

**BUILDING AGREEMENT**

BETWEEN

<**BUILDER'S NAME**>

Builder

AND

<**OWNER'S NAME**>

Owner

**H. E. MANNERING  
SOLICITOR  
45 GAUNSON CRESCENT  
WANNIASSA ACT 2903  
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**SCHEDULE**

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DATE OF THIS AGREEMENT:

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BUILDER: <NAME OF BUILDER>  
<BUILDER'S ADDRESS>

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OWNER: <OWNER'S NAME>  
<OWNER'S ADDRESS>

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LAND: Block <> Section <> Division <>

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CONTRACT PRICE: <PRICE IN WORDS> <PRICE IN FIGURES>

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PROGRESS PAYMENTS WHICH BUILDER MAY CLAIM:

1. Deposit on signing of this agreement	\$	<>
2. Completion of concrete slab	\$	<>
3. Completion of pre-sheeting stage	\$	<>
4. Completion of painting	\$	<>
5. On issue of a Certificate of Occupancy by the Building Controller	\$	<>
CONTRACT PRICE	<u>\$</u>	<u>&lt;&gt;</u>

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COMMENCEMENT DATE: Within INSERT DATE OR OTHER CONDITIONS>

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COMPLETION DATE: Within <SO MANY DAYS OR WEEKS OR OTHER  
FIXED DATE>

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INTEREST RATE FOR PAYMENTS NOT MADE ON TIME: 12% per year  
calculated daily from the day after payment was due to and including the day payment is  
actually made

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PLANS ATTACHED TO THIS AGREEMENT: <INSERT PLAN NOS OR SOME  
OTHER IDENTIFYING FEATURE>

THIS AGREEMENT is made by the owner and the builder on the date described in the schedule.

#### OBLIGATIONS AND RIGHTS OF THE BUILDER

1. The builder will at the builder's expense -
  - a.
    - i. in a good and workmanlike manner complete the construction of the building described in the plans; and
    - ii. include in that construction the inclusions;
  - b. from the commencement date until the work is completed insure -
    - i. against the builder's liability under worker's compensation legislation; and
    - ii. against the builder's public liability; and
    - iii. for full replacement value of the materials and labour used in the construction for loss arising from fire, theft, vandalism, storm & tempest, impact, explosion and any other risk desirable in the builder's opinion.
2. The builder will -
  - a. commence construction on the commencement date; and
  - b. complete construction on or before the completion date.
3. The completion date is extended by each of the following events by the number of days the events delay completion of construction -
  - a. alteration of plans;
  - b. variation requested by the owner;
  - c. a builder's variation;
  - d. delay in delivery of materials;

- e. industrial dispute, directly or indirectly involving the builder's employees or sub-contractors or affecting the supply of materials;
  - f. dispute with owners, tenants or occupiers of adjoining or neighbouring lands;
  - g. inclement weather affecting the land;
  - h. any hindrance or obstruction during construction of the builder, the builder's employees, sub-contractors or agents by the owner.
4. The builder may subcontract any part of the work.
  5. The builder may make a claim for a progress payment by delivering a written claim to the owner when the construction has reached the stage described in the schedule for the progress payment.

#### OWNER'S OBLIGATIONS AND RIGHTS

6.
  - a. The owner will pay the contract price described in the schedule to the builder (or as the builder directs in writing) by progress payments claimed by the builder.
  - b. The owner will pay a progress payment not later than 7 days after delivery of progress payment claim.
  - c. If any progress payment payable to the builder is not made on time, the owner will with the next progress payment pay interest at the rate described in the schedule on the unpaid amount and if no further progress payments are due, the owner will, if demanded in writing, immediately pay that interest.
7.
  - a. The owner grants the builder and the builder's employees, sub-contractors and agents a licence to enter and occupy the land for the purposes of

construction.

- b. The licence commences on the date of this agreement and continues until all money payable to the builder under this agreement has been paid.
- 8.
- a. The owner warrants
    - i. the plans are complete, correct and accurate; and
    - ii. the owner is the owner of copyright in the plans.
  - b. If the plans are not complete, correct and / or accurate in any material respect or so as to require additional work by the builder, the builder may apply for a builder's variation.
  - c. If the owner is not the owner of the plans and the construction by the builder amounts to a breach of copyright in the plans, the owner will compensate the builder for any loss suffered by the builder.

#### MUTUAL OBLIGATIONS, RIGHTS AND ACKNOWLEDGMENTS

9. If, in the course of construction, the builder discovers -
- a. the foundations described in the plans are insufficient to support the building; or
  - b. the presence of rock which will require additional work, hinder the normal course of construction or prevent construction according to the plans
- the additional cost of that work will be regarded as a builder's variation.
- 10.
- a. The owner may request a variation from the plans by detailing the variation in writing and delivering it to the builder.
  - b. If the owner requests a variation -
    - i. the builder may refuse to undertake the variation; or
    - ii. the builder may submit to the owner a written quotation -

- (1) as to cost;
- (2) the additional time which the builder requires in the completion date;
- (3) the time for payment of the cost (and if a time for payment is not stipulated, then payment will be made with the last progress payment); and
- (4) if owner accepts the quotation in writing, the builder will proceed with the work.

c. If the variation is a builder's variation -

- i. the builder must submit to the owner a written quotation, which in the opinion of the builder is the reasonable cost of the variation;
- ii. if the quotation is not accepted by the owner in writing within 2 days of delivery of the quotation -
  - (1) the builder may suspend construction; and
  - (2) the owner may engage an alternative contractor for construction of the variation and during that construction the builder is entitled to an extension of time for completion as a builder's variation; and
  - (3) on completion of the variation the builder shall proceed with the work.

11. If any material for construction is not available to the builder in the normal course of business from the builder's usual suppliers, the builder may without consultation with the owner use material of equivalent cost and standard in function.

12. The right, title and interest in material delivered to the land remains with the builder until the later of
  - a. a progress payment, which includes the cost of that material, has been made; and
  - b. the material has been permanently installed in the building.
13. Any money which is payable to the builder by the owner is a charge on the land and the owner authorises the builder to register a caveat or a charge against the title to the land.
14. The owner and the builder agree that
  - a. construction pursuant to this agreement is complete and
  - b. construction has been completed in a good and workmanlike manner when a Certificate of Occupancy or Use is issued in respect of the plans under the Building Act 1972.
15. a. The builder will at the builder's expense repair defects or faults ("defects") in construction which
  - i. appear within the 90 days of completion of construction; and
  - ii. are due to defective or improper materials or bad workmanship on the builder's part; and
  - iii. are specified in a notice delivered to the builder pursuant to this clause ("maintenance list") and which defects notice states that it is given pursuant to this clause.
- b. Defects -
  - i. resulting from natural shrinkage of timber; and
  - ii. in equipment installed in the improvements subject to a

manufacturer's warranty for the owner's benefit

are not covered by this clause.

- c. The owner may serve a defects notice within 95 days of completion of construction.
- d. The builder will within 60 days of delivery of the defects notice in a good and workmanlike manner repair the defects and if the builder fails to do so
  - 
  - i. the owner may repair the defects; and
  - ii. the reasonable amount so expended by the owner is recoverable from the builder.

- 16. Any variation, claim, notice or other communication to be given or delivered is valid if it
  - a. is signed by or for the owner or the builder and
  - b. delivered by hand, sent in a prepaid letter addressed to the party at the usual or last known address of the party or left for the owner in a letterbox on the land.
- 17. If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, the parties agree to endeavour to settle the dispute with the assistance of a mediator appointed by the President of the Law Society of the Australian Capital Territory before having recourse to litigation.

#### MEANING OF WORDS USED IN THIS AGREEMENT

- 18. a. "builder" and "owner" includes executors, administrators and permitted assigns of any of them;
- b. "material" includes equipment, inclusions or any goods for the purposes of

building;

- c. "plan" means the plans attached to this agreement approved by the relevant authorities and described in the schedule;
- d. singular includes the plural and vice versa
- e. If there is more than one owner or builder, they are liable jointly and individually.

