

**These terms and conditions are the terms on which Clements are prepared to perform Residential Works on your behalf. If you agree to use Clements then you agree to the terms and conditions below. Words used in these terms and conditions are defined at clause 32.**

## 1. RESIDENTIAL WORKS

Clements shall carry out and complete the Residential Works in accordance with this Contract.

## 2. EXCLUDED ITEMS

The Client and Clements agree that the items set out on the front page of this Contract as Exclusions, if any, are excluded from this Contract.

## 3. PLANS & SPECIFICATIONS

3.1 All Plans and Specifications for Residential Work to be done under this Contract, including any variations to those Plans and Specifications, are taken to form part of this Contract.

3.2 Subject to clause 3.3, any agreement to vary this Contract, or to vary the Plans and Specifications for Residential Work to be done under this Contract, must be in writing and signed by or on behalf of each party to this Contract.

3.3 This clause does not apply to a Contract of the kind referred to in section 16 of the *Home Building Regulation 2004*.

## 4. WARRANTIES

4.1 Clements warrants:

- (a) That the Residential Work will be carried out in accordance with the Specific Warranties,
- (b) that the Residential Works will be carried out in a proper and workmanlike manner and in accordance with the Contract Documents,
- (c) that all materials supplied by Clements will be good and suitable for the purpose for which they are used and, unless otherwise stated in this Contract, those materials will be new,
- (d) that the Residential Works will be done with due diligence and within a reasonable time,
- (e) that the Residential Works and any materials used in doing the Residential Works will be reasonably fit for the specified purpose or result, if the Client expressly makes known to Clements the particular purpose for which the work is required or the result that the Client desires the Residential Works to achieve so as to show that the Client relies on Clements skill and judgment, and
- (f) that it holds all licenses required to carry out the Residential Works.

## 5. HEALTH AND SAFETY

In carrying out the Residential Works, Clements and its agents and employees shall observe all relevant Occupational Health and Safety Laws.

## 6. COMMENCEMENT OF WORKS

6.1 Clements shall not be required to commence the Residential Works until

- (a) the Client:
  - (i) provides evidence that it is the owner of the Site or are authorised by the owner to enter into this Contract,
  - (ii) provides a copy of any approval required by Council or other Authority in respect of Residential Works, if any,

(iii) if requested provides evidence in writing of finance approval for the funding of the Residential Works by a financial institution approval by Clements acting reasonably, and

(iv) has paid the Deposit, if any, in accordance with clause 11.

(b) the Supplementary Works, if any, are completed or arrangements are made for the Supplementary Works to be done in conjunction with the Residential Works, and

(c) the Equipment, if any, is available.

## 7. QUALITY OF CONSTRUCTION

7.1 All work done under this Contract will comply with:

(a) The *Building Code of Australia* (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act),

(b) All other relevant codes, standards and specifications that the work is required to comply with under any law, and

(c) The conditions of any relevant development consent or complying development certificate.

7.2 Despite subclause 6.1, this Contract may limit the liability of Clements for a failure to comply with subclause 6.1 if the failure relates solely to:

(a) A design or specification prepared by or on behalf of the Client (but not by or on behalf of Clements), or

(b) A design or specification required by the Client, if Clements has advised the Client in writing that the design or specification contravenes subclause 6.1.

## 8. ACCURACY OF CONTRACT DOCUMENTS

8.1 The party responsible for the preparation of a Contract Document warrants that it is accurate and correct.

8.2 In the event of any inconsistency between the Contract Documents, or any detail not being given, Clements shall give notice to the Client detailing the problem. The Client must within two (2) Business Days of receiving such notice give written instructions as to how Clements is to proceed with the Residential Work.

8.3 In the event that the Client refuses or fails to give written instructions to Clements within two (2) Business Days of a notice pursuant to Clause 8.2 the Client authorises Clements to determine the required detail necessary to resolve the error, ambiguity or inconsistency.

8.4 If the required detail, as determined by the Client or Clements necessitates a change to the scope of the Residential Works, that work is deemed to be a Variation.

8.5 In relation to a document that is; supplied by, prepared under the instruction of, or prepared from sketches provided by, the Client, the Client indemnifies Clements from all costs, expenses, losses or damages that are incurred by Clements relating to or as a consequence of any claim for breach of copyright arising from Clements carrying out the Residential Works in accordance with that document.

## 9. BUILDING APPROVALS

9.1 The Client must obtain and pay for all approvals required by Council or any other Authority necessary for the Residential Works.

9.2 The Client must obtain and give copies of all required approvals to Clements promptly.

9.3 If the requirements of any statutory or other Authority necessitate a change to the Residential Works Clements must carry out the

Residential Works to effect that change and that work is deemed to be a Variation

#### **10. CONTRACT PRICE**

10.1 The Client shall pay the Contract Price and other money that becomes payable under this Contract in the manner and at the times stated in this Contract.

#### **11. DEPOSIT**

11.1 The Client must pay a deposit in accordance with clause 11.2 by 5:00pm on the second Business Day after the later of:

- (a) the day on which Clements gives a copy of this Contract signed by Clements to the Client, and
- (b) if the Residential Works is required to be covered by Home Warranty Insurance, the day on which Clements gives a certificate of Home Warranty Insurance in respect of the Residential Works to the Client.

11.2 The deposit shall be:

- (a) 10% of the Contract Price where the Contract Price is not greater than \$20,000.00, or
- (b) 5% of the Contract Price where the Contract Price is greater than \$20,000.00.

#### **12. GST**

12.1 The Contract Price and all other monies payable by the Client pursuant to this Contract are exclusive of GST unless otherwise stated.

12.2 If Clements incurs a liability to pay GST in connection with a supply to the Client pursuant to this Contract, the consideration that the Client must pay to Clements for the supply is increased by an amount equal to the GST liability that Clements incurs in making the supply and the amount of the GST liability is payable at the same time and in the same manner as the consideration in respect of the supply is payable.

12.3 Clements shall provide the Client with a tax invoice for any GST included in any payment made pursuant to this Contract.

#### **13. VARIATIONS**

13.1 A Variation occurs if:

- (a) this Contract deems a Variation, or
- (b) the Client and Clements agree in writing to a Variation, including, subject to clause 13.2, agreement as to the price of the Variation.

13.2 If there is insufficient time to calculate the price of a Variation, or if this Contract deems a Variation, the price of the Variation will be charged to the Client in the following manner, materials plus reasonable labour rates plus a **margin of 25%**.

13.3 Notwithstanding any other clause herein, Clements is under no obligation to carry out any Variation requested by the Client.

13.4 Where a Variation occurs the parties must sign a contract variation which shall include a description of the Variation and the price of the Variation. Clements is not required to carry out any work in relation to a Variation unless the Client has signed a contract variation for the Variation.

#### **14. SITE POSSESSION, ACCESS, SERVICES AND MATERIALS**

14.1 The Client warrants that it has exclusive possession of the Site to carry out works including the Residential Works.

14.2 The Client must provide all weather access to the Site for delivery of materials. If the Client does not provide all weather access, Clements may carry out any work required to achieve such access and that work is deemed to be a Variation.

14.3 The Client must not:

- (a) hinder Clements' access or possession of the Site for the purposes of carrying out the Residential Works, or
- (b) hinder the progress of the Residential Works.
- (c) make inquiry of, issue directions to, or give instructions to, Clements' workers or subcontractors. Communications must only be with Clements' nominated person.

14.4 The Client may only have access to the Residential Works at reasonable times and after giving reasonable prior notice for the purposes of inspecting the progress of the Residential Works.

14.5 The Client must supply electricity and water, at its expense, for Clements to use in the Residential Works.

14.6 All materials delivered to the Site by Clements and not required for the Residential Works will remain the property of Clements.

#### **15. ACKNOWLEDGEMENT OF POSSIBLE DELAYS**

15.1 The Client acknowledges that completion of the Residential Works may be suspended by Clements pursuant to Clause 25 or delayed by any cause beyond the control of Clements including:

- (a) a Variation or a request by the Client for a Variation,
- (b) an act of God, fire, explosion, earthquake or civil commotion,
- (c) any weather condition that, in the reasonable opinion of Clements, prevents work from being carried out in the usual manner,
- (d) an industrial dispute,
- (e) anything done or not done by the Client,
- (f) delays in getting any approvals,
- (g) the delay in the supply of materials,
- (h) the period known as "Building Industry Shutdown" being a five (5) week period commencing on or about 22 December in each year,
- (i) the Contract Documents not being fully completed or made available to Clements by the date of this Agreement, or
- (j) If any relevant Authority directs that the Residential Works be suspended due to environmental issues or otherwise.

15.2 Where the cost of the Residential Works has increased due to any delay beyond the control of Clements, Clements is entitled to a reasonable increase in the Contract Price.

#### **16. PROGRESS CLAIMS**

16.1 Clements may issue a Progress Claim in respect of work carried out by Clements to the relevant date in accordance with this Contract:

- (a) when in Clements's opinion:
  - (i) the Residential Works have reached a stage of Practical Completion, and
  - (ii) any Variation has reached a stage of Practical Completion, and
- (b) on the last day of each month.

16.2 The Client must pay the Contract Price progressively as claimed by Clements within seven (7) days of service of a Progress Claim on the Client.

16.3 Clements may serve a Progress Claim on the Client by any method that it is entitled to give notice under this Contract.

16.4 If the Client fails to pay any Progress Claim when due, the Client must pay interest on the amount of such Progress Claim at the rate of **15% per** annum calculated from the due date for payment of the relevant Progress Claim up to and including the day that the Progress Claim is paid and compounding on the first day of each calendar month.

#### **17. HOME WARRANTY INSURANCE**

17.1 This clause applies only if the Contract Price is greater than \$20,000.00 or such other amount as may be prescribed under the *Home Building Regulation 2004* from time to time.

17.2 Where this clause applies Clements shall, prior to commencing the Residential Works:

- (a) enter into a Contract of insurance in relation to the Residential Works that complies with the *Home Building Act 1989*, and
- (b) provide the Client with certificate of Home Warranty Insurance in respect of the Residential Works.

**18. OTHER INSURANCES**

- 18.1 Clements must take out prior to commencing, and maintain until completion of the Residential Works, insurance against:
- (a) Public Liability for an amount of not less than \$5,000,000, and
  - (b) All other losses in respect of which Clements is required to maintain insurances by law.
- 18.2 Clements must comply with all obligations under Workers Compensation Legislation.
- 18.3 Clements must, when asked by the Client, produce evidence of the existence and currency of any of the above insurance policies.

**19. COMPLETION PERIOD**

- 21.1 Clements will use its best endeavours to complete the Residential Works within the Completion Period subject to clauses 6, 15 and 25.

**20. PRACTICAL COMPLETION**

- 20.1 Clements will give notice to the Client of Practical Completion of the Residential Works within five (5) Business Days of Practical Completion. A Progress Claim claiming the total Contract Price or the unclaimed balance of the Contract Price shall be deemed to be notice of Practical Completion of the Residential Works.
- 20.2 If the Client disagrees that the Residential Works have reached the stage of Practical Completion the Client must notify Clements in writing within five (5) Business Days of the notice of Practical Completion stating the reasons why the Residential Works are not practically complete. Clements shall as soon as practicable after receipt of such notice:
- (a) complete those things as may be necessary to bring the Residential Works to the stage of Practical Completion and give the Client further notice of Practical Completion, or
  - (b) reject the Client's notice and/or initiate dispute resolution procedures.
- 20.3 If the Client fails to give a notice pursuant to Clause 20.2, the Client is deemed to have acknowledged that the Residential Works have reached the stage of Practical Completion.
- 20.4 Clements is not required to obtain any Certificate of Occupancy or Construction Certificate relating to the Residential Works.

**21. DEFECTS LIABILITY PERIOD**

- 21.1 The Defects Liability Period is a period of six (6) calendar months commencing on and including the date of Practical Completion.
- 21.2 The Client may, before the end of the Defects Liability Period, give Clements one (1) list of defects in the Residential Works that appear after the date of Practical Completion.
- 21.3 Clements must rectify defects that are Clements's responsibility and which are notified to Clements during the Defects Liability Period.

