

# STANDARD FORM OF CONTRACT FOR SMALL CONTRACTS

*This form of contract and these conditions were prepared for the use of members of  
Civil Contractors New Zealand (Inc).*

**THIS AGREEMENT** (including the Schedules and attachments) dated ... month 2021  
("the Contract")

**BETWEEN** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
("the Contractor")

**AND** MARLBOROUGH KAIKOURA TRAIL TRUST  
("the Principal")

**IT IS AGREED** as follows:

## **1 WORKS**

- 1.1 The Contractor will construct and complete the works described in the attached drawings and specifications ("the Works"). The Contractor will carry out the Works in a thorough and competent manner.
- 1.2 The overall works shall be completed in conjunction with xxxxxxxxxx
- 1.3 The Contractor shall be responsible for the care of the Works and shall make good, at its own cost, any loss or damage which may occur before completion, unless caused by an excepted risk. The excepted risks are seismic events, floods, volcanoes, or other forces of nature, riot, war, revolution, radioactivity, design other than by the Contractor or by a person acting on its behalf, acts or omissions of the Principal or of any person for whom it is responsible and such other risks as an experienced contractor could not reasonably be expected to foresee or insure against.

## **2 CONTRACT PRICE**

- 2.1 The contract price for the Works is capped at a maximum price of \$.....+ GST (excluding variations as may be required). Schedule 1 sets the contract price as being calculated in accordance with the attached schedule of rates and the actual quantities of the work.
- 2.2 The basis for determining contract price adjustments (if any) for increases in costs is specified in Schedule 1.

## **3 BOND**

- 3.1 A bond is not required.

#### **4 PAYMENT**

- 4.1 On signing of the Contract and before commencement of the Works, the Principal shall pay the Contractor a deposit in the amount specified in Schedule 1. The Contractor shall not be required to commence the Works until the Principal has paid the deposit.
- 4.2 The Contractor shall serve on the Principal payment claims for the Works. Each payment claim shall be served on the date specified in Schedule 1, or otherwise monthly.
- 4.3 In response to each payment claim, the Principal shall provide a payment schedule to the Contractor. Each payment schedule shall be provided on the date specified in Schedule 1, or otherwise not later than 14 days after each payment claim is served. The payment schedule shall state the amount to be paid by the Principal (“the scheduled amount”).
- 4.4 The Principal shall pay the Contractor the scheduled amount on the due date for payment specified in Schedule 1, or otherwise not later than 14 days after the payment claim is served.
- 4.5 If the Principal fails to pay the scheduled amount to the Contractor by the date specified in clause 4.4, the Principal shall pay the Contractor interest on the amount owing from the due date for payment to the date of payment at the interest rate for late payment as specified in Schedule 1.

#### **5 VARIATIONS**

- 5.1 The Principal may require variations to the Works, but all variations must be ordered by the Principal or its representative in writing.
- 5.2 If any materials specified are not reasonably obtainable or are not permitted by law to be used, the Contractor may, after consultation with the Principal, substitute other materials of a similar quality and value as is reasonably practicable and this shall be a variation.
- 5.3 The Contractor shall include the price of any variations (including but not limited to changes to the Works or substitution of materials) in its payment claims.

#### **6 COMPLIANCE WITH LAWS**

- 6.1 The Principal and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works. The Principal shall, at its own cost, obtain all licences and approvals which may be required for the use of the Works when constructed. The Contractor shall, at its own cost, obtain all necessary permits and approvals for the construction of the Works.
- 6.2 If permits or approvals are issued subject to conditions requiring changes to the Works, the changes may be ordered by the Principal as a variation under clause 5. If the Principal does not order the changes required, then the Contract shall be at an end. If permits or approvals are issued subject to a condition requiring a certificate or report from a registered engineer, the Principal shall bear the cost of obtaining such certificate or report.

## **7 SITE**

- 7.1 The Principal shall give the Contractor possession of the site from the date of the signing of the Contract or such other date as specified in Schedule 1. On completion of the Works, as notified by the Contractor to the Principal, the Contractor shall remove promptly from the site all surplus material, plant and rubbish.

## **8 DEFECTS**

- 8.1 The Contractor shall, at its own cost, rectify any defects in materials or workmanship in the Works which have been notified to the Contractor by the Principal not later than 31 days after completion of the Works.

## **9 INSURANCE**

- 9.1 The Contractor shall obtain insurance of the contract works, materials, plant and construction machinery (while on the site). The policy shall cover loss or damage from any cause occurring from the date of possession of the site until the date of completion of the Works as notified by the Contractor, not being an excepted risk under clause 1.2 (which risks are to be carried by the Principal). The policy shall also cover loss or damage arising from any act or omission by the Contractor in the course of carrying out its obligations under clause 8.1. The sum insured shall be not less than the amount specified in Schedule 1.
- 9.2 The Contractor shall also obtain insurance in the joint names of the Principal and the Contractor against public liability risks, which is to be maintained until 31 days after completion of the Works. The amount of such public liability insurance shall be not less than the amount specified in Schedule 1 for any one claim or series of claims arising out of the same occurrence.
- 9.3 Before commencement of the Works, the Contractor shall provide to the Principal or their representative satisfactory evidence that the insurances in clauses 9.1 and 9.2 have been obtained. If the Contractor fails to arrange or keep in force the insurance required by clauses 9.1 and 9.2, the Principal may, after notifying the Contractor in writing, obtain or keep in force such insurance, and the Contractor shall indemnify the Principal for the cost.

## **10 DEFAULT BY THE CONTRACTOR**

- 10.1 The Principal may, by notice in writing, terminate the Contract if the Contractor:
- (a) commits an act of bankruptcy, or makes or enters into any arrangement or composition with its creditors, or suffers or allows any execution to be levied on its property or obtained against it, or being a company enters into liquidation whether compulsory or voluntary, or has a receiver or statutory manager appointed and the assignee, liquidator, receiver or statutory manager fails within 10 days to make arrangements satisfactory to the Principal for the execution of the Works; or
  - (b) is unable or refuses or neglects to carry out the Works in accordance with the Contract or otherwise to carry out its obligations under the Contract, provided that the Principal has given the Contractor 10 days notice to comply with its obligations and the Contractor has failed to do so at the expiry of that period.
- 10.2 If the Contract is terminated under clause 10.1, the Contractor shall be entitled to be paid a fair and reasonable sum for all work carried out up to the date of termination, subject to the right of the Principal to retain and recover such sum as it shall be entitled to claim by way of damages for non-completion of the Contract.

## **11 DEFAULT BY THE PRINCIPAL**

- 11.1 The Contractor may, by notice in writing, suspend the Works and/or terminate the Contract if the Principal:
- (a) commits an act of bankruptcy, or makes or enters into any arrangement or composition with its creditors, or suffers or allows any execution to be levied on its property or obtained against it, or being a company enters into liquidation whether compulsory or voluntary, or has a receiver or statutory manager appointed and the assignee, liquidator, receiver or statutory manager fails within 10 days to make arrangements satisfactory to the Contractor for the continued payments of amounts due under the Contract; or
  - (b) fails to pay the Contractor any moneys due under the Contract within 10 days of the relevant due date for payment.
- 11.2 If the Works are suspended and/or the Contract is terminated under clause 11.1, the Principal shall be deemed to be in breach of the Contract and the Contractor shall be entitled to recover any costs or damages incurred as a result of such breach.
- 11.3 If the Contractor suspends the Works under the Construction Contracts Act 2002 and its amendment 2015, the Contractor shall be entitled to recover any costs incurred as a result of that suspension as a variation.

## **12 DISPUTE RESOLUTION**

- 12.1 The dispute resolution mechanisms provided in clause 12 are in addition to and not in substitution of adjudication under the Construction Contracts Act 2002 and its amendment 2015.
- 12.2 If any dispute of any kind whatsoever arises between the Principal and the Contractor in connection with or arising out of the Works (whether during the progress of the Works or after their completion and whether before or after the suspension, termination, abandonment or breach of the Contract), either party may, by written notice, require that the matter in dispute be referred to mediation. If no agreement or settlement has been reached within 20 days, or such further time as the parties may agree, from the date of the notice requiring mediation, then either party may, by written notice, require that the matter in dispute be referred to arbitration in accordance with clause 12.3.
- 12.3 Alternatively, either party may, by written notice, require that the matter in dispute be referred immediately to arbitration before a sole arbitrator to be agreed between the parties, subject to and in accordance with the provisions of the Arbitration Act 1996. Clauses 12.2 and 12.3 shall be deemed to be an arbitration agreement within the meaning of the Arbitration Act 1996.
- 12.4 Where the Principal is a consumer within the meaning of the Arbitration Act 1996, the arbitration agreement is not enforceable against the Principal unless the Principal signs the consent set out in Schedule 3 after the dispute has arisen.

