

TERMS AND CONDITIONS OF WARREN BROTHERS

1. OUR OBLIGATIONS

1.1 We will:(a) make and/or supply the product, and(b) install the product at the site; and(c) carry out the works; according to order.

2. PAYMENT

2.1 You must pay us the contract price progressively at each stage as invoiced

2.2 We must give you a written claim for a progress payment at the completion of each stage.

2.3 You must pay a progress claim for a completed stage within 7 days of us giving you the claim.

2.4 You must pay us any other amount which is payable under this contract on demand after we have carried out the work or incurred the cost.

3. ACCESS AND USE OF FACILITIES

3.1 You must:

(a) give us unrestricted access to the site during normal business hours to check measure, to deliver and install the product and, if necessary, to fix any defects;

(b) provide us, while we are at the site, with adequate access to available water, electricity, toilet and washing facilities;

(c) take necessary steps for the safekeeping, control and supervision of all domestic animals on the site.

3.2 If we ask for access to deliver the product and you do not give that access within 7 days, then we can claim payment for the delivery stage, or otherwise you must pay us for work performed and costs incurred up to the point of delivery.

4. CHECK MEASURING

4.1 We will attend the site and perform a check measure on or by the check measure date.

4.2 We may make minor modifications to the plans and specifications agreed to conform to the checked measurements. We will notify you of any modifications made.

4.3 Any major additional work necessary to comply with the modified plans and specifications is a variation and Clause 11 applies.

5. OUR WARRANTY

5.1 In addition to your rights under law, we warrant that:

(a) our work; and

(b) materials supplied by us will, within industry accepted standards and tolerances, be free of defects at the time of completion of installation.

5.2 However, subject to law and the warranties set out in Clause 28, we do not have to fix:

(a) any problem caused by misuse, abuse, wear and tear or normal shrinkage or movement; or (b) appliances and fixtures and fittings made by others and which are outside of the manufacturer's guarantee or warranty period; or (c) any defect in, or problem caused by work, materials or appliances supplied by you.

6. OUR RIGHT TO FIX

6.1 If at any time you claim the product is defective, you must notify us in writing, as soon as possible.

6.2 If you fail to notify us of a claim within a reasonable time of becoming aware of an alleged defect, we are not responsible for

any damage that results from your delay in notification.

6.3 If we accept responsibility, we have the right to fix the defect, but we must do so within 28 days. Any defects that in our reasonable opinion may affect the safety of the works or may lead to it being damaged will be fixed as soon as practicable. You must give us access to do this in accordance with Clause 3.

7. COLOUR VARIATION

7.1 You acknowledge that the colour and grain of timber, granite and other natural materials can vary.

7.2 We will use our best efforts to match the colour or grain of the product to any sample selected or provided by you, but we have no liability if they are different.

8. SURPLUS MATERIALS

8.1 Unless you and we have a different agreement somewhere else in this contract:

(a) only suitable new materials or your reclaimed timber will be used;(b) demolished materials remain our property; and (c) materials we bring to the site which are surplus remain our property.

9. PROVISIONAL SUMS AND APPLIANCES

9.1 Unless agreed elsewhere in this contract, we are not responsible to install any appliances, or to connect anything to any services.

10. DELAYS

10.1 We will do everything that is reasonably possible to ensure that the works are started as soon as it is reasonably possible and reach practical completion within the completion period.

10.2 We are not responsible for any delay caused by something beyond our control including any failure by you to:

(a) make a selection; (b) have the site ready for installation; or (c) give us access to the site.

10.3 The delivery date will be put back and the practical completion date extended by whatever time is reasonable if we claim an extension of time by giving you written notice.

10.4 For every day the subject of an extension of time where you are responsible for the delay, we may charge you the total of the actual increase in cost to us to carry out the works plus another 20%.

11. VARIATIONS

11.1 If you request a variation, we will give you a written variation document detailing the work, the price, when the price is to be paid, estimated time to do it and the likely delay, if any.

11.2 If we request a variation we will state the reason for the variation.

11.3 If you accept the variation, by signing the variation document and returning the signed variation document to us, we will then undertake the variation in the time agreed.

11.4 You cannot unreasonably withhold consent to a variation that we request in accordance with Clause 4 (if the modification is of a minor nature only) and Clause 12.

12 UNFORESEEN CIRCUMSTANCES

12.1 If we become aware of unforeseen circumstances we must notify you in writing and we may stop work.

12.2 Any additional work necessary due to unforeseen circumstances is a variation and Clause 11 applies.

12.3 If a fixed price for a variation is not agreed, you agree that you are required to pay our actual cost plus another 20% for the work.

13. WORK BY YOU

13.1 If you are to provide plumbing and electrical services, or to supply or install appliances you must have the site ready and appliances available at least 24 hours before the time we state to install the product.

13.2 Any plumbing and electrical services that you provide must be carried out by appropriately licensed persons.

14 SUBCONTRACTING

14.1 We may sub-contract any of our obligations.

14.2 You must not give instructions to our subcontractors or workers on the site.

15. RISK

15.1 The product is at your risk once it is delivered to the site.

15.2 Any materials and goods supplied by you or any work carried out by you, your contractors or your agents is at your risk.

16. INSURANCE

16.1 We will have public liability insurance of at least \$5 million.

16.2 You will ensure that you are similarly insured.

16.3 If you tell us to insure the product against loss or damage occurring after it is delivered to the site or to similarly insure your property whilst the product is being installed on the site, you will be charged our actual cost of insuring plus another 20% for arranging this insurance.

17. WHOLE AGREEMENT

17.1 Subject to law, the contract documents comprise the whole agreement between you and us

18. CONTRACT DOCUMENTS

18.1 These conditions, the plans and the specifications have precedence in that order if there is any inconsistency between them.

19. DEFAULT INTEREST

19.1 If you fail to make any payment under this contract on time, we will charge you interest at the interest rate of 15% on what is unpaid after then. Such failure to pay is a serious breach of your obligations.

20. DEBT COLLECTING COSTS

20.1 You must reimburse to us any debt collecting costs (and commissions) we pay to recover, or attempt to recover, any overdue payment.

21. RETENTION OF TITLE

21.1 Property in the product does not pass to you until it has been paid for in full, even if we have installed it.

21.2 To the extent allowed by law, if you fail to make a due payment, we may enter the site and take reasonable action to remove the product without us being liable to you for damage to the site or product caused by such removal.

22. CHARGE OVER LAND

22.1 If you are not a resident owner, you agree that the land on which the site is located is charged in our favour as equitable mortgagee to secure the payment of all amounts to be paid by you under this contract.

23. COPYRIGHT

23.1 We own all copyright created by us in the product, the plans, the specifications and the workshop drawings.

23.2 If you give us any sketch, plan or other document which infringes someone else's copyright, you indemnify us against all claims and costs.

24. YOUR JOINT AND SEVERAL LIABILITY

24.1 If there is more than one of you then:

- (a) all your obligations are joint and several;
- (b) we only have to give notices to one of you; and
- (c) only one of you need accept a quote or sign a notice, and then all are bound.

25. TERMINATION

25.1 If either party is in serious breach of this contract, the party not in breach may give the other party a written request to remedy that breach. If the breach is not remedied within 14 days, the party not in breach may end this contract by giving further written notice to that effect.

26. EFFECT OF ENDING THIS CONTRACT

26.1 If this contract is ended you must, without prejudice to any right or remedy, pay us the actual cost of providing the works carried out to the day this contract is ended.

27. INSOLVENCY

27.1 Should either party become insolvent, then the other party may, by giving a written notice, terminate this contract 27.2 To be insolvent means:

- (a) any act of bankruptcy under the Bankruptcy Act by a natural person;
- (b) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager or the entering into of a deed of arrangement if a corporation; or
- (c) any act of insolvency.

28. STATUTORY WARRANTIES

28.1 To the extent required by the Domestic Building Contracts Act 2000, we warrant that:

- (a) all materials supplied by us will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- (b) the work will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975;
- (c) the work will be carried out in an appropriate and skillful way and with reasonable skill and care;
- (d) the work will be carried out in accordance with the plans and the specifications to this contract;
- (e) if the works consist of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the work is finished; and

(f) each provisional sum item allowance, if calculated by us, has been calculated with reasonable skill and care, having regard to all the information reasonably available when this contract is entered into (including information about the nature and location of the site).

29. GST

29.1 Where a price is not agreed for an additional charge or omission from the works, the amount of Goods and Services Tax attributable to the value for that supply is to be added to the price calculated under the terms of this contract.

30. MEANINGS

In this contract (and where appearing in italics):

"check measure date" means the date the FINAL measurement was taken

"completion period" means the period of time after the delivery date, to install the product and reach practical completion;

"contract documents" means the conditions of the order, the plans, the specifications and any other documents listed

"contract price" means the contract price stated in the order;

"practical completion" means when the works are complete except for minor omissions and defects that do not prevent the works from being reasonably capable of being used for their usual purpose.

"practical completion date" means the date the works are installed and reach practical completion;

"Product" means the cabinets, built-ins and other products detailed in the order documents;

"resident owner means an individual who intends to reside in the completed works:

- (a) on practical completion; or
- (b) within 6 months after practical completion;

"schedule" means the relevant schedule to the order contract;

"site" means the address where the works are to be carried out.

"unforeseen circumstances" means:

- (a) any written direction lawfully given by a building surveyor or other person acting under a written law; or
- (b) circumstances that could not reasonably have been foreseen by the us at the time when the contract was entered into.

"variation" means any change in the product or the work in installing the product

"We" and "our" and "us" means the contractor Warren Brothers;

"Works" means the whole of the works as provided for in the order documents, including the check measure, supply and installation of the product and any variation;

"You" and "your" means the owner accepting and paying for the work.