**22. DISPUTE RESOLUTION**

- 22.1 If a dispute arises then a party shall give written notice to the other party setting out the matter in dispute.
- 22.2 Clements and the Client must meet within 10 Business Days of the giving of a notice pursuant to Clause 26 to attempt to resolve the dispute or to agree on methods of doing so.
- 22.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 22.4 The parties agree that anything done or said in the negotiations cannot be revealed in any other proceedings.

**23. DEBT COLLECTION AND OTHER COSTS**

- 23.1 The Client must pay to Clements any debt collection costs, including legal fees and costs associated with recovery or attempted recovery, of any money payable under this Contract.
- 23.2 If, after this Contract is entered into, a statutory or other Authority introduces or increases:
- (a) any tax, charge, levy or other regulation, or

- (b) any requirement that affects the Residential Works, or that causes any increase in the costs of the Residential Works then the Contract Price shall be adjusted accordingly.

**24. SUBCONTRACTING AND ASSIGNMENT**

- 24.1 Clements may subcontract the whole or any part of the Residential Works but remains responsible for all of the Residential Works.
- 24.2 Clements may assign this Contract without the prior written consent of the Client.

**25. SUSPENSION**

- 25.1 If the Client is in breach of this Contract, Clements may suspend the carrying out of the Residential Works.
- 25.2 Clements must give to the Client written notice of the suspension and details of the breach.
- 25.3 Clements must recommence the carrying out of the Residential Works within a reasonable time after the Client remedies the breach and gives Clements written notice of that fact.

**26. NOTICES**

- 26.1 A notice is deemed to be have given if the notice is:
- (a) delivered by hand to the other party,
  - (b) posted by ordinary prepaid mail to the other party's address stated in the Quotation on the second Business Day following the date of posting, or
  - (c) sent by facsimile transmission to the parties last known facsimile number upon receiving confirmation of delivery of the transmission.

**27. TERMINATION OF CONTRACT**

- 27.1 If a party is in default of this Contract the other party may give the party in breach a written notice stating:
- (a) details of the breach, and
  - (b) that, if the breach is not remedied within ten (10) Business Days, the party is entitled to terminate this Contract.
- 27.2 If the breach is not remedied by the party in breach within ten (10) Business Days of notice of default being given, the party giving the notice of default may end this Contract by giving a further written notice to that effect.
- 27.3 If Clements ends this Contract pursuant to this clause then, at the election of Clements, the Client must pay as a debt due and payable either:
- (a) the greater of the costs of or the market value of the Residential Works to date (including the costs of any materials on the Site or already ordered from suppliers) and the costs of quitting the Site less any amount already paid by the Client, or
  - (b) Damages.
- 27.4 A party is in default of this Contract if it:
- (a) is in substantial breach of this Contract,
  - (b) becomes insolvent, bankrupt or makes an assignment of that party's estate for the benefit of creditors, or
  - (c) makes an arrangement or composition with creditors.

**28. CHARGE**

- 28.1 Subject to, Clements obtaining a Judgment or Order of a Court or Tribunal against the Client as a result of a breach of this Contract by the Client, the Client hereby charges all its right, title and interest in the Site in favour of Clements with payment of the amount due and authorises Clements to Caveat the Title to the Site.

**29. MULTIPLE CLIENTS**

- 29.1 If there is more than one (1) Client:
- (a) the obligations in this Contract apply to each of them individually and to all of them jointly,
  - (b) a reference in this Contract to one (1) Client is a reference to all Clients,

- (c) a notice, claim or any other communication to the Client(s) only has to be given to one (1) of the Clients, and
- (d) only one (1) of the Clients has to sign or give a notice, instruction, direction or communication to bind all of the Clients.

### **30. LIMITATION OF LIABILITY**

30.1 Clements's liability to the Client (and any party claiming through the Client against Clements) for any claim for loss or damage (including legal expenses), whether arising in contract, tort or otherwise, in connection with this Contract shall be as follows:

- (a) where the liability relates to the supply of goods, Clements's liability shall be limited to the lesser of the cost of:
  - (i) replacement of the goods or the supply of equivalent goods,
  - (ii) repair of the goods,
  - (iii) payment of the costs of replacing the goods or acquiring equivalent goods, or
  - (iv) payment of the costs of having the goods repaired, or
- (b) where the liability relates to the supply of services, Clements's liability shall be limited to the lesser of the costs of:
  - (i) supplying the services again, or
  - (ii) payment of the costs of having the services supplied again.

30.2 Clements shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the carrying out of the Works.

### **31. MISCELLANEOUS**

31.1 This Contract may be entered into by any number of counterparts all of which taken together shall constitute one instrument.

31.2 This Contract shall be governed by and constructed pursuant to the laws of New South Wales and the parties agree to submit to the jurisdiction of the Courts of New South Wales in connection with any dispute relating to this Contract.

31.3 If a provision of this Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result, or
- (b) if the provision cannot be read down to that extent it must be severed without altering the validity and enforceability of the remainder of the Contract.

31.4 This Contract embodies the whole agreement between the parties relating to the subject matter of this Contract and supersedes any and all oral and written negotiations and communications by or on behalf of any of them.

31.5 The parties have not, in entering into this Contract, relied upon any warranty, representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this Contract, except such as is expressly provided herein and subject thereto have relied entirely upon their own enquiries relating to the subject matter of this Contract.

31.6 Except as otherwise provided elsewhere in this Contract, none of the terms in this Contract may be varied, waived, discharged or released, except with the prior written consent of both parties.

31.7 To the extent that there is any inconsistency between the Contract and the Quotation then the Contract will prevail.

### **32. DEFINITIONS/INTERPRETATION**

In this Contract:

- (a) "*Authority*" means the Local Government, State or Federal Government, or any Government agency that has power to affect the Residential Works;

- (b) "*Business Day*" means any day other than Saturdays, Sundays or public holidays;
- (d) "*Clements*" means Timtrel Pty Limited ABN 41 003 125 200 trading as Clements Airconditioning Refrigeration Electrical, its successors and assigns;
- (c) "*Client*" means the party named as the Client or Owner in the Contract Particulars and includes the Client's agents, employees and invitees;
- (d) "*Completion Period*" means the period referred to in the Contract Particulars, if any, otherwise with a reasonable time of the conditions at clause 5.1 being satisfied.
- (e) "*Contract*" means this Contract including the Contract Documents;
- (f) "*Contract Documents*" means these terms and conditions, any special conditions, the Plans (or measurements) and the Specifications;
- (g) "*Contract Particulars*" means those particulars stated as Contract Particulars at the front of this Contract;
- (h) "*Contract Price*" means the amount stated as the Contract Price in the Contract Particulars;
- (e) "*Equipment*" means any equipment, goods and other parts and components to be supplied by Clements as part of the the Works;
- (f) "*Exclusions*" means the exclusions stated in the Contract Particulars;
- (i) "*GST*" has the same meaning as given to it in the A New Tax System (Goods and Services Tax) Act 1999.
- (j) "*Nominated Person*" means the person listed as the Nominated Person in the Contract Particulars, if any.
- (k) "*Plans*" means all plans referred to in the Contract Particulars.
- (l) "*Practical Completion*" means when the Residential Works are complete except for minor omissions and defects that do not prevent the Residential Works from being reasonably capable of being used for their usual purpose;
- (m) "*Progress Claim*" means both a tax invoice as defined in the A New Tax System (Goods and Services Tax) Act 1999 and a claim for a progressive payment made pursuant to this Contract;
- (n) "*Residential Works*" means the works referred to in the Scope of Works which are to be carried out, completed and handed over to the Client in accordance with this Contract as shown in the Contract Documents and including Variations, if any, but excluding Exclusions and Supplementary Works;
- (o) "*Scope of Works*" means the Scope of Works in the Contract Particulars;
- (p) "*Site*" means the address at which the Residential Works are to be carried out as specified in the Contract Particulars;
- (q) "*Specification*" means all specifications referred to in the Contract Particulars.
- (r) "*Specific Warranties*" means the Specific Warranties referred to in the Contract Particulars.
- (g) "*Supplementary Works*" means those supplementary works which need to be carried out by the Client or others, prior to, or in conjunction with, the Works.
- (s) "*Variation*" means to vary the Residential Works by:
  - (i) carrying out additional work,
  - (ii) omitting any part of the Residential Works,
  - (iii) changing the scope of the Residential Works.