

SIMPLE WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



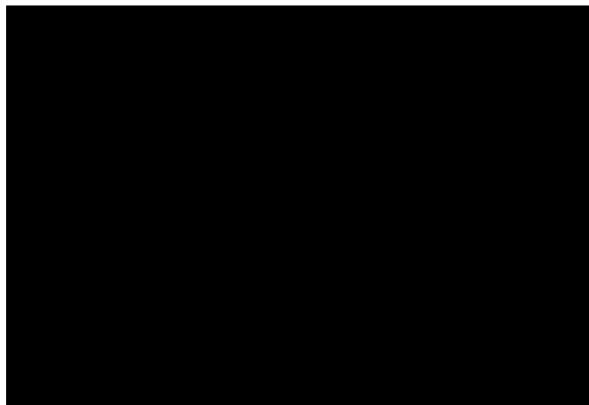
ABIC SW-2008 H Vic Simple Works Contract for Housing in Victoria

Contract Price:

Owner:

Contractor:

Site:



A Overview

A3 Warranties by the contractor

- .1 The contractor warrants that it:
 - a has the capacity to enter into this contract
 - b has the skill, technology, human and financial resources necessary to perform its obligations
 - c is registered or licensed, as the case may be, to carry out the **works* in accordance with the **relevant legislation* and the registration or licence number is shown in **item 1 of schedule 1**
 - d has been allocated the Australian Business Number (ABN) shown in **item 1 of schedule 1** for taxation purposes and that it is registered for **GST*
 - e will notify the owner **promptly* of any change in its ABN, **GST* registration, or the status of its licence or registration to carry out the **works*.
- .2 The contractor warrants that:
 - a the **works* will be carried out in a proper and workmanlike manner and in accordance with the plans and specification set out in this contract
 - b all materials to be supplied by the contractor for use in the **works* will be good and suitable for their purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new
 - c the **works* will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the **Building Act* and the regulations made under that Act
 - d the **works* will be carried out with reasonable care and skill and will be completed by the date for **practical completion* specified by this contract, as adjusted
 - e as the **works* described in the **contract documents* consist of the erection or construction of a home, or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the **works* are completed
 - f if this contract states the particular purpose for which the **works* are required, or the result which the owner wishes the **works* to achieve, so as to show that the owner relies on the contractor's skill and judgement, the contractor warrants that the **works* and any materials used in carrying out the **works* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result and
 - g any **provisional sum* included by the contractor in **schedule 6** has been calculated with reasonable care and skill taking account of all the information reasonably available at the date this contract is executed, including the nature and location of the **site*.

A4 Obligations of the owner

- .1 The owner must:
 - a subject to **subclause A2.1e**, obtain and give to the contractor all **official documents* required to begin the **works* and any shown in **item 29b of schedule 1**. If the contractor is required by **item 29 of schedule 1** to obtain the building permit, for the purposes of section 248(1) of the **Building Act*, the owner authorises the contractor to do so.
 - b obtain from neighbouring owners all easements that are required before the **works* can begin
 - c give possession of the **site* in accordance with this contract
 - d appoint an architect to administer this contract and provide appropriate **contract documents* for the **works*, given the nature of the **works*
 - e indemnify the contractor for any liability incurred by the contractor to a third party in respect of any default or negligence of the architect or any other consultant the owner engages in relation to the **works*
 - f issue instructions to the contractor only through the architect
 - g pay the contractor the **contract price* as adjusted in accordance with this contract
 - h comply with all other obligations under this contract.
- .2 If the owner's financial position alters to the extent that it may be unable to meet its obligations under this contract, it must immediately inform the contractor and the architect in writing.
- .3 If the owner does not own the property on which the **works* are to be carried out, written permission from the property owner for the **works* to be carried out must be provided by the owner to the contractor. The contractor is released from any obligations under the contract if the owner fails to provide this written permission.

A5 Warranties by the owner

- .1 The owner warrants that it has the financial resources necessary to perform its obligations.
- .2 If the owner has financed the **works* using a lending institution, the owner warrants that the institution is shown in **item 1 of schedule 1**.
- .3 If the owner has shown an Australian Business Number (ABN) in **item 1 of schedule 1**, it warrants that:
 - a the ABN is correct
 - b it will notify the contractor if it is not registered for **GST* and
 - c it will **promptly* notify the contractor if its ABN or registration status changes.

A Overview

A6 Architect to administer contract

- .1 The architect for the purposes of this contract is shown in **item 2 of schedule 1**.
- .2 The architect is appointed to administer this contract on behalf of the owner and the owner warrants that the architect has authority to administer this contract.
- .3 The architect is the owner's agent for giving instructions to the contractor. However, in acting as assessor, valuer or certifier, the architect acts independently and not as the agent of the owner.
- .4 The owner must ensure that the architect, in acting as assessor, valuer or certifier, complies with this contract and acts fairly and impartially, having regard to the interests of both the owner and the contractor. The owner must not compromise the architect's independence in acting as assessor, valuer or certifier.
- .5 The architect is not the owner's agent for giving or receiving notices under **clause A8, section P and section Q**.
- .6 If the architect resigns, or becomes incapable of acting as architect, or if the owner terminates the engagement of the architect, the owner must immediately nominate another architect and give written notice of the name and address of the architect to the contractor.
- .7 If the contractor has no reasonable objection to the nominated architect, that person will be appointed as the architect for the purposes of this contract.
- .8 The newly appointed architect is bound by the written decisions of any previous architect.

A7 Architect's instruction

- .1 The architect may issue an instruction at any time during this contract provided that the instruction is given in writing.

A8 Disputing architect's certificate, written decision or failure to act

- .1 If a **party* wishes to dispute a certificate, notice, written decision or written assessment issued by the architect, or to dispute the failure of the architect to issue something, the **party* must give the architect written notice under this clause within 20 **working days* after:
 - a receiving the certificate, notice, written decision or written assessment or
 - b becoming aware of the failure of the architect to issue something.
- .2 If the **party* fails to give a notice under **subclause A8.1**, the **party* will not be entitled to dispute the matter at all.
- .3 The architect must assess a notice given under **subclause A8.1** and give a written decision to the **party* and the other **party* within 10 **working days*.
- .4 If a **party* wishes to dispute a written decision given under **subclause A8.3**, or the architect's failure to give that decision, the requirements of **section P** apply.

A9 Failure to give certificate, written decision or notice

- .1 If the architect fails to issue a certificate, notice, written decision or written assessment required under this contract in respect of a claim, this does not mean that the claim has been accepted or is valid.

A10 Compensation is sole remedy

- .1 Where the contractor or the owner is entitled to compensation as determined under this contract, that compensation, when paid in full, is the sole and complete remedy for the contractor or the owner under this contract.

A11 Section 132 compliance

- .1 The contractor and the owner agree that the basis upon which a **variation* to the **works* may be carried out, and the basis for payment for any **variation* is to be strictly as set out under the building contract. In particular, the contractor and the owner acknowledge in accordance with section 132(2) of the **Act* that sections A, H and J of the contract impose more onerous obligations than are imposed under the **Act*

A1 合作合同

1. 依据这个合同，合同方和所有者必须：
 - a. 行为在合理范围内
 - b. 在所有事项方面协调配合
 - c. 避免阻碍对方
 - d. 提供所有合理的帮助并且对根据这个合同在保险政策下提出要求的人合作
2. 这些义务不会影响在这个合同下参与者的权利或者其的责任中的任何一个。

A2 合同方的义务

1. 合同方必须：
 - a. 在收到可施工的土地需要时 10 个工作日之内开始施工工作
 - b. 勤奋的进行所有相关需要的工作和依据在合同文件里面设立的标准完成施工工作
 - c. 在所有时间里，保持施工土地和任何可能被施工影响到的区域的干净整洁
 - d. 遵循建筑师在合同里标明的所有指示
 - e. 包含在这个合同里面要求的全部官方文件去完成这些施工工作，并且包括任何在计划 1 的项目 29 里面的内容
 - f. 遵循在这个合同里面所有的义务
 - g. 遵循所有相关的法令
 - h. 依据条例 M1 去实际完成工作
2. 如果合同方去完成这个工作的能力在某些程度上改变了，这个改变是可能无法满足他的义务，这个合同方必须立即以书面的形式通知建筑师和所有者。

A3 合约者的特约条款

1. 合约者特约条款是：
 - a. 有签署这份合同的能力
 - b. 有需要的技术，科技，人力资源和经济能力去完成他的义务
 - c. 是被注册了或者持有牌照，因为这个项目可能，根据*相关法令和在计划 1 里的事项 1 表明的牌照号去实施相关的工作
 - d. 在计划 1 里的事项 1 里有表明已经有澳洲工商号码 (ABN)去满足纳税目的，并且已经注册了 GST (消费税)
 - e. 立即通知所有者关于 ABN 的任何改变，GST 的注册，或者所持牌照的状况或者去实施工作的注册情况
2. 合约者特约条款是：
 - a. 工作需要在一个适当的和技术熟练的情况下进行，并且符合计划与在合同里提及的详情
 - b. 合约者提供的将会在建筑工作过程中用到的所有材料需要是好的并且适合他们的目的的，除非在合同里标明了这些材料将会是新的
 - c. 这个建筑工作将会依据，并且遵循，所有法令和法律包括的要求，不对这个特约条款的普遍性，建筑行为和和行为法令下的要求做出限制的情况下去实施工作
 - d. 这个建筑工作将会在合理的照料和技术下实施，并且需要根据合同细节提及的实施完成日期完工，根据调整改变

- e. 依据合同文件里面对施工的描述，包括建造或者修建一个房屋，或者计划去装修，改变，扩建，增强或者维修一个房屋到适合的阶段占有期，在建筑工程完成时，房屋是适合于占有期。
- f. 如果这个合同声明了对于工作需要的特殊目的，或者所有者希望这个建筑工程可以得到的结果，只要去标明所有者依据合约者的技术和判定，合约者特约条款表明建筑施工工作和任何实施这个工作所需要的材料是合理的符合那个目的，或者是一个非常自然和具有高质量的，并且可以合理的预计去达到目的
- g. 任何在计划 6 里面合约者包括的备用款是将合理的照料和技术 and 所有合理的在已生效的合同里的现有信息纳入考虑范围去计算的，包括这个施工场地的特征和位置

