

## INDEPENDENT CONTRACTOR AGREEMENT

Date: \_\_\_\_\_ day of \_\_\_\_\_ 20

### CONTRACT DETAILS

Parties	COMPANY	CONTRACTOR
Name:	Fletcher Residential Limited	
Address: (both physical and postal)		
Phone:		
Fax:		
Email:		

## BACKGROUND

- A. The Company builds residential dwellings in and around the Auckland and Canterbury regions.
- B. The Company wants to use the Contractor from time to time to perform works which will be described in a Purchase Order and a Scope of Works issued by the Company from time to time for specific works (**Contract Works**).
- C. It is agreed that the Contractor will carry out and complete any Contract Works it carries out for the Company to the entire satisfaction of the Company and in accordance with and subject to the following conditions of this agreement.

## THE PARTIES AGREE:

### 1. INDEPENDENT CONTRACTOR

- 1.1 The Company is under no obligation to provide the Contractor with continuous work. The Contractor will provide services to the Company under this agreement on an "as and when" basis.
- 1.2 Where the Company wants to use the Contractor to perform Contract Works it shall notify the Contractor by issuing to the Contractor, from time to time, a scope of works which provides, in sufficient detail, the nature of the Contract Works (**Scope of Works**). The Company will also issue to the Contractor a Purchase Order for the Contract Works which details the terms and conditions including the price of the proposed Contract Works (**Purchase Order**). The parties agree that the terms and conditions of this agreement are implied into each Purchase Order and Scope of Works as if set out in full in the Purchase Order and Scope of Works. In the event of an ambiguity or inconsistency between the Purchase Order or the Scope of Works and the terms and conditions of this agreement, the Purchase Order and the Scope of works shall prevail.
- 1.3 If the Contractor wishes to accept the instruction to carry out the Contract Works specified in the Purchase Order and Scope of Works it must notify the Company verbally or in writing of its acceptance of the job within the period specified in the Purchase Order. The Company understands the independent nature of the Contractor's engagement with it so that the Contractor is free to decline a job. If the Contractor has not accepted the instruction within the period specified in the Purchase Order, the instruction will be deemed to have been withdrawn and the Company will be entitled to offer the job to another party. For the avoidance of doubt, if the Contractor declines the job, the Company will be entitled to offer the job to another party.
- 1.4 The Contractor confirms that it has the core competencies listed in Schedule 1 (**Core Contractor Competencies**) and will ensure that it has the Core Contractor Competencies at all times it is carrying out Contract Works pursuant to this agreement.
- 1.5 From time to time, the Company may want to use the Contractor to perform other work in addition to the works described in the Purchase Order. Where the Company wants to use the Contractor to perform such other works, it shall issue a new Purchase Order to the Contractor and clauses 1.2 and 1.3 of this agreement apply.
- 1.6 Nothing contained in this agreement will be construed or have effect as constituting any relationship of employer and employee between the Company and the Contractor. The Contractor will have no entitlement to any form of employee benefits such as holiday pay

and sick leave. The Contractor will be solely liable for all of its own debts, losses, expenses and taxation on its income.

## 2. SCOPE OF CONTRACT WORKS

- 2.1 The Contractor must carry out those works forming part of the Contract Works (including any variation or extras to the Contract Works) in compliance with this agreement, the Purchase Order, the Scope of Works, the Core Contractor Competencies, the contract documentation provided to the Contractor with any Purchase Order or Scope of Works, including any specifications and plans, and in compliance with the building code established under the Building Act 2004 (**Building Code**) and such other statutes, regulations and codes as may be in force at the time of the Contract Works and to the highest trade standard.
- 2.2 The Contract Works will be under the general control and direction of the Company's site manager as confirmed to the Contractor from time to time (**Site Manager**). The Contractor shall be responsible to the Site Manager and must co-operate and liaise with the Site Manager at all times.

## 3. SUBCONTRACTING

- 3.1 The Contractor shall not enter into a single subcontract for the whole of the Contract Works.
- 3.2 The Contractor may subcontract parts of the Contract Works with the prior written consent of the Company, whose consent shall not be unreasonably withheld.
- 3.3 The subcontracting of any of the Contract Works shall not relieve the Contractor from any liability or obligation in respect of the Contract Works.

## 4. MATERIALS

- 4.1 Where the Contractor supplies any materials for use in the Contract Works, such materials must:
- 4.1.1 be new (unless otherwise stated in the Purchase Order or Scope of Works);
  - 4.1.2 be suitable for the purposes for which they will be used; and
  - 4.1.3 comply with the requirements specified in the Building Code.
- 4.2 The Contractor shall not substitute any materials or products specified in the Company's Purchase Order or the Scope of Works or any specification relating to the Contract Works without the prior approval of the Company in each case through the Site Manager.
- 4.3 All materials on any site will be the property of the Company once paid for and no such material shall be removed from any site without the consent of the Company.

## 5. TIME

- 5.1 The Contractor shall commence the Contract Works by the start date as advised by the Site Manager (**Start Date**). The Contractor must following the Start Date, carry out and complete the Contract Works at such times as the Company's programme reasonably requires and so as not to delay or impede the progress of the Company's business and shall complete the Contract Works by the date required set out in the Purchase Order (if any) or by such date as may be advised by the Site Manager.

## **6. VARIATIONS**

- 6.1** Any variation which changes the Contract Works under this agreement must only be undertaken on the written instruction of the Company and issue of a revised or substituted Purchase Order.

## **7. PAYMENT**

- 7.1** The Contractor will submit to the Company, no later than 14 days after completion of the Contract Works is achieved, its invoice for the Contract Works with appropriate details and otherwise in accordance with the relevant Purchase Order.
- 7.2** The Contractor will ensure that its invoice includes any information required by the Company in order to process the payment (against the Purchase Order) as notified to the Contractor from time to time.
- 7.3** Payments will be made on or before the last working day of the month following the month in which the invoice is submitted.
- 7.4** The parties to this agreement acknowledge that, by virtue of this clause 7, they have agreed the mechanisms and terms for payment in section 14 of the Construction Contracts Act 2002 in lieu of the default provisions in sections 16-18 of that Act.
- 7.5** No payment shall become due unless and until (and as a condition precedent to payment) this agreement, and any associated documents have been completed, signed and returned to the Company and the Contractor has verbally or in writing confirmed its acceptance of the instruction to carry out the Contract Works on the terms, and for the price, specified in the Purchase Order.

## **8. WARRANTIES AND ACKNOWLEDGMENTS**

- 8.1** The Contractor warrants that the Contract Works will be carried out:
- 8.1.1** in a proper and competent manner;
  - 8.1.2** to the highest trade standard;
  - 8.1.3** in accordance with the plans and specifications;
  - 8.1.4** in accordance with the Scope of Works and the Core Contractor Competencies;
  - 8.1.5** in accordance with all laws, regulations and legal requirements;
  - 8.1.6** with all materials being installed to manufacturers details and instructions and to the general satisfaction of the Company; and
  - 8.1.7** in accordance with the standards and procedures set by the Company.
- 8.2** The Contractor shall provide the Company with the benefit of all product and manufacturer's warranties and guarantees for the products and materials used in the Contract Works generally available in the market on the commercial terms usual at that time in the market. The Contractor will provide copies of all relevant warranties and guarantees to the Company on completion of the Contract Works.
- 8.3** The parties acknowledge that the disclosure information and checklist prescribed by regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014 have been complied with.

## **9. 24 MONTH DEFECTS PERIOD**

**9.1** For the purposes of this Contract, a “Defect” includes but is not limited to a fault or flaw in the workmanship or materials provided by the Contractor or its agents that is:

- 9.1.1** an unauthorised departure from what was prescribed by the plans and specifications;
- 9.1.2** a failure to carry out the Contract Works in a proper and competent manner;
- 9.1.3** not within tolerances consistent with the highest trade standard;
- 9.1.4** non-compliance with the Building Code;
- 9.1.5** use of materials that are not suitable for the purpose for which they have been used;
- 9.1.6** premature product failure; or
- 9.1.7** damage resulting from the Contractor’s failure to carry out repairs as soon as practicable after it is notified of the defect.

**9.2** For the avoidance of doubt, a Defect is not:

- 9.2.1** fair wear and tear;
- 9.2.2** damage not caused by the Contractor or its agents;
- 9.2.3** defective workmanship or materials not supplied by the Contractor or its agents; or
- 9.2.4** damage resulting from a failure to undertake normal maintenance.

**9.3** Any Defect that arises and is notified to the Contractor within 24 months of completion of the particular Contract Works detailed in the Purchase Order and/or Scope of Works shall be made good by the Contractor at its cost within 14 days of the Contractor receiving notice, or within such other reasonable period as may be approved by the Company. The Contractor will also be liable for the costs of any additional remedial works which are required as a result of the Defect.

**9.4** In repairing any Defect, the Contractor shall fully reinstate the Contract Works to the finish specified in the contract documentation, including the plans and specifications.

**9.5** If the Contractor does not remedy the defects notified to it within the 14 day period, the Company may carry out the work and at the Company’s election either recover from the Contractor the cost of making good the Contract Works or off-set the costs of making good the Contract Works against any sums otherwise payable to the Contractor.

**9.6** Where it is not possible or practicable to remedy the Defect or where the cost of repairing the Defect is disproportionate to the nature of the Defect, the Company may instruct the Contractor not to remedy the Defect. The Company will assess the reasonable amount payable by the Contractor to the Company in lieu of remedying the Defect and such amount may be deducted from sums otherwise payable to the Contractor.

## **10. INSURANCE AND INDEMNITY**

**10.1** The Contractor indemnifies the Company against any liability, loss, claim or proceeding in respect of any personal injury, death or damage to real or personal property arising from

the Contractor's carrying out of the Contract Works unless the event is caused by the fault or neglect of the Company.

- 10.2** The Contractor will effect and maintain suitable insurance for the liabilities referred to in clause 10.1 (including public liability insurance to a value of not less than \$1,000,000.00). The Contractor will provide to the Company evidence of such insurance being in place within 7 days of signing this agreement and on request anytime thereafter.

## **11. ENVIRONMENT, HEALTH AND SAFETY**

### **11.1** The Contractor:

- 11.1.1** must comply with all the Company's Health and Safety and environmental policies and procedures and any reasonable instructions of the Company, including (without limitation):

- (a) having an appropriate documented system of identifying hazards and risks, assessing the risk of harm and eliminating or minimising the risks so far as is reasonably practicable; and
- (b) having an appropriate documented system of notification of hazards observed and/or created and incidents;

- 11.1.2** acknowledges that it is responsible for health and safety issues relating to the provision of the Contract Works including, but not limited to:

- (a) complying with the Contractor's obligations under the Health and Safety at Work Act 2015 (**HSWA**) and any regulations under the HSWA; and
- (b) complying with approved codes of practice, local and national standards or accepted practices applicable to the industry in which the Contractor operates;

- 11.1.3** will advise the Company of any physical or mental impairment that may impact on its ability to perform the Contract Works safely or effectively;

- 11.1.4** will provide on any of the Company's sites on which it is performing the Contract Works, a competent and fully informed supervisor who will control and supervise the Contract Works in accordance with the Company's requirements and who has a good understanding of safe work practices including hazard identification and risk management, and has responsibility for the health and safety of any person undertaking or potentially impacted by the undertaking of the Contract Works;

- 11.1.5** will prior to commencing work on any job:

- (a) prepare and submit a site specific Environment, Health and Safety Plan or suitable equivalent to the Company along with all required supporting documentation for review and approval (at least two weeks in advance of the Start Date);
- (b) provide signed acceptance of the Company's Code of Conduct; and
- (c) provide evidence of all related EHS training (including general EHS training);

- 11.1.6** prior to entering onto the Company's site, be inducted into, and ensure that its subcontractors are inducted into the Company's Code of Conduct, Life Saving Rules and all Environmental, Health and Safety requirements, including participating in, and ensuring that any subcontractors participate in, a Health and Safety induction provided by the Site Manager or other authorised Company representative;
- 11.1.7** will consult, co-operate with and co-ordinate activities with the Company and other duty holders, where the Contractor, Company and other duty holders have a duty in respect of the same matter under the HSWA;
- 11.1.8** will ensure it has employment arrangements and/or conditions of engagement arrangements with any person or organisation undertaking the Contract Works or part thereof, which will not prohibit the Company from implementing its Health and Safety policies and procedures; and
- 11.1.9** in order to assist the Company to reduce waste, will comply with the Company's requirements in relation to waste separation and disposal as notified to the Contractor from time to time.

## **11.2 ESG Reporting**

- 11.2.1** If requested by the Company, the Contractor must, at its cost, provide in the form, to the extent, in the manner, to whom, and at times requested by the Company, data, records and information relating to sustainability, including as to:
  - (a) GHG Emissions associated with the Contract Works (which may be provided to the Company directly, or via a third party supply chain portal nominated by the Company);
  - (b) energy production or energy consumption; and
  - (c) waste data relating to the Contract Works, including type of waste, volume or tonnage, and disposal route (landfill or diversion).
- 11.2.2** If the Contractor supplies any products or materials as part of carrying out the Contract Works, if requested by the Company, the Contractor must, at its cost, provide the Company with any Sustainable Product Certifications that the Contractor holds and any information about those products or materials as may be requested by the Company from time to time.
- 11.2.3** The Contractor must:
  - (a) collect and keep all data, information and records as may be required to enable the Contractor to discharge its obligations under clause 11.2.1 and in any event hold such data, information and records for a minimum of seven years;
  - (b) ensure such data, information and records are accurate;
  - (c) advise whether the data, information or records, or any part of the data, information or records, has been validated by independent audit and, if so, to what verification standard; and

