

**INDEPENDENT CONTRACTOR AGREEMENT**

Date: \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

**CONTRACT DETAILS**

Parties	BUILDER	CONTRACTOR
Name:	Fletcher Living A division of Fletcher Residential Limited	
Address: (both physical and postal)		
Phone:		
Fax:		
Email:		

**BACKGROUND**

- A. The Company builds residential dwellings in and around the Auckland region.
- B. The Company wants to use the Contractor from time to time to perform works which will be described in a Purchase Order issued by the Contractor 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 it with a Purchase Order for the Contract Works in the form set out in Schedule 1. The parties agree that the terms and conditions of this agreement are implied into each Purchase Order as if set out in full in the Purchase Order. In the event of an ambiguity or inconsistency between the Purchase Order and the terms and conditions of this agreement, the Purchase Order shall prevail.
- 1.3 If the Contractor wishes to accept the instruction to carry out the Contract Works specified in the Purchase Order 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accepted the instruction within the period specified in the Purchase Order, the instruction will be deemed to have been withdrawn and the Company will be entitled to offer the job to another party.
- 1.4 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 apply.

**1.5** 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, 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 contract documentation provided to the Contractor with any Purchase Order, 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 supervisor (**Supervisor**). The Contractor shall be responsible to the Supervisor and must co-operate and liaise with the Supervisor 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 Contract);

**4.1.2** 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 specified in the Company's Purchase Order or any specification relating to the Contract Works without the prior approval of the Company in each case through the Supervisor.

**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 Supervisor (**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 or by such later date as may be advised by the Supervisor.

**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.

**7. PAYMENT**

**7.1** Where appropriate, the Contractor will submit to the Company its payment claim in respect of all Contract Works completed during a month no later than three working days before the end of each month and, in all other cases, the Contractor will submit to the Company no later than 14 days after completion of the Contract Works is achieved its final claim with appropriate details.

**7.2** Invoices must contain the following information for the company's scan and capture tool to process and payment to be made;

- Legal information about the vendor : Business name/trade name, address, GST #,
- The words "TAX INVOICE" in a prominent place;
- Invoice number;
- Invoice date;
- FRL Purchase Order number \*Note no other info such as name or address should be on the same line;
- FRL or Fletcher Living business Unit name that ordered the goods;
- FRL purchaser's full name or recipient (attention to);
- Clear description of goods and/or services;
- Quantity / volume (if applicable);
- Unit cost & amount ex GST (if applicable); and
- GST and total payable – currency specified and/or a statement that "GST is included" in final price if it has been.

Where available the following information is to be provided;

- Payment instructions;
- Payment terms (must be according to agreement with FRL);
- Bank account number;
- Contract number;
- Delivery note number;
- Any additional charges must be itemized such as Freight cost, delivery cost, insurance, etc;
- Lot number and
- Discount due date.

**7.3** Payments will be made on the 20<sup>th</sup> of the month following the month in which the invoice is submitted or next business day if the 20<sup>th</sup> falls on a weekend or public holiday

**7.4** All claims for payments and payments shall be subject to the provisions of the Construction Contracts Act 2002.

**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 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 all laws, regulations and legal requirements;
  - 8.1.5** with all materials being installed to manufacturers details and instructions and to the general satisfaction of the Company; and
  - 8.1.6** 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 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 specification and plans.
- 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 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 9.1 (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. SAFETY**

- 11.1** The Contractor:
- 11.1.1** Must comply with all the Company's Health and Safety policies and procedures and any reasonable instructions of the Company, including:
- (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) 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 Consultant'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; and

**11.1.4** 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 Health and Safety handbook; and
- (c) provide evidence of all related EHS training (including general EHS training).

**11.1.5** prior to entering onto the Company's site, be inducted into, and ensure that its subcontractors are inducted into the Company's Environmental, Health and Safety requirements, including participating in, and ensure that any subcontractors participate in, an Health and Safety induction provided by the Supervisor or other authorised Company representative.

**11.1.6** 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.

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

- 12.1** The Contractor shall 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.
- 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 above policy and procedures 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 Works or part thereof, which will not prohibit the Company from implementing the policy and procedures.
- 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 Manager will be payable by the Contractor on demand.

## **13. DEFAULT**

- 13.1** After giving written notice to the Contractor for failing to observe any of the provisions of this agreement, or if the Contractor becomes bankrupt or is put into liquidation, the Company reserves the right to determine the Contractor is in default and enlist the services of another contractor.

**14. ARBITRATION**

**14.1** 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.

**15. NOTICES**

**15.1** 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.

Signed as an agreement.

**SIGNED** for and on behalf of **FLETCHER LIVING a division of FLETCHER RESIDENTIAL LIMITED** by:  
and witnessed by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Title of authorised signatory

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

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

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Title of authorised signatory

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

**SCHEDULE 1**

Purchase Order