SPECIAL CONDITIONS

19. The following construction is not part of this agreement (even if described in the plan) -
- a. telephone connections;
  - b. "Wing wall" and gate;
  - c. verandah;
  - d. the provision of any heating; and
- if the procurement of a Certificate of Occupancy or Use for other work to be performed by the builder requires any further approval by the Building Controller, the owner will reimburse the builder for such cost.
20. The owner will provide electrical power for the builder's use on site without charge to the builder.
21. Any material resulting from demolition of the existing building will on demolition become the builder's property.
22. The owner accepts that it may not be possible to have all material used in the construction (especially windows and bricks) match existing materials and the owner will not make any complaint or refuse to make payment as a result of such discrepancy in material used.
23. "Construction Notes" on the plans are not to be regarded as terms of this agreement and are noted in the plans for the builder's guidance and information only.

INCLUSIONS LIST

ITEM	ALLOWANCE / BUILDER'S NOMINATED SUPPLIER
BRICKS	\$440/1000 delivered on site, supplied by <SUPPLIER> with natural colour mortar.
ROOFING	Concrete tiles
WINDOWS	Supplied by <SUPPLIER>
FLYSCREENS	As above
FITOUT	Stained or painted architraves and skirtings
PAINTING - INTERNAL	Owner's choice - any colour available through normal retail outlets
PAINTING - EXTERNAL	Owner's choice - any colour available through normal retail outlets
CLOTHES HOIST	3.6m diameter rotary
DRIVEWAY	6m wide from garage to land boundary
PATHS	As noted in plan from back door to hoist 600mm wide
FENCING	Half fencing to each of side and rear boundaries
DOORS - INTERNAL	Masonite
DOORS - EXTERNAL	Front door - allowance \$120.00. Rear door as selected by buyer
HEATING	Supplied by AGL - allowance of \$3500.00 for supply and installation
HOT WATER SYSTEM	1 Rheem 31/170l external gas - supplied by <SUPPLIER>
DOOR FITTINGS - INT	Room doors and wardrobe doors - allowance \$300.00 in total
DOOR FITTINGS - EXT	Included in allowance for internal door fittings
INSULATION -CEILING	Not included
INSULATION - WALLS	Rated R1.5
LIGHT PTS -EXTERNAL	4
LIGHT PTS - INTERNAL	1 light point per room
POWER POINTS - EXTERNAL	Not included
POWER POINTS - INTERNAL	1 single per room, except 2 double in main bedroom and kitchen and 1 double in laundry
TAPS - INTERNAL	\$250.00 supplied by plumber
TAPS - EXTERNAL	2 as supplied by plumber - 1 rear & 1 front
SERVICE CONNECTIONS	Gas, water, electricity (single phase) & sewerage and stormwater as per drainage plan

CERAMIC TILES	Wall & floor 35.00/sq m supplied by <SUPPLIER>
KITCHEN	\$4000.00 allowance supplied and installed (with sink and rangehood) by <SUPPLIER> 1 Chef Baroness electric wall oven supplied by <SUPPLIER> Gas Hot plates - supplied by <SUPPLIER> - allowance \$350.00
BATH	5' 6" Pressed metal white - supplied by <SUPPLIER>
VANITY UNIT	Total allowance \$700.00 for 2 units supplied by <SUPPLIER>
MIRRORS	Allowance \$150.00 supplied by <SUPPLIER>
SHOWER SCREENS	Total allowance \$700.00 supplied by <SUPPLIER>
TOWEL RAILS	Allowance \$150.00 supplied by <SUPPLIER>
SOAP HOLDERS	Included in allowance for towel rails
TOILET PAN/CISTERN	Allowance \$260.00 supplied by <SUPPLIER>
TOILET ROLL HOLDER	Included in allowance for towel rails
LAUNDRY TUB	70 l capacity supplied by <SUPPLIER>
WASHING MCH CONN	As supplied by plumber
EXHAUST FANS	None included
GARAGE DOORS	\$800.00 <NAME> in total for 2 doors
TILING HEIGHTS	1800mm in showers Skirting in toilet, laundry 1200 on walls of ensuite and bathroom
OTHER	Vacuum cleaning system - allowance \$1000
SPA	Spa bath allowance \$1600 supply only - installation included in contract price

SIGNED by the owner )  
in the presence of: )

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Owner

.....  
Witness  
Name:  
Address:

SIGNED by or )  
for and on behalf of the )  
builder in the presence of: )

.....  
Builder

.....  
Witness  
Name:  
Address: