

**TERMS AND CONDITIONS**

1. DEFINITIONS

- 1.1 In this Schedule D the following words and phrases will have the meanings ascribed to them below, and cognates will have corresponding meanings:
- 1.1.1 “AGREEMENT” means the Building Contract to which this document serves as Schedule D, all other of its schedules, annexures and appendices, which includes the PLANS and the FINISHING SCHEDULE.
- 1.1.2 “BUILDING REGULATIONS AND STANDARDS” means the building regulations and standards promulgated in terms of the Housing Consumers Protection Measures Act 95 of 1998 or the National Building Regulations and Building Standards Act 103 of 1977 (including any regulations published pursuant thereto), or any other legislative enactments or any other applicable rules and norms regulating the WORKS.
- 1.1.3 “BUSINESS DAY” means a day which is not a Saturday, a Sunday, or a public holiday in the Republic of South Africa.
- 1.1.4 “CONTRACTOR” means the party contracting with the EMPLOYER for the execution of the WORKS as specified in the AGREEMENT.
- 1.1.5 “CONTRACT SUM” means the total of the remuneration due to the CONTRACTOR, including VAT where applicable, in terms of the AGREEMENT for the execution of the WORKS on the PROPERTY, which is referred to in the AGREEMENT and specified in Schedule E, which sum shall be adjusted, if necessary, in terms of the AGREEMENT.
- 1.1.6 “CHANGES” means any WORKS or items in addition to or in substitution for the specifications listed in the FINISHING SCHEDULE, or any amendment or variation of the PLAN. “CHANGES” does not refer to the exercise of choices where choices are provided in the FINISHING SCHEDULE.
- 1.1.7 “DEED OF SALE” means the Deed of Sale pertaining to the Erf concluded between Islandview Village (Pty) Ltd (Registration number: 2016/305379/07) and the EMPLOYER on \_\_\_\_\_(insert date), to which the Building Agreement constitutes Annexure B.
- 1.1.8 “EMPLOYER” means the party contracting with the CONTRACTOR for the execution of the WORKS as specified in the AGREEMENT and DEED OF SALE.
- 1.1.9 “FINISHING SCHEDULE” means the detailed schedule of specifications and finishes annexed to the Building Agreement as Schedule A, which details the fittings and finishes forming part of the WORKS.

- 1.1.10 "LATENT DEFECT" means a defect which with reasonable inspection of the WORKS by the EMPLOYER prior to the EMPLOYER taking possession in terms of clause 7 below would not be apparent to the naked eye.
- 1.1.11 "PATENT DEFECT" means a defect which a reasonable inspection of the WORKS by the EMPLOYER will be apparent to the naked eye.
- 1.1.12 "PLAN" the signed drawings of the WORKS annexed hereto and initialled for identification purposes, or as substituted by the final plan of the WORKS agreed to in terms of clause 5 below.
- 1.1.13 "PROJECT AGENT" means an independent professional architect or quantity surveyor, or other suitably qualified person, appointed by the CONTRACTOR.
- 1.1.14 "PROPERTY" means the erf listed hereinabove, which is the parcel of land on which the WORKS must be executed by the CONTRACTOR.
- 1.1.15 "WORKS" means the WORKS as described in the Building Agreement and as recorded in all schedules thereto, including any variations thereof.
- 1.1.16 "TRANSFERRING ATTORNEYS" means Stadler and Swart Incorporated as referred to in the DEED OF SALE.

## 2. SUSPENSIVE CONDITIONS

- 2.1 This entire AGREEMENT is subject to the registration of transfer of ownership of the PROPERTY into the name of the EMPLOYER pursuant to the DEED OF SALE.
- 2.2 This AGREEMENT is subject further to the EMPLOYER procuring bond approval as contemplated in clause E4 and 9 of the DEED OF SALE.

