUTES**

17.1 Any dispute or difference between the BUILDER and the OWNER arising out of and during the currency of the contract or upon termination or cancellation thereof, may be referred to arbitration.

17.2 The arbitrator shall be appointed at the request of either party by the president for the time being of the association affiliated with the Building Industries Federation SA having jurisdiction in the area.

17.3 The arbitration shall be held in terms of the Arbitration Act. The arbitrator is expressly authorised to determine the format and procedure of the arbitration and, in so doing and more particularly with regard to pleadings, discovery of documents and other matters of that kind, the arbitrator shall in his sole discretion determine the procedure to be adopted and shall have regard in that connection to the primary need to determine the dispute or difference as expeditiously and as cheaply as possible and with resort to as little formality as is reasonably practicable.

**18. BUILDER'S DEFAULT**

Should the BUILDER default by:

18.1 Without reasonable cause, wholly suspending the building before completion thereof; or

- 18.2 Refusing to proceed with the building with reasonable diligence; or
- 18.3 Refusing, after notice in writing from the OWNER, to remove defective work or improper materials;

then, if such default shall continue for FOURTEEN (14) days after a registered letter has been sent to the BUILDER from the OWNER specifying same, the OWNER may, without prejudice to any other rights he may have in terms of this contract or in law, by registered post terminate the employment of the BUILDER under this contract, provided no dispute has been declared in terms of Clause 17. In such event the BUILDER shall be liable for all damages incurred by the OWNER by reason of such default.

## 19. **OWNER'S DEFAULT**

- 19.1 Should the OWNER commit a breach of any of the terms of this contract, all of which terms shall be material, and not rectify such breach after having been given SEVEN (7) days notice by registered post to do so, the BUILDER shall be entitled forthwith to give the OWNER, per registered post, written notice of the termination of this contract, without prejudice to any other rights which the BUILDER may have in terms of this contract or in law.
- 19.2 Failure by the OWNER to make any payment due shall entitle the BUILDER, on giving SEVEN (7) days' written notice to the OWNER, to cease work under this contract until payment shall have been made to the BUILDER. The time during which such works shall cease shall operate as an automatic extension of time for completion and occupation, unless the contract specifies to the contrary in writing
- 19.3 A certificate signed by an engineer or a registered quantity surveyor specifying the amount due by the OWNER to the BUILDER shall be sufficient proof of any amount due to the BUILDER in terms of the contract, and may also be used by the BUILDER for the purposes of obtaining judgement by provisional sentence against the OWNER in any court of law having jurisdiction in respect thereof. Where the OWNER is in default the cost of obtaining the engineer's or quantity surveyor's certificate shall be for the OWNER'S account.

## 20. **PC ITEMS**

The purchaser acknowledges that a delay in choosing the PC items reflected in the Building Plans and Specifications could prejudice the seller and accordingly:

- 20.1 the purchaser shall be obliged to choose the PC items within one (1) week of being requested to do so;
- 20.2 in the event that the purchaser fails to choose the PC items, he hereby irrevocably authorises the seller to do so on his behalf.

## 21. SPECIAL CONDITIONS

THUS DONE and SIGNED by the BUILDER at

on this the                      day of                      20

for and on behalf of

THUS DONE and SIGNED by the OWNER at

on this the                      day of                      20

OWNER

The benefits conferred herein are hereby accepted by the Seller of the PROPERTY.

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