- (d) permit any persons appointed or approved by the Company to examine, monitor, measure, copy, audit and/or verify such data, information and records and will cooperate with, and provide all reasonable assistance to any such persons (including providing access to premises, plant and the Contractor's equipment, producing and giving access to documents and answering any relevant questions).

**11.2.4** The following definitions are to be used for clause 11.2:

**GHG Emissions** means emissions of Greenhouse gases from all sources, categorised as Scope 1, 2 and 3 Emissions as defined by "A Corporate Accounting and Reporting Standard" published by the Greenhouse Gas Protocol.

**Sustainable Product Certifications** means any certifications defined in the Fletcher Building 'Sustainability Certified Products' document (which can be accessed at <https://fletcherbuilding.com/assets/1-about-us/documents/revenue-sustainable-products.pdf>) and any third party product sustainability certifications relevant to the product supplied.

## **12. DRUG AND ALCOHOL POLICY**

- 12.1** The Contractor shall, at the Contractor's cost, comply with the Company's drug and alcohol policy which shall form part of this agreement and which makes all persons on site subject to random drug detection and testing procedures as well as just cause and post-accident/incident drug and/or alcohol testing procedures (**Company's Drug and Alcohol Policy**).
- 12.2** The Contractor shall ensure that any person under its control entering the site for any reason is fully informed of and accepts the Company's Drug and Alcohol Policy as a condition of entry to site.
- 12.3** In particular the Contractor shall ensure it has employment arrangements and/or conditions of engagement arrangements with any person or organisation undertaking the Contract Works or part thereof, which will not prohibit the Company from implementing the Company's Drug and Alcohol Policy.
- 12.4** The Contractor will indemnify and keep indemnified, the Company from all costs, damages, fines, penalties, loss and expense incurred by the Company as a consequence of the Contractor or persons under its control not complying with the Company's Drug and Alcohol Policy. Any such cost, damages, fines, penalties, loss and expense incurred by the Company will be payable by the Contractor on demand.

## **13. PREVENTION OF INDIVIDUALS IN BREACH FROM ATTENDING SITE**

- 13.1** Without prejudice to the Company's other rights and remedies, whether pursuant to this agreement or at law generally, the Company may from time to time request the Contractor to prohibit an individual (whether that individual is a direct employee of the Contractor, a subcontractor of the Contractor or an employee of a party the Contractor has subcontracted certain parts of the Contract Works to) from continuing to carry out activities on any site where Contract Works are being undertaken by the Contractor where, in the Company's reasonable opinion, the Company considers that such individual:



- 13.1.1** has breached certain terms of this agreement; and/or
  - 13.1.2** has undertaken an illegal act; and/or
  - 13.1.3** has breached or is likely to breach the Company's Health and Safety and/or Drug and Alcohol Policy and endanger either themselves or others by continuing to attend site to carry out parts of the Contract Works; and/or
  - 13.1.4** is causing unreasonable delays and disruption to the progress of the Contract Works.
- 13.2** In particular the Contractor shall ensure it has employment arrangements and/or conditions of engagement arrangements with any person or organisation undertaking the Contract Works or part thereof, which will not prohibit the Company from implementing the policy and procedures referred to at clause 13.1 above and which will permit the Contractor to take such steps as may be required to ensure compliance by the Contractor with clause 13.1.
- 13.3** The Contractor shall take such steps as may be required to comply with the terms of clause 13.1 at its cost including keeping the Company indemnified against any claims or loss incurred by the Company as a result of enforcing this clause 13.
- 14. DEFAULT**
  - 14.1** If the Company decides for any reason whatsoever that it no longer intends to proceed with the Contract Works (of part thereof) the Company may, at its sole discretion, terminate or reduce the Contract Works under this agreement by notice in writing to the Contractor.
  - 14.2** If the Company terminates the Contract Works (or part thereof) in accordance with clause 14.1, the Company will reimburse the Contractor for any of the Contract Works already carried out on site and any other direct costs already incurred in connection with these works. The Contractor is not entitled to recover loss of profit or damages on that part of the Contract Works not executed at the date of termination.
  - 14.3** If the scope of the Contract Works is reduced in accordance with clause 14.1, the Contractor shall be paid for the balance of the Contract Works to be completed on a pro rata basis.
  - 14.4** If the Contractor is in breach of any of the material provisions of this agreement (including, but not limited to, the provisions in relation to health and safety and the Company's Drug and Alcohol Policy), or becomes bankrupt or is put into liquidation, the Company reserves the right to provide the Contractor with written notice terminating this agreement and may enlist the services of another contractor. If the Company terminates this agreement due to the Contractor breach, the Company may recover from the Contractor any cost, damage, loss or expense incurred as a result of the Contractor's breach of this agreement.
- 15. NOVATION BY THE COMPANY**
  - 15.1** The Company may without the consent of the Contractor, novate this agreement to any entity in which the Company, or any related company (as that term is defined in the Companies Act 1993) of Fletcher Building Limited, holds a 50% interest. The Contractor agrees that on notification of any such novation, it will execute any novation agreement prepared by the Company documenting such novation.

## 16. ARBITRATION

- 16.1** If any dispute or difference of any kind whatsoever arises between the Company and the Contractor in connection with or arising out of this agreement or the carrying out of the Contract Works, the parties shall endeavour in good faith and expeditiously to resolve the dispute by negotiation between them. If no agreement is reached within 5 working days, then either party may refer the dispute to arbitration. The arbitration shall be by a sole arbitrator and in accordance with the provisions of the Arbitration Act 1996.

## 17. NOTICES

- 17.1** Unless otherwise notified by one party to the other, the address for any notices or other communications required to be given under this agreement shall be the address set out in the Contract Details section of this agreement.

## 18. COUNTERPARTS AND ELECTRONIC SIGNATURE

- 18.1** This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts). Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 18.2** The parties consent to the signing of this agreement by electronic signature(s) in accordance with the Contract and Commercial Law Act 2017 and agree to be bound if this agreement is signed by electronic signature(s). If either party signs by electronic signature it must, if requested, provide written confirmation to the requesting party that:
- (a) the signature was legitimately applied with the relevant authority;
  - (b) the signatory has full knowledge of the contents of this agreement and intends to be bound by it; and
  - (c) the electronic signature complies with the requirements of section 228 of the Contract and Commercial Law Act 2017 (if applicable).

Signed as an agreement.

**SIGNED** for and on behalf of **FLETCHER  
RESIDENTIAL LIMITED** by:

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Signature of authorised signatory

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Name of authorised signatory

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Title of authorised signatory

**SIGNED** for and on behalf of **[INSERT  
NAME OF CONTRACTOR]** by:

and witnessed by:

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Signature of authorised signatory

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Name of authorised signatory

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Title of authorised signatory

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Signature of witness

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Name of witness

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Occupation

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City/town of residence

## SCHEDULE 1

### Core Contractor Competencies

Competency	Expected Service Outcomes & Behaviours
<b>PROTECT – Working Safely</b>	Lives the Protect Value at all times, putting health and safety at the forefront
	Believes that all injuries are preventable
	Always follows our Life Saving Rules
	Stops work if it is unsafe and speaks up if hazards are identified; reports all hazards, near misses, and incidents
	Leads by example on site and supports positive reinforcement of safe behaviours; addresses unsafe behaviours and/or conditions
<b>Quality and Workmanship</b>	Work is completed to a very high standard with minimal defects
	Any defects are repaired quickly to maintain high quality standards
	Consistently reviews quality of work completed to prevent noticeable defects
	Educates others on quality of work and leads by example by upholding quality standards
<b>Scheduling &amp; Organisation</b>	Is highly organised and sticks to agreed schedules, start dates, and times
	Delivers on or before agreed deadlines, managing workload and capacity smoothly
	Demonstrates flexibility and ability to reschedule resources to make up lost time or attend urgent priorities
	Where customer remedials are involved, always arrives on site at agreed time or communicates any changes in advance
<b>Teamwork and Communication</b>	Keeps up regular communications regarding job progress and relevant updates
	Any issues are communicated to FRL in a timely manner
	Works smoothly with other trades on site to collaboratively complete contract works
	Ensures all communications, toolbox talks, and company updates are shared with staff

<b>Customer Leading</b>	Acts as a representative of the Fletcher Living brand at all times
	Understands that work requests for smaller remedials have a critical impact on the customers' experience and therefore are treated with priority
	Provides great communication, time management, and service for customers when carrying out remedials in their homes
	Partners with FRL to uphold our commitment to providing outstanding service and quality to our customers