**Signed by the Principal**

**Signed by the Contractor**

Date:

Date:

Principal's address for notices:

Contractor's address for notices:

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Tel:

Tel:

Email:

Email:

Mobile:

Mobile:



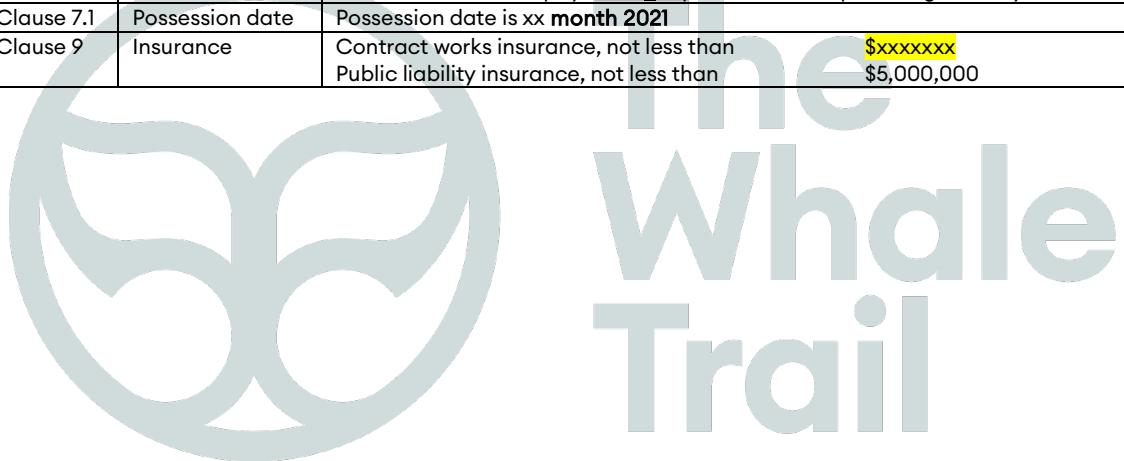
The  
Whale  
Trail



Civil Contractors New Zealand gratefully acknowledges the assistance of Kensington Swan in the production of this contract and conditions.

# SCHEDULE 1

Clause Reference in the Contract	Item	Details to be completed
Clause 2.1	Contract price	The contract price shall be <i>(cross out the line which does NOT apply)</i> : (a) \$ _____ <i>(exclusive of GST)</i> ; or (b) <b>calculated in accordance with the attached schedule of rates and the actual quantities of the work.</b>
Clause 2.2	Increases in Costs	The contract price shall be <i>(cross out the clause which does NOT apply)</i> : (a) a fixed price and shall not be adjusted for increases in costs, except as provided in clause 5 (variations); or (b) <del>based on the wage rates and the prices of materials and services payable at the date of the Contract, and any increases or additional costs incurred by the Contractor after this date, whether in the wages, rates, prices of materials or services, shall be added to the Contract price and paid by the Principal.</del>
Clause 4.1	Deposit	NIL
Clause 4.5	Interest	Interest rate for late payment 2% per annum compounding monthly
Clause 7.1	Possession date	Possession date is xx <b>month 2021</b>
Clause 9	Insurance	Contract works insurance, not less than \$xxxxxxx Public liability insurance, not less than \$5,000,000



Clause 12.4  
**SCHEDULE 3**

**CONSENT BY PRINCIPAL TO BE BOUND BY ARBITRATION AGREEMENT**

*(To be completed if the Principal is a consumer under section 11 of the Arbitration Act 1996, i.e. where the Principal enters into the contract otherwise than in trade and the Contractor enters into the contract in trade.  
Note – this consent is only enforceable if it is signed **after the dispute has arisen.**)*

THIS CONSENT is made the 22 day of \_\_\_\_\_ month 2020  
("the Consent")

BETWEEN XXXXXXXXXX  
("the Contractor")

AND MARLBOROUGH KAIKOURA TRAIL TRUST  
("the Principal")

The Principal and the Contractor are parties to a construction contract ("the Contract").

The Principal is a consumer within the meaning of the Arbitration Act 1996 in that it enters into the Contract otherwise than in trade, and the Contractor entered into the Contract in trade.

The Principal, as a consumer, certifies that it has read and understood the arbitration agreement contained in clauses 12.2 and 12.3 of the Contract and agrees to be bound by it.

The Principal and the Contractor agree that *(cross out the clause which does NOT apply):*

All the provisions of the Second Schedule of the Arbitration Act 1996 do not apply to the arbitration agreement.

or

~~The following provisions of the Second Schedule of the Arbitration Act 1996 do not apply to the arbitration agreement:~~

\_\_\_\_\_

Signed by the Principal

Signed by the Contractor

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date: