

# FORM OF CONTRACT FOR HOUSING AND MINOR WORKS

**CONTRACT FOR**

.....(works)

**BETWEEN**

..... (employer)

**AND**

..... (builder)

**ON**

..... (erf and locality)



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# **GUIDELINES FOR THE USE OF THIS CONTRACT**

**These guidelines do not form part of the contract**

**NOTE:** Two copies of the contract are to be completed by the contracting parties and the top copy retained by the employer. The other copy is to be handed to the builder as soon as the employer has completed the acceptance of tender

## **Step 1**

The employer and principal agent are to complete the schedule of contract particulars before issuing the document to the tenderers (builders)

## **Step 2**

The builder must complete the builder's tender (offer to build) and write on that part of the contract form where shown the following in the presence of the person who is to witness his or her signature:

- the place of signature (the city, town or village where the signing takes place)
- the date that the builder signs the tender form
- his own signature
- write in block capitals the full personal name of the person who has signed the document and the name of the builder's company or firm
- the witness must sign where shown
- write the address where the builder can be found as his own place of business, such as his home or office
- write the address where post can be received by the builder
- write the telephone and (if the builder has one) the telefax number where the builder can be contacted

## **Step 3**

The employer, to accept the tender, must complete the acceptance of tender by writing on that part of the contract form where shown the following in the presence of the person who is to witness his or her signature:

- the place of signature (the city, town or village where the signing takes place)
- the date that the employer signs the tender form

- his own signature
- write in block capitals the full personal name of the person who has signed the document and the name of the employer
- the witness must sign where shown
- write the address where the employer can be found as his place of business
- write the address where post can be received by the employer
- write the telephone and (if the employer has one) the telefax number where the employer can be contacted

#### **Step 4**

The builder shall provide the employer with a contract guarantee in terms of clause 2.01, and shall take out insurance in terms of clause 2.05

#### **Step 5**

The employer shall take out insurance of the works in terms of clause 4.01 and thereafter hand over the site to the builder in terms of clause 4.02

# FORM OF CONTRACT FOR HOUSING AND MINOR WORKS

This contract is a document which sets out the manner in which the work is to be done by the builder and paid for by the employer. The builder when tendering must study the contract and satisfy himself that he understands the contract conditions, what he is to do, also when by whom he is to do, also when and by whom he is to be paid. After signing the contract, the builder and employer will be bound by the conditions set out herein

## SCHEDULE OF CONTRACT PARTICULARS

Name of employer .....

Physical address of employer .....

.....

.....

Postal address of employer .....

.....

.....

Telephone number .....

Telefax number .....

Name of principal agent .....

Physical address of principal agent .....

.....

.....

Postal address of principal agent .....

.....

.....

Telephone number .....

Telefax number .....

**SCHEDULE (CONTINUED)**

The contract documents comprise this contract document, preliminaries, drawings numbered ..... specifications, bills of quantities, schedule of materials (delete if not applicable) .....

Contract guarantee (percentage of contract sum) .....

First amount (excess) of each insurance claim payable by builder ..... (amount in words: .....)

Date for possession of the site (handing over to the builder) .....

Date for practical completion .....

Law of this contract shall be the law of (country) .....

Tender closing date ..... Time .....

Place of submission of tender .....

Period for holding good tender (days) .....

Penalty (amount) ..... per day

Special work to be done by specialist builders in terms of clause 13.00

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## BUILDER'S TENDER (OFFER TO BUILD)

The builder hereby offers to build the works for the employer in terms of these conditions of contract for the contract sum of

..... (amount in words: .....  
.....)

The employer has, until the expiry of the tender, that is ....., the right to accept this offer, no offer at all, or any other offer

Should the employer accept this tender by signing this document on page 4, the tenderer becomes the builder and is bound to perform in accordance with the provisions of this contract

Place of signature .....

Date of signature .....

Signature of builder .....

Full name of signatory (builder) .....

Name of builder .....

Signature of witness .....

Full name of signatory (witness) .....

Physical address of builder .....

.....

.....

Postal address of builder .....

.....

.....

Telephone number .....

Telefax number .....

## ACCEPTANCE OF TENDER

The employer hereby accepts the tender by the builder

Place of signature .....

Date of signature .....

Signature of employer .....

Full name of signatory (employer) .....

Name of employer .....

Signature of witness .....

Full name of signatory (witness) .....

Physical address of employer .....

.....

.....

Postal address of employer .....

.....

.....

Telephone number .....

Telefax number .....

# CONDITIONS OF CONTRACT

## 1.00 DEFINITIONS

Definitions of words used in this contract are set out below

### 1.01 Acceptance of tender

means the signing of the contract by the **employer** which brings this contract into force

### 1.02 Builder

means the person, partnership, company, close corporation, community of builders or other legal body that contract to build the **works** and is so identified in the schedule

### 1.03 Certificate of final completion

means the certificate to be issued by the **principal agent** when the works have been fully completed in terms of clause 1.11 hereof

### 1.04 Certificate of practical completion

means the certificate to be issued by the **principal agent** when, in his opinion, the works have reached the stage of **practical completion** in terms of clause 1.17 hereof

### 1.05 Contract documents

means this contract document, preliminaries, drawings, specifications, bills of quantities or schedule of materials; also any documents annexed to the contract documents by agreement between the parties

### 1.06 Contract guarantee

means the guarantee in the exact words of the guarantee form as provided with this document and to be provided by one or more guarantors on behalf of the **builder**. This guarantee is to provide for the guarantor(s) to be responsible to finish the contract and/or for payment of the **employer** of an amount of up to a maximum of 10% (ten percent) of the contract sum, in the event that the **builder** does not complete the **works**

### 1.07 Contract sum

means the amount entered on page 3 of this document

### 1.08 Days

means calendar days (that is actual days including Saturdays, Sundays, public holidays and builders' holidays, etc)

## CONDITIONS OF CONTRACT (CONTINUED)

### 1.09 Employer

means the person, partnership, company, close corporation, community body or other legal body so defined in the schedule

### 1.10 Final account

means the amount to be paid to the **builder** in terms of clause 10.00 hereof

### 1.11 Final completion

means the completion of all work in this contract including rectification of all defective and incomplete work to the reasonable satisfaction of the **principal agent**

### 1.12 Notice in writing

means a written notice delivered by either party to the other, together with reasonable proof of the date of delivery

### 1.13 Payment

means payment by the **employer** to the **builder** of the amount(s) so certified by the **principal agent** within 10 **days** of the issuing of the **payment certificate**

### 1.14 Payment certificate

means a certificate issued by the **principal agent** entitling the **builder** to **payment** by the **employer** for work done and materials on site

### 1.15 Penalty

means the amount to be paid by the **builder** to the **employer** for each **day** the works are finished late due to the **builder's** default at the amount per **day** stated in the schedule

### 1.16 Period of liability for defects

means the period commencing on the date of issue of the **certificate of practical completion** and ending on the 90th **day** thereafter

### 1.17 Practical completion

means that stage of completion when the **works** are, in the opinion of the **principal agent**, completed sufficiently for it to be properly used for the purpose for which it was constructed

### 1.18 Principal agent

means the person stated in the schedule or his nominee who will inspect the **works** and perform the other duties so provided for in this contract

## CONDITIONS OF CONTRACT (CONTINUED)

### 1.19 Site

means the place where the **works** are to be constructed. The **builder** is to build the **works** only on the land so defined in the **contract documents**

### 1.20 Specialist builders

means those other builders directly paid by the **employer** to do work on the **site** and not forming part of this contract

### 1.21 Tender closing date and time

means the date and time of day on that date when the **employer** will open tenders for the **works**

### 1.22 Variations

means changes to the **works** that the **principal agent** issues to the **builder** as instructions in writing. Should the **builder** do extra work not described in a written instruction from the **principal agent**, such work will not be paid for by the **employer**

### 1.23 Works

means the construction which is to be done by the **builder** in terms of this contract and as set out in the contract **documents**

## 2.00 BUILDER'S OBLIGATIONS

The **builder** shall:

- 2.01 Before starting work on **site**, arrange for a **contract guarantee** to be provided on the form in this document from a person or organisation acceptable to the **employer**
- 2.02 When notified of the **acceptance of tender**, commence to build the **works** on the date for possession of the **site** and carry out the **works** in accordance with the **contract documents**, to the reasonable satisfaction and in accordance with the written instructions of the **principal agent**
- 2.03 Provide all of the necessary materials, labour, plant and equipment to build the **works**, including water and electricity, etc for the **works** and build the **works** as set out in these **contract documents**
- 2.04 Comply with all applicable statutory provisions and local authority requirements
- 2.05 Insure his workmen and employees against death or injury arising out of the execution of the **works**

## CONDITIONS OF CONTRACT (CONTINUED)

- 2.06 In the event of a loss leading to a claim against the insurance policies stated in clause 4.0.1, pay the first amount (excess) as stated in the schedule of each such claim to the **employer**. Such amounts may be deducted from any **payment** due by the **employer** to the **builder**
- 2.07 Comply with all written instructions of the **principal agent** to make variations to the **works**
- 2.08 Complete and hand over the **works** by the date for **practical completion** stated in the schedule, or any extensions thereof in terms of 6.01
- 2.09 Make good at his own expense all incomplete and defective work within the **period of liability for defects**
- 2.10 To Pay to the **employer** any **penalty** for delay as due to the **employer** on demand by the **principal agent**. Such amounts may be deducted from any **payment** due by the **employer** to the **builder**

### 3.00 IMPROPER CONDUCT BY THE BUILDER

- 3.01 The **builder** hereby warrants that he has not made, nor shall he make any promises to any person of the **employer**, nor to any relative or business associate or political associate of the **employer** to do or not to do anything as an inducement to award this contract to the **builder** nor to allow any other such wrongful inducement to gain an advantage in the carrying out of the contract. Such conduct is hereby deemed to be improper conduct
- 3.02 The establishment by the **employer** or **principal agent** of proof of improper conduct by the **builder** shall be grounds for immediate cancellation of the contract by the **employer** and of payment by the **builder** to the **employer** of any loss suffered by the **employer** due to such cancellation

### 4.00 EMPLOYER'S OBLIGATIONS

The **employer** shall:

- 4.01 Insure the **works** and materials on **site** with a Builder's All Risks Policy insuring against loss by fire, explosion, earthquake and for public liability and riot with a registered insurer subject to the provisions of Clause 2.06 hereof
- 4.02 Hand over the **site** to the **builder** and point out boundary pegs on the date of possession of the **site**
- 4.03 Make payment to the **builder** for the work as certified by the **principal agent** and as set out herein
- 4.04 Take possession of the **works** when the **works** have been completed by the **builder**

## CONDITIONS OF CONTRACT (CONTINUED)

### 5.00 PRINCIPAL AGENT'S DUTIES

The **principal agents** shall:

- 5.01 Regularly inspect the **works** to satisfy himself that it is being built as shown in the **contract documents**
- 5.02 Give any instructions and/or explanations and/or **variations** to the **builder** including any relevant advice to assist the **builder** to understand the **contract documents**
- 5.03 Certify payment to the **builder** for work done and, in the discretion of the **principal agent**, for materials delivered to the site
- 5.04 Grant or refuse any extension of time requested by the **builder** to the date of **practical completion**
- 5.05 Inspect the **works** to decide when it is at the stage of **practical completion** and, when satisfied, certify that **practical completion** has occurred
- 5.06 Inspect the **works** to decide when it is at the stage of **final completion** and, when satisfied, certify that **final completion** has occurred
- 5.07 Decide on the settlement of any disputes that may arise between the **builder** and the **employer**, subject to the conditions of clause 17.00

### 6.00 DELAY AND EXTENSION OF TIME: PENALTY

- 6.01 If the carrying out of the **works** is delayed by bad weather, public disorder or any other reason decided by the **principal agent** at his sole discretion to be reasonable, then the date for **practical completion** of the **works** is to be extended by the period so decided by the **principal agent**
- 6.02 If the delay is due to causes that are the fault of the **builder**, then the **principal agent** may certify this fact in writing to the **builder** and to the **employer** and the **employer** may then withhold **penalties** from the **builder** as set out in clause 11.00

### 7.00 DEFAULT BY BUILDER

If the **builder**:

- 7.01 Stops work on site for more than 14 days and or
- 7.02 Fails, in the opinion of the **principal agent**, to carry out the **works** with reasonable diligence and/or

## CONDITIONS OF CONTRACT (CONTINUED)

- 7.03 Refuses to comply with an instruction issued by the **principal agent**
- 7.04 Then the **employer** shall, by notice in writing, inform the **builder** of such default and, if such default shall continue for a further period of 7 days, cancel this contract and employ others to complete the **works**. The cost of such work by others shall be a debt due by the **builder** to the **employer**
- 7.05 Whereupon no further **payment** will be due to the **builder** by the **employer** until the **works** are completed by the replacement **builder(s)** and the **builder's final account** and that of the replacement builder(s) have been ascertained and any loss to the **employer** arising from the cancellation has been identified. Such loss shall be deducted from any **payment** due by the **employer** to the **builder**, including **payments** from the retention fund

### 8.00 DEFAULT BY THE EMPLOYER

If the **employer** fails to make **payment** for work properly done by the **builder** as provided for in this contract and the **builder** issues a notice in writing to the **employer** and the **employer** does not pay within 7 days of such notice in writing, then the **builder** may, without prejudice to any other rights he may have, cancel the contract, stop work and clear the site. The **builder** shall thereupon be entitled to **payment** in full, as assessed by the **principal agent**, for the work done and materials supplied, up to the said date of cancellation

### 9.00 RETENTION FUND

- 9.01 The **employer** shall withhold from the **builder** 10% (ten per cent) of all **payments** made before the issuing of the **certificate of practical completion** as a retention fund. No interest is to be paid to the **builder** on the retention fund. The retention fund shall be held by the **employer** as a guarantee to the **employer** for the completion of the contract
- 9.02 Half of the retention fund shall be paid to the **builder** on the issuing of the **certificate of practical completion** and the remainder on the issuing of the certificate of **final completion**

### 10.00 FINAL ACCOUNT

The final value of the **works** shall be determined by the calculation of omissions and additions to the contract sum as caused by the effect of variations. The valuation of such omissions and additions shall be based on the rates in the bills of quantities or schedule of rates as the case may be. A draft final account shall be prepared by the **principal agent** or his nominee within 30 days of the issue of the certificate of **final completion** for approval by the **builder**. The **builder** shall review the draft final account and shall make any adjustments as may be necessary and shall return it to the **principal agent** within 30 days. Thereupon the **principal agent** shall issue a final **payment certificate** taking into account any monies due to the **builder** which amount shall be paid in full and final settlement of all monies due by the **employer** to the **builder**

## CONDITIONS OF CONTRACT (CONTINUED)

### 11.00 PENALTY

The **builder** shall be liable to pay a **penalty** to the **employer** for the number of days the **works**, in the opinion of the **principal agent**, remains incomplete beyond the date for **practical completion** as stated in the schedule, taking into account the builder's entitlement to an extension of time. Such **penalty** may be deducted from any monies due or to become due to the **builder** from the **employer**, including from the retention fund

### 12.00 PAYMENT

12.01 The **principal agent** shall issue monthly **payment certificates** to the **builder** for **payment** by the **employer**

12.02 **Payment** shall be due by the **employer** to the **builder**. Should any **payment** be made later than provided for herein, then the **employer** shall pay to the **builder** interest at 3% above the prime rate charged by commercial banks to their clients at that time

### 13.00 SPECIALIST WORK

The **employer** may directly employ **specialist builders** to do work such as electrical installation on **site** whilst the **works** are in progress. The **builder** shall allow such **specialist builders** to do their work as and when needed and shall make available all facilities to enable such work to be properly done to the satisfaction of the **principal agent**

### 14.00 PRACTICAL COMPLETION AND FINAL COMPLETION

14.01 The **principal agent** shall be the sole judge of when the **works** reach the stage of **Practical completion**. When the **works** have reached **practical completion** the **principal agent** shall issue a **certificate of practical completion**, together with a list of any incomplete and defective work. After the end of the period of liability for defects the **principal agent** shall inspect the **works** and, if satisfied that all **works** are complete and defects rectified, shall issue the certificate of **final completion**

14.02 Immediately the said list is issued to the **builder**, he shall do all of the work indicated on the list, failing which the provisions of clause 7.04 shall be invoked by the **principal agent**