## 3. PAYMENT OF THE CONTRACT SUM

- 3.1 Where this AGREEMENT is not subject to mortgage finance being obtained by the EMPLOYER, payment of the full amount of the CONTRACT SUM will be made by the EMPLOYER into the Trust Account of the TRANSFERRING ATTORNEYS within 14 (fourteen) days after signature of this AGREEMENT. Progress payments will be made to the CONTRACTOR from the funds held by the TRANSFERRING ATTORNEYS in instalments as the WORKS progress. The amount of the payments will be calculated as the following percentages of the CONTRACT SUM, certified by the PROJECT AGENT:
  - 3.1.1 25% on completion of the floor slab;
  - 3.1.2 20% on completion of the roof construction;
  - 3.1.3 20% on completion of ceilings, plaster work, windows and external doors;

- 3.1.4 25% on completion of built-in cupboards and sanitary ware;
  - 3.1.5 The balance on the date of completion of the WORKS. The making of this final payment shall be evidence that the CONTRACTOR has fulfilled its obligations in terms of this AGREEMENT, save latent defects.
  - 3.1.6 The EMPLOYER hereby irrevocably *in rem suam* authorises the TRANSFERRING ATTORNEYS to affect the abovementioned progress payments from the funds which it holds in trust from time to time to the CONTRACTOR as and when such payments become due and payable in terms of this AGREEMENT.
- 3.2 Alternative to clause 3.1 above, and in the sole discretion of the CONTRACTOR, the EMPLOYER shall upon request and prior to the commencement of the WORKS, furnish to the CONTRACTOR a Banker's Guarantee or other acceptable security for the fulfilment of the EMPLOYER'S liability in terms of this AGREEMENT, in an amount not less than the Contract Sum. It is however agreed that payments shall in this event still be effected as set out in clause 3.1 above.
- 3.3 If the WORKS are financed by a bank, or by any other financial institution acceptable to the CONTRACTOR, the EMPLOYER by executing this AGREEMENT empowers and authorises the CONTRACTOR to apply for and receive progress payments from the bank or financial institution. It is recorded that the financing institution will itself ensure that it does not pay more than the value of the work done by the CONTRACTOR as part of the bank's service offering to the EMPLOYER, and as such the EMPLOYER will not dispute the timing or the amount of the progress draw submitted by the CONTRACTOR. In cases where the WORKS are financed, the progress instalments may differ from the breakdown provided in clause 3.1.
- 3.4 The EMPLOYER will be liable for any interim (in other words while the WORKS are being undertaken) interest or fees charged by the bank or financial institution financing the WORKS, if any, in accordance with the EMPLOYER'S prevailing arrangement with the bank or financial institution.
- 3.5 The EMPLOYER will on demand pay in cash directly to the CONTRACTOR the amounts listed below in addition to the CONTRACT SUM, which amount is detailed on Schedule E. The CONTRACTOR shall be obliged upon receipt thereof to timeously effect payment of such monies to the entities concerned. For purposes of this clause, all charges for the items set out below are for the account of the EMPLOYER where no agreement has been made for such charges to be included in this AGREEMENT:
- 3.5.1 Engineer's fees and costs.
  - 3.5.2 Soil testing and test pits.
  - 3.5.3 Special foundations or reinforcing due to adverse subsoil conditions.

- 3.5.4 Blasting and/or work where a compressor and / or excavator is required due to adverse subsoil conditions.
  - 3.5.5 The removal or importation of any material not forming part of the WORKS.
  - 3.5.6 The location of boundary and building plan footprint pegs.
  - 3.5.7 Footway deposit and hoarding fees.
  - 3.5.8 Transfer duty and cost.
  - 3.5.9 Bond registration costs and fees.
  - 3.5.10 Valuation fees.
  - 3.5.11 Water, electrical and sewerage connection fees and deposits.
  - 3.5.12 Interim rates and taxes.
  - 3.5.13 Inspection fees.
  - 3.5.14 National Home Builders Registration Council (NHBRC) enrolment fee for the WORKS.
  - 3.5.15 Building plan approval fees raised by the local Municipality.
- 3.6 The EMPLOYER acknowledges that all water used during the construction period is a necessary part of the building process and that the costs of water usage, are for the EMPLOYER's account and shall not form part of the CONTRACT SUM. The CONTRACTOR is also not liable for any property rates and taxes in respect of the PROPERTY.
- 3.7 All progress payment instalments due to the CONTRACTOR will be paid in South African currency without set-off, deduction or exchange directly into the banking account of the CONTRACTOR, the details of which the CONTRACTOR shall provide the EMPLOYER from time to time in writing. In the event that the WORKS are financed by a bank or financial institution, then the EMPLOYER will do all such things and sign all such documents as may be necessary to ensure that progress payment instalments are received by the CONTRACTOR without delay and strictly in accordance with the provisions of this AGREEMENT.
- 3.8 Any amount not paid on the due date shall bear compound interest thereon at a rate of 3% (three percent) greater than the prime lending rate charged by the CONTRACTOR's bank, which interest shall accrue as from the due date for payment.

#### 4. TIMING OF PAYMENT

- 4.1 In the event of this AGREEMENT being subject to the EMPLOYER obtaining mortgage finance, then the CONTRACTOR will submit the necessary

documents required by the financing institution (called "DRAW DOCUMENTS") to effect payment of progress instalments for signature by the EMPLOYER. So as not to delay the completion of the WORKS, the EMPLOYER will ensure that the DRAW DOCUMENTS are signed by it and returned to the CONTRACTOR within 3 (three) days after being provided therewith. Should any payment be delayed due to any failure on the part of the EMPLOYER to timeously return the DRAW DOCUMENTS to the CONTRACTOR or any other omissions by the EMPLOYER in relation to requirements of the relevant financial institution, then interest on any late payment as a result thereof will be payable as per clause 3.8 above.

- 4.2 Should the EMPLOYER at any time prior to the date of completion leave the Republic of South Africa as its place of residence, then it will be obliged to inform the CONTRACTOR within 21 (twenty-one) days prior to departure and to ensure that suitable alternative arrangements for the signature of DRAW DOCUMENTS are specified.
- 4.3 In the event of the WORKS not being financed, payment in accordance with clause 3.1 will be made within 3 (three) days of the CONTRACTOR's request.

## 5. FINAL PLAN

- 5.1 Prior to submission of any construction drawings for municipal approval, the CONTRACTOR will arrange a meeting with the EMPLOYER so that the EMPLOYER may sign-off and approve the construction drawings as being accurate reflections of the WORKS. Upon signature of the construction drawings by the EMPLOYER, such drawings will constitute the PLAN for the purposes of this AGREEMENT in substitution for the drawing contained in the annexures to this AGREEMENT, and in the unlikely event of any differences between any of the annexures and the substituted PLAN, the substituted PLAN will prevail.
- 5.2 Subject to clause 5.3 and clause 15 below the EMPLOYER acknowledges that no further amendments or changes will be allowed after the construction drawings have been signed off by the EMPLOYER. However, the EMPLOYER may select his choice of finishes where the FINISHING SCHEDULE provides for choices, provided that such items will be supplied by the CONTRACTORS's preferred supplier. Where choices are allowed in terms of the FINISHING SCHEDULE, the CONTRACTOR may in its discretion refuse any request to choose finishes to a value greater than those values allowed for in the FINISHING SCHEDULE.
- 5.3 In the event that the CONTRACTOR and the EMPLOYER agree in writing to CHANGES, the full cost of the said CHANGES will be supplied by the CONTRACTOR in a quotation to the EMPLOYER for acceptance. Once accepted by the EMPLOYER, the CONTRACTOR will invoice the EMPLOYER, for which payment is to be made in full and received by the CONTRACTOR within 2 (two) days, before the CONTRACTOR will commence with such CHANGES. Should payment not be received by the CONTRACTOR within the above 2 (two) days, the CONTRACTOR will continue construction as per the original AGREEMENT and the amendment of the AGREEMENT as to any CHANGES will lapse and be of no force or effect.

## 6. STRUCTURE AND DESIGN ELEMENTS

- 6.1 The WORKS will in all aspects be carried out in accordance with the BUILDING REGULATIONS AND STANDARDS applicable from time to time, and in accordance with any other law or enactment that may apply, or any permitted deviation from these regulations and standards. In the unlikely event of these legal provisions conflicting with the PLAN or the FINISHING SCHEDULE, then the legally binding norms and standards will prevail. The PLAN and the FINISHING SCHEDULE are also subject to changes for compliance with all the developmental approvals pertaining to the PROPERTY in terms of the Land Use Planning Ordinance 15 of 1985 or other applicable legislation or regulations, including but not limited to the approved site development plan and architectural guidelines of the development of which the PROPERTY forms part.
- 6.2 The foundations and structure of the WORKS, which includes the roof, will be designed and overseen by a competent person, usually a structural or civil engineer or engineers, as required by and in accordance with the BUILDING REGULATIONS AND STANDARDS. The construction of these elements of the WORKS will be executed in accordance with such designs, and may as far as those details are concerned differ from the PLAN and the FINISHING SCHEDULE.

## 7. COMPLETION AND OCCUPATION

- 7.1 When the WORKS are substantially complete the CONTRACTOR shall notify the EMPLOYER who shall within 5 (five) working days inspect the WORKS together with the CONTRACTOR and provide the CONTRACTOR with a once off single, comprehensive written list of any work still to be completed and/or defects to be remedied.
- 7.2 As soon as the work shown on the list referred to in 7.1 hereof has been completed by the CONTRACTOR and inspected and accepted by the EMPLOYER, then the PROJECT AGENT shall inspect the works and certify in writing that the WORKS have been completed at which point the WORKS shall have reached Practical Completion (hereinafter referred to as "Practical Completion").
- 7.3 The EMPLOYER will take possession and occupation of the WORKS when it has reached Practical Completion which shall be a date no later than 5 (five) months after commencement of the WORKS, or an alternative date as notified by the CONTRACTOR in writing. The construction industry holiday during the December/January period, and adverse weather and rain days, are excluded from the 5 (five) month period for the completion of the WORKS.
- 7.4 The risk and benefit of ownership of the completed WORKS will vest in the EMPLOYER from the day on which the EMPLOYER takes possession and occupation of the PROPERTY and the completed WORKS.
- 7.5 The parties record that no employee of the CONTRACTOR has the authority to agree to an earlier or later date of occupation, and any verbal communications from the employees of the CONTRACTOR regarding occupation dates will not be binding on the CONTRACTOR. Only written communications regarding

occupation dates on a letterhead of the CONTRACTOR will bind the CONTRACTOR.

- 7.6 The CONTRACTOR will not be obligated to give occupation and possession of the WORKS until the date of Practical Completion, and then only once any and all amounts due to the CONTRACTOR in terms of this AGREEMENT have been received by the CONTRACTOR and the local Municipality has issued a occupation certificate as contemplated in section 14 of the National Building Regulations and Building Standards Act No. 103 of 1977.
- 7.7 The 5 (five) month period for construction is dependent on the EMPLOYER's punctually procuring payment of all amounts due, including draws in the event of mortgage finance and timeously performing all obligations in terms of this AGREEMENT, including the selection of fittings and finishes where the EMPLOYER is provided with choices in terms of the FINISHING SCHEDULE, and may be pro rata delayed if the EMPLOYER neglects or refuses to fulfil its obligations timeously.
- 7.8 Once the CONTRACTOR offers possession and occupation, the EMPLOYER will not be entitled to refuse or delay taking possession and occupation beyond the date offered by the CONTRACTOR. Should the EMPLOYER fail to take occupation on the date provided by the CONTRACTOR, then all risk of any kind will nevertheless pass to the EMPLOYER from that date, and any damage whatsoever caused to the Property and WORKS thereafter will be for the account of the EMPLOYER who shall be solely liable to pay for such damages.

## 8. GUARANTEES

- 8.1 The CONTRACTOR guarantees the WORKS in respect of all latent defects for a period of three (3) months from the date of Practical Completion, provided such a defects result from the defective material or workmanship having been employed by the CONTRACTOR.
- 8.2 The CONTRACTOR furthermore guarantees the roof and any other relevant portion of the WORKS in respect of leakage for a period of 1 (one) year from the date of Practical Completion.
- 8.3 The CONTRACTOR furthermore guarantees all structural aspects of the WORKS in respect of defects therein for a period of one (1) year from date of Practical Completion, with the exception of hairline settlement cracks which are not guaranteed and are considered normal in newly built homes. Hairline settlement cracks for the purposes hereof are any cracks that are certified to be Slight, Very Slight or Negligible (Categories 2, 1, and 0) on the scales published in Tables 2, 3 and 4 of Part 1 Section 2 of the NHBRC Home Building Manual of 1999.
- 8.4 Any PATENT DEFECTS, which may appear within 3 (three) calendar months after Practical Completion, shall be made good by the CONTRACTOR, at his own cost. The EMPLOYER shall issue the CONTRACTOR a single comprehensive written list of any such PATENT DEFECTS to be remedied or items still to be completed and the CONTRACTOR shall attend to such defects and items within reasonable period thereafter.

8.5 The EMPLOYER will be obligated within the time limits prescribed in the preceding paragraphs to notify the CONTRACTOR in writing of any defects covered by the guarantee and the CONTRACTOR will thereafter be afforded a reasonable period of time, and reasonable access to the WORKS and the PROPERTY, to rectify the defects.

## **9. WORKS RISK, INDEMNITIES, AND INSURANCE**

9.1 Subject to the provisions of 9.2 hereof the WORKS shall be at the risk of the CONTRACTOR from the dates on which possession of the site is given to the CONTRACTOR until the date of Practical Completion as referred to herein, after which the risk in the WORKS shall pass to the EMPLOYER.

9.2 The CONTRACTOR shall not be liable for damage to or physical loss of the WORKS where this results from any of the following circumstances, and the EMPLOYER shall indemnify the CONTRACTOR in such circumstances:

9.2.1 war, whether declared or not, invasion and hostile acts of foreign enemies.

9.2.2 rebellion, insurrection, revolution, terrorism, military or usurped power or civil war.

9.2.3 civil commotion, riot, strike, lockout or disorder by persons other than the CONTRACTOR's employees or its sub-contractors.

9.2.4 confiscation, nationalisation or requisition by any public or local authority.

9.2.5 sonic shock waves caused by aircraft or other aerial devices and ionising radiation or contamination.

9.2.6 the use or occupation of any part of the WORKS by the EMPLOYER, the EMPLOYER's servants and agents, or those for whose acts or omission they are responsible.

9.2.7 an act or omission of the EMPLOYER, the EMPLOYER's servants or agents and those for whose acts or omissions they are responsible.

9.2.8 an act or omission by others engaged by the EMPLOYER and those for whose acts or omissions they are responsible.

9.2.9 design of the WORKS by the EMPLOYER or any agent of the EMPLOYER.

9.2.10 a LATENT DEFECT in materials specified by trade name where the CONTRACTOR has no right of substitution. The CONTRACTOR hereby cedes to the EMPLOYER any claim that may exist against the supplier/ manufacturer of such materials.

9.3 The CONTRACTOR shall effect contract WORKS insurances in the joint names of the EMPLOYER and the CONTRACTOR, and covering the CONTRACTOR's sub-contractors. The sum insured shall be the CONTRACT SUM plus 10% (ten



percent) thereof, the cost of repairing such damage or making good such loss shall be treated as a CHANGE as contemplated in clause 5 hereof.

- 9.4 The limit of the CONTRACTOR's liability shall not exceed the amount of the contract WORKS insurance.
- 9.5 Subject to the provisions of 9.6 hereof the CONTRACTOR indemnifies the EMPLOYER against any liability, loss, claim or proceedings whatsoever from other parties consequent upon death or bodily injury or illness of any person, or damage to physical loss of any property other than the WORKS, arising out of or due to the execution of the WORKS or occupation of the site by the CONTRACTOR.
- 9.6 The CONTRACTOR does not indemnify the EMPLOYER where the liability, loss, claim or proceedings arise from any of the excluded circumstances listed hereunder, and the EMPLOYER shall indemnify the CONTRACTOR in such circumstances:
- 9.6.1 an act or omission of the EMPLOYER, his servants or agents and those for whose acts or omissions they are responsible.
  - 9.6.2 an act or omission of others engaged by the EMPLOYER or those for whose acts or omissions they are responsible.
  - 9.6.3 design of the WORKS by the EMPLOYER or any agent of the EMPLOYER.
  - 9.6.4 the use or occupation of the site by the EMPLOYER.
  - 9.6.5 the right of the EMPLOYER to have the WORKS or any part thereof executed at the site.
  - 9.6.6 interference with any servitude or other right that is the unavoidable result of execution of the WORKS, including the weakening of or interference with the support of land adjacent to the site, unless resulting from any negligence act or omission by the CONTRACTOR or his sub-contractors.
  - 9.6.8 damage to or physical loss of the contents of the WORKS.
  - 9.6.9 the occupation of any part of the WORKS by the EMPLOYER or his tenants.
- 9.7 The CONTRACTOR shall effect public liability insurance to cover the joint interest of both parties in respect of the indemnity stated in 9.5 hereof, for not less than the amount stated in Schedule E. The CONTRACTOR shall also effect any relevant workmen's compensation or similar insurances as are required by law.
- 9.8 Where the execution of the WORKS involves the risk of weakening or interference with the support of adjoining land or structures the EMPLOYER shall effect support insurance in the joint names of both parties and shall engage a professional engineer to design and supervise the provision of any

necessary support work. Such support work shall be deemed to be a CHANGE as contemplated in clause 5 hereof.

9.9 The CONTRACTOR shall have the right to suspend the progress of the WORKS until he is furnished with the professional engineer's requirements and any delay so caused shall be dealt with in terms of 7.3 hereof.

9.10 The CONTRACTOR shall not be liable for any defect in any materials or goods supplied by the EMPLOYER for incorporation in the WORKS.

## 10. JOINT EMPLOYERS

Insofar as there may be more than one EMPLOYER in terms of this AGREEMENT, the liability of each of the EMPLOYERS will be jointly and severally and that of co-principle debtors. This means that any one of the EMPLOYERS could be held liable for all of the obligations of the EMPLOYER in terms hereof. Any one of the joint EMPLOYERS may represent the EMPLOYERS and sign the final construction drawings as contemplated in clause 5.

## 11. COMPANY/CLOSE CORPORATION/TRUST

11.1 In the event of the EMPLOYER being a company to be formed, the signatory of the EMPLOYER will be personally liable for all the obligations of the EMPLOYER as though he contracted in his personal capacity if the following conditions are not met:-

11.1.1 the company in respect whereof he acts is not incorporated within 30 (thirty) days of signature hereof; and

11.1.2 the company, having been incorporated, fails to adopt and ratify unconditionally this transaction without modification within 14 (fourteen) days of date of incorporation, and gives notice of such adoption and ratification to the CONTRACTOR within a further 10 (ten) days.

11.2 Upon timeous fulfilment of the conditions in clause 11.1 the signatory of the EMPLOYER will nevertheless become and be liable to the CONTRACTOR as surety for- and co-principal debtor of the company or close corporation for which he or she acted as trustee, under renunciation of the benefits of excussion and division.

11.3 In the event of the EMPLOYER being a Company/Close Corporation or the Trustee(s) for the time being of a Trust, or any other form of legal persona other than a natural person, the signatory for the EMPLOYER by his signature hereto binds himself as surety for- and co-principal debtor *in solidum* with the EMPLOYER.

11.4 Claus 11.3 entails that if the EMPLOYER cannot perform his obligations herein the person who signs this AGREEMENT on behalf of the EMPLOYER will be liable in his personal capacity to fulfil the obligations of the EMPLOYER.

## 12. UNDERTAKING BY THE EMPLOYER

- 12.1 The EMPLOYER undertakes and is obliged to become and remain the registered owner of the PROPERTY until the WORKS have been completed and the full CONTRACT SUM paid to the CONTRACTOR. The EMPLOYER undertakes and shall not be entitled to re-sell the PROPERTY prior to completion of the WORKS and full payment of the CONTRACT SUM, without the prior consent of the CONTRACTOR in writing.
- 12.2 All materials and fittings remain the property of the CONTRACTOR until the full CONTRACT SUM has been paid to CONTRACTOR by the EMPLOYER.

### 13. POSSESSION OF CONTRACTOR

- 13.1 The CONTRACTOR will be entitled to:
- 13.1.1 Take possession of the PROPERTY on the day when the EMPLOYER becomes the registered owner thereof in terms of the DEED OF SALE, and the EMPLOYER will be obliged to ensure that no person will interfere with the CONTRACTOR taking possession of the PROPERTY on that day;
- 13.1.2 Commence the WORKS within a reasonable period of time after the EMPLOYER becomes the registered owner of the PROPERTY (or an earlier date if agreed to by the person selling the PROPERTY to the EMPLOYER);
- 13.1.3 Retain possession of the WORKS and the PROPERTY until all amounts owed to the CONTRACTOR under or as a result of this AGREEMENT, and under any other agreement or arrangement between the CONTRACTOR and the EMPLOYER in connection with the WORKS, have been paid in full and all obligations of the EMPLOYER in terms of this AGREEMENT have been fulfilled;
- 13.1.4 Refuse access to the WORKS and the PROPERTY to any person, including the EMPLOYER, until such time as the WORKS have been completed and are ready for handover to the EMPLOYER. Should the EMPLOYER however wish to view the WORKS or the PROPERTY prior to the date of completion, then the EMPLOYER may arrange with the CONTRACTOR for a suitable date and time, and the CONTRACTOR will not refuse any reasonable requests for a viewing by the EMPLOYER. The EMPLOYER acknowledges that this arrangement is to ensure that the CONTRACTOR complies with its obligations in terms of any applicable health and safety legislation and regulations.

### 14 **EXECUTION OF WORKS**

- 14.1 The CONTRACTOR shall not be obliged to begin the WORKS until:
- 14.1.1 the necessary plan and other approvals, consent or other authority required under law (including any statute, ordinance, by-law and/or regulation) has been obtained by the EMPLOYER;

- 14.1.2 the mortgage bond, where applicable, has been granted and registered;
  - 14.1.3 all servitudes, if any, have been registered;
  - 14.1.4 the EMPLOYER has effected payment of the CONTRACT SUM as contemplated in clause 3.1 or furnished the payment guarantee where required in terms of 3.2 hereof.
- 14.2 The CONTRACTOR shall at reasonable times keep upon the WORKS a competent person in charge.
- 14.3 The EMPLOYER shall not have the right to interfere with, hinder or obstruct any of the CONTRACTOR's workmen or other persons employed by or acting on behalf of the CONTRACTOR.
- 14.4 The CONTRACTOR shall order timeously all materials required for the WORKS. In the event of any of the materials required for the WORKS being unavailable such as to cause a possible delay to the progress of the WORKS, the CONTRACTOR shall notify the EMPLOYER, who shall select substitute material of a similar quality readily available to the CONTRACTOR. Any delay so caused to the WORKS shall operate as an extension of time for the completion within the meaning of clause 7 hereof and any difference in price shall be for the account of the EMPLOYER.
- 14.5 Where the work involves demolition and/or alterations to existing premises then, unless specifically agreed, any materials or goods which are to be demolished or removed from the existing premises and which are not designated for re-use shall become the property of the CONTRACTOR.

## **15. VARIATION**

- 15.1 Subject to the provisions of clause 5 regarding CHANGES, the EMPLOYER may from time to time issue a written instruction for variation as to the alteration or modification to the design, quality or quantity of the WORKS as shown upon or described in the contract documents provided that no such variation shall change the essential character of the WORKS and no such variation shall vitiate this Agreement.
- 15.2 The value of any variation shall be agreed between the CONTRACTOR and the EMPLOYER, before the variation is commenced, and such agreed value shall be added to or subtracted from the CONTRACT SUM.
- 15.3 Where such value has not been agreed in terms of 15.2 hereof then the variation shall be valued upon the cost of the materials used at the current market value plus 10% (ten percent) thereof, together with the gross cost of labour involved plus 40% (forty percent) thereof and together with the cost of plant and transport plus 15% (fifteen percent) thereof. The CONTRACTOR shall supply supporting vouchers showing the time spent, the materials used and the plant and transport employed for verification to the EMPLOYER.

- 15.4 Any additional costs arising from a variation performed by a sub-contractor shall be subject to a 15% (fifteen percent) mark-up for the CONTRACTOR's supervision, overheads and profit.

**16. EXTENSION OF TIME AND PENALTY FOR LATE COMPLETION**

- 16.1 Should the WORKS be delayed by inclement weather, variations or any other cause for which the CONTRACTOR is not responsible, the CONTRACTOR shall be entitled to a fair and reasonable extension of time for the completion of the WORKS.
- 16.2 The CONTRACTOR shall within 10 (ten) working days of becoming aware of any such delay to the WORKS give written notice of the cause and effect of the delay to the EMPLOYER and the EMPLOYER shall grant a reasonable extension of time for the completion of the WORKS and in so doing shall make allowance for any holidays recognised in the Building Industry.
- 16.3 Should the WORKS be delayed through any fault of the EMPLOYER or those for whom he is responsible, the CONTRACTOR shall be entitled to recover any direct loss or expense caused by such delay. The amount of such loss or expense shall be assessed between the CONTRACTOR and the EMPLOYER and the agreed value shall be added to the CONTRACT SUM.