A4 所有者的义务

1. 所有者必须

- a. 根据分条款 A2.1e，获得并且给合约者所有要求去开始建筑工作的官方的文件，和任何在计划 1 事项 29 里的任何信息。如果计划 1 里事项 29 要求合约者去获得建筑许可，为了章节 248 (1) 建筑行为目的，所有者授权合约者去做这些
 - b. 在建筑工作开始之前获得相邻的所有者们的所有需要的地役权
 - c. 根据合同给这块地的占有施工使用权
 - d. 任命一个建筑师去管理这个合同并且为这个建筑工作提供适当的合同文件，给这些建筑工作一个性质
 - e. 对于由建筑师的违约或者疏忽，或者任何其他由所有者任命从事于和这个建筑工作相关的顾问造成合约者对于第三方的责任需要赔偿
 - f. 只能通过建筑师给合约者出示指示
 - g. 根据这个合约，付给合约者已调整过的合约价格
 - h. 遵循这个合约下的所有其他的义务
- 2. 如果所有者的经济状态在某种程度改变了，这个改变可能无法满足这些在这个合同下的义务，所有者必须立即以书面的形式通知合约者。
 - 3. 如果所有者没有正在施工场地土地的所有权，一份由房产所有者提供的允许在这块地施工的许可必须是以书面的形式由所有者提供给合约者。如果所有者没有提供书面形式的许可，合约者在这个合同下没有任何义务。

A5 所有者特约条款

- 1. 所有者特约条款有需要的经济资源去履行他们的义务。
- 2. 如果所有者已经获批了贷款去完成这个建筑工作，所有者特约条款在计划 1 里的事项 1 里面标明。
- 3. 如果所有者已经在计划 1 里的事项 1 里表明了澳大利亚工商号,他的特约条款是:
 - a. 澳大利亚的商务号是正确的
 - b. 如果这个没有为 GST(消费税)注册需要通知合约者
 - c. 如果澳大利亚商务号或者注册状态有任何改变需要立即通知合约者

A6 建筑师对管理者合约

- 1. 这个合约对建筑师的目的在计划 1 的事项 2 里。
- 2. 建筑师被任命为代表代所有者去执行管理这个合约，并且所有者特约条款表明建筑师有权力去管理这个合约。

3. 建筑师是所有者的中介去给合约方提供指导。但是，当在作为一个审查员，估价员，或者证书颁发者的时候，建筑师要独立采取行动，并且不是作为所有者的中介。
4. 所有者必须确保建筑师在作为一个审查员，估价员，或者证书颁发者的时候遵循这个合约，并且做出公平和公正的行为，把所有者和合约者双方都纳入考虑范围。所有者一定不能危害建筑师的独立性当他在作为一个审查员，估价员和证书颁发者的时候。
5. 根据章节 Q, P 和法令 A8, 建筑师不是所有者用去给出或者接收通知的中介。
6. 如果建筑师辞职，或者没有能力作为一个建筑师，或者如果所有者终止的和建筑师和合约，所有者必须立即授权另外一个建筑师并且以书面通知的形式告诉合约者这个建筑师的名字和地址。
7. 如果合约者对这个新的建筑师没有合理的反对理由，这个新的建筑师将会被任命为去完成这个合约目的的建筑师。
8. 新任命的建筑师受到前任建筑师以书面形式做出的决定的制约。

A7 建筑师的指示

1. 建筑师可能在合约期间提出一个指示，这个是以书面的形式。

A8 建筑师的证明，书面形式的决定或者不遵守的行为纠纷

1. 如果一方对建筑师发行的证书，通知，书面形式的决定或者书面形式的评估有异议，或者对建筑师没有发行一些东西有异议，这方必须在 20 个工作日以内给建筑师书面形式的通知根据法令，当：
 - a. 收到证书，通知，书面形式的决定或者书面形式的评估，或者
 - b. 开始担心建筑师无法发行一些东西。
2. 如果根据分条款 A8.1, 这方没有给出一个通知，这方将没有权力对事项作出任何的异议。
3. 建筑师必须阅读根据分条款 A8.1 给出的通知，并且在 10 个工作日内给一个书面形式的决定给对方。
4. 如果一方对在分条款 A8.3 下的书面形式的通知觉得有异议，或者建筑师没有提供章节 p 所需的要求的决定。

A9. 没有给出证明，书面形式的决定或者通知

1. 如果建筑师没有发行一个证书，通知，书面形式的决定或者评估，这些是在这个合约针对一个合约要求的，这不表明这个要求不被接受或者无效。

A10. 赔偿是单独的赔偿

1. 根据这个合约里所决定的，当合约者或者所有者有资格获得赔偿的时候，这个赔偿，当一次性付款的时候，是对于合约者或者所有者单独的和完全的赔偿。

A11. 132 章节法规

1. 合约者和所有者同意基于建筑工作的变动，和基于任何变动的付款是在建筑合约里有严格的划分。