

AGREEMENT made this <day> day of <month>, 2021

BETWEEN **NEW HOMES (NZ) LIMITED** at Auckland together with its successors hereinafter referred to as “the Owner” of the one part.

AND **M & M TRADEHIRE LIMITED** together with their executor’s administrators and successors hereinafter referred to as “the Builder” of the other part

WHEREAS:

- A. The Owner is the owner of the land specified in item one of the First schedule to this agreement.
- B. The Builder has agreed to erect, carry out and complete the Works specified in the plans, drawings and specifications.

NOW THE PARTIES AGREE as follows:-

1. INTERPRETATION

- 1.1 “Drawings” means the plans and drawings showing the Works and initiated by both parties for the purpose of identification and annexed hereto as the Second Schedule.
- 1.2 “Land” means the land specified in item one of the First Schedule to this agreement.
- 1.3 “Lock-Up” means foundations or floorings laid, all external walls, roofing, doors and windows or suitable boarding erected to prevent unauthorized access.
- 1.4 “Site” means the area of the land in which Works have been constructed together with the reasonable areas surrounding it.
- 1.5 “Specifications” means the description of the Works specified in the Third Schedule to this agreement.
- 1.6 “Works” means the building and all related materials and surfaces (including all site development, landscaping and ancillary Works required in terms of the plans, drawings and specifications)

2. CONTRACT PRICE

- 2.1 In consideration of the contract price specified in item two of the First Schedule being paid by the Owner to the Builder at the times and in the manner hereinafter set forth, the Builder shall set forth erect, carry out and complete in a thorough and workmanlike manner and in accordance with the local bylaws and the plans, drawings and specifications of the works, more particularly that shown and described in the said plans, drawings and specifications and the Builder shall be entitled to exclusive possession of the land to enable it to carry out the Works. The Owner shall have first obtained and paid all local authority fees in respect of a building consent and where appropriate a resource consent from the local authority.

3. COMMENCEMENT AND PROGRESS OF THE WORKS

- 3.1 The Builder shall commence the Works as soon as reasonable practicable after the Owner has obtained all necessary Local Authority consents and shall thereafter proceed with the same with all reasonable speed consistent with good workmanship, due allowance being made for weather conditions, shortage of materials or labour, strikes, inevitable accidents. Fore Majeure, or any other cause beyond the control of the Builder.

4. PAYMENT

- 4.1 The contract price (together with all adjustments for variations and substitutions as authorized herein) free from all deductions whatsoever shall be paid by the Owner to the Builder as set out in item three of the First Schedule within FOURTEEN days of receipt of invoice.
- 4.2 If any amount remains unpaid after the due date for payment then the Builder may in addition to all its other remedies charge interest on such amount at the rate of 1 % per month from the due date down to the date of payment.

5. EXTRAS / VARIATIONS

- 5.1 Subject to any written variation between the Builder and the Owner, all extras and variations to this contract with the exception of extras and variations required pursuant to clause 5.2 and 5.3 hereof shall be agreed upon in writing and shall be signed by or on behalf of the Owner and the Builder and any extra costs including extras and variations required pursuant to clause 5.2 and 5.3 hereof over and above the contract price shall be paid in full by the Owner, prior to commencement of the extra or variation work unless the Builder agrees otherwise.
- 5.2 Any work additional to that detailed in the plans, drawings and specifications which shall be required by the local authority or the unworkability or inadequacy of the plans, drawings and/or specifications may be carried out by the Builder.
- 5.3 In the event of any materials detailed in the plans and specifications being unprocurable or the implementation of the whole or any part of the plans, drawings and specifications being hereinafter prohibited by any statute, regulation or bylaw then the Builder may substitute such permissible materials as are of a value and quality as near as reasonable practicable to the specified materials or implements such alterations to the plans, drawings or specifications as shall be authorized by the Owner **PROVIDED HOWEVER** should any such alterations result in saving of materials or labour then the direct cost of such materials and labour shall be deducted from the contract price.

6. ACCESS

- 6.1 At all times while the Builder is carrying out the Works, the Owner at his own costs shall provide vehicular access suitable for trucks delivering materials to the site of the Works.

- 6.2 The Owner or any representative or site visitor authorized in writing by the Owner shall be entitled to have access to inspect the Works at all reasonable times in the presence of an authorized representative of the Builder, notwithstanding that the Builder reserves the right to exclude entry to all persons for a reasonable period where the Builder considers entry by the Owner, his representative or any site visitors to be dangerous to their physical safety. Subject to any written variation between the Builder and the Owner, any access by the Owner, his representative or any site visitor shall be conditional upon the Owner providing the Builder with a minimum of 24 hours notice.
- 6.3 The Builder shall not be responsible for any damage done to the Works by the Owner, his representative or any site visitors.
- 6.4 Prior to completion of the Works by the Builder and prior to the receipt by the Builder of the completion certificate, the Builder accepts no liability whatsoever, for the physical safety of the Owner, his representative or any site visitors of the Owner or for any harm caused to the Owner, his representative or any site visitors by any hazard.
- 6.5 The Owner gives exclusive possession of the land to the Builder to enable the Builder to carry out the work.

7. MAINTENANCE

- 7.1 Any defects or other faults which may appear and are notified to the Builder in writing within the period of 60 days after the completion of the Works and which arise from materials and workmanship not being in accordance with the plans, drawings and specifications shall be made good by the Builder at its own cost. The Builder shall not be liable for any defects caused by or arising out of any willful or negligent action of the Owner and/or his agents.

8 SUB-CONTRACTORS

- 8.1 The Builder may sublet any portion of the contract Works but shall not without the consent of the Owner assign or sublet the whole of the contract Works.
- 8.2 The Builder shall be responsible for all work of sub-contractors engaged by it.

9. POSSESSION

- 9.1 The Owner shall be entitled to use or occupy the site Works only:-
 - 9.1.1 If the Builder at the request of the Owner consents to such occupation use, such consent shall not be withheld unless such use or occupation will impede the carrying out of the work still to be done; or the Owner has not paid all monies due and owing at that time to the Builder; or
 - 9.1.2 If the Builder has informed the Owner that the Works are completed and the Owner has delivered to the Builder the completion certificate; or
 - 9.1.3 If the Builder is in breach of any obligations under these presents and the Owner has given to the Builder at least FOURTEEN days notice in writing of his intention to use or occupy the site of Works and specify the breach complained of and the Builder has not reasonable steps to remedy such breach.
- 9.2 If the Owner uses or occupies the site and Works otherwise in accordance with clause 9.1 hereof then all moneys payable to the Builder on completing its obligations under this agreement (except any sum entitled to be retained for completion of maintenance items) shall be immediately due as if claimed in terms of clause 2 hereof.

10. DEFAULT

- 10.1 If the Builder shall go into liquidation or enter into any arrangement with or for the benefit of its creditors the Owner by notice in writing sent to the Builder by registered post may terminate this agreement. Upon the service of such notice all claims of the Builder under this agreement shall cease save that the Builder shall be entitled to be paid and shall be paid a fair and reasonable sum for all work carried out by it up to the date of termination.
- 10.2 If the Owner shall make default in the observance or performance of any condition or agreement herein contained or implied then in such case the Builder without prejudice to its other remedies may at its option exercise all or any of the following:
- i) Cancel this agreement and without prejudice to any other remedies hereunder or at law any moneys paid by way of deposit or installments of the contract price shall be absolutely forfeited to the Builder as liquidated damages.
 - ii) Suspend carrying out the Works until such default has been remedied
 - iii) Whether the Works shall have been suspended or not take such action as it shall deem expedient in any court of competent jurisdiction including (but without limitation) an action for loss of profit on the remainder of the contract.
 - iv) Where default arises out of failing to pay any part of the contract price as aforesaid without prejudice to its other rights or remedies charge interest in accordance with clause 4.3 hereof.
- 10.3 If the Owner shall become bankrupt or insolvent or compound with or make any assignment of his estate for the benefit of its creditors or, being a company shall go into liquidation then, unless the assignee, trustee or liquidator within a reasonable time after being called on in writing to do so shall make satisfactory arrangements to assume liability hereunder the Builder without prejudice to any other remedies hereunder or at law may terminate this agreement and may recover from the Owner all consequential loss.

11. LOCAL BODY REQUIREMENTS

- 11.1 Requirements embodied in The Building Act 1991, Resource Management Act 1991, The New Zealand Building Code Act, local body bylaws stipulated in the local body or national legislation shall take precedence over the specifications. Any variations required by the local body having jurisdiction shall be treated as a variation in accordance with clause 5 hereof.

12. PC SUMS

- 12.1 The contract price referred to herein may include the PC lump sum as set out in the specifications. Any additional costs over and above these sums shall be added to the contract price. Conversely, any reduction in the said costs shall be deducted from the contract price.

13. INSURANCE OF THE CONTRACT WORKS

- 13.1 the Builder shall ensure the contract works under a "builders risk" insurance policy as is commonly in use in New Zealand. Such policy shall be for the contract price.
- 13.2 The said policy shall be effected at the commencement of the contract works and shall be maintained until the date of practical completion.

14. BOUNDARY PEGS. FILL AND LAND SUBSIDENCE

- 14.1 Survey pegs reasonably required by the Builder to define site boundaries, unless already established shall be provided by a surveyor employed by the Owner. If the Builder so requires, survey pegs, offset pegs and datum pegs shall be shown to the Builder, who shall record the position of such pegs.
- 14.2 the Builder shall not be liable to any damage to the works caused by subsidence of the section or site or any part thereof Nor shall the Builder be liable for any damage to the land from any cause during its occupation of the land unless such damage has been caused by a negligent act or omission on the part of the Builder it's servants or agents nor shall the Builder be liable for any damage or for any additional costs of the works resulting from absence of information on any foundation defects or site difficulties or other matters which were not reasonably discoverable by the Builder on a reasonable inspection of the site.
- 14.3 the Builder shall not be liable for any damage or deterioration of any works to the building or to the land caused by or resulting from the inadequacy of earth fill or by the negligent application thereof unless such damage or deterioration may be properly attributable to a negligent act or omission on the part of the Builder or of the Builder' servants or agents then the owner will indemnify the Builder against any claim against it by any person whatsoever for damages or expenses incurred by reason of faulty earth fill aforesaid.

15. BASIS AND DIMENSIONS

- 15.1 Figure dimensions on drawings shall take precedence over scale dimensions and drawings to a larger scale shall take precedence to a smaller scale.

16. SURPLUS MATERIALS

- 16.1 All materials placed by the Builder upon the site and not incorporated in the works and all waste materials shall be the property of the Builder and removed as soon as reasonably practicable after the completion of the works.

17. WARRANTY AND CONDITIONS

- 17.1 The only warranty on the part of the Builder in respect of any new goods comprising part of the Works is that the goods shall be of merchantable quality only and such warranty is to the exclusion of all other warranties conditions and liabilities either by statute or common law whatsoever expressed or implied or where arising in contract tort or by statute or otherwise. No representation in relation to such goods shall be binding on the Builder unless in writing and signed by the Builder. Without limiting the generality of the foregoing provisions the Builder shall not be liable for any personal injury or consequential or contingent loss or damage whatsoever caused through the negligence or otherwise of the Builder, its servants or agents. In respect of the failure of any such goods the Builder' liability shall be limited to the replacement of those goods or similar goods of merchantable quality, or at the sole option of the Builder refund of any moneys paid by the Owner in repair of those goods.

18. PASSING OF RISK

- 18.1 All goods to be comprised as part of the Works shall remain at the risk of the Builder until such goods leave the premises of the Builder. All such goods shall be at the sole risk of the Owner on the site from the time of delivery to the Owners onto the site or a carrier on its behalf notwithstanding that the property in such goods has not passed to the Owner.

19 RESERVATION OF TITLE

- 19.1 All property title and ownership of any goods that comprise part of the contract works notwithstanding that they have been delivered to the site and/or the owner shall remain with the Builder until the full contract price (including extras and variations) has been paid by the Owner to the Builder.
- 19.2 If prior to acquiring the property in such goods the goods are intermingled with any other goods or if such goods shall become a constituent part of any other goods the property in the goods shall nevertheless remain vested in the Builder until the whole of the contract price has been paid to the Builder. The Owner hereby charges all intermingled goods in favor of the Builder until the contract price has been paid in full. In any case, whereby the Builder believes that Owner is insolvent or is likely to become insolvent or unable to pay for the goods, the Builder may by itself or its agents or servants enter forcibly or otherwise upon any land premises or property where it believes the goods may be and retake possession of such goods and remove them from such land premises or property and the Owner shall indemnify the Builder in respect of all such actions.
- 19.3 The goods reclaimed or recovered by the Builder pursuant to this clause may be sold by the Builder to any third party on such terms as the Builder in its absolute discretion deems fit and the proceeds of such resale shall be deducted from the sum or sums then owing by the Owner to the Builder.
- 19.4 Title to the goods referred to herein shall not pass to the Owner until the Owner shall have fully paid in legal tender all moneys outstanding to the Builder in respect of the contract price and interest thereon and the provisions of this clause shall continue to

20 AGREEMENT TO MORTGAGE

- 20.1 The parties hereto acknowledges that the Builder is proceeding to attend to the contract works described in this contract in good faith and in the event that the Works are being completed on land owned by the Owner or in respect of which the Owner has a legal or equitable interest the parties acknowledge that this agreement constitutes an agreement to mortgage such property or interest in such property to the Builder in respect of all or any moneys required to be paid by the Owner to the Builder pursuant to this agreement. The parties agree that should any moneys due to the Builder remain outstanding for a period of more than FOURTEEN days from the date in respect of which moneys were due to be paid or in the event that the Builder has reasonable grounds to believe that such moneys will not be paid upon the due date for such payment, the Builder may require the Owner to provide a registrable security over the property or interest in such property forthwith. The Owner hereby appoints the Builder or its attorney to execute a registrable mortgage against the title for the sum owing by the Owner to the Builder. The parties acknowledge that this agreement to mortgage creates a caveatable interest in favor of the Builder who hereby agrees not to lodge a caveat pursuant hereto unless the Owner is in default in terms of this agreement and/or any moneys due to be paid by the Owner to the Builder remain outstanding for a period of FOURTEEN days from the due date of payment thereof and/or the Builder has reasonable grounds to believe that the Owner will not be able to make payment of any moneys due pursuant to this agreement on the due date for such payment.

21. ARBITRATION

- 21.1 In the case of any dispute or difference shall arise between the Owner and the Builder as to the construction or execution of the contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (save as herein reserved) such dispute or difference shall be in the same as hereby referred to as arbitration.
- 21.2 Written notice requiring that dispute or-difference shall be settled by arbitration may be given by one party to the other at any time and such notice shall specify the matter or matters at issue and give detail particulars of the dispute or difference.

- 21.3 Arbitration shall be by a single arbitrator or if one cannot be agreed upon within 21 days after the service of written notice as aforesaid by two arbitrators (one to be appointed by the Owner and the other by the contractor) and in the event that they shall fail to agree then by their umpire appointed in writing prior to entering upon the arbitration.
- 21.4 If one party has appointed an arbitrator but the other party fails to so appoint within 28 days after the service of the written notice the aforesaid party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator a the reference and his award shall be binding upon both parties as if he had been appointed by consent.
- 21.5 The appointment of arbitrators or umpires and the conduct of the arbitration shall be in all respects as provided in the Arbitration Act 1908 or any amendment thereto or re-enactment thereof for the time being in force.
- 21.6 Reference of any matter to arbitration under the foregoing provisions hereof shall not be a bar to any action at law or other proceedings to cover any moneys due and owing by the Owner to the Builder.

22. LIMITATION OF LIABILITY

- 22.1 The parties expressly agree that the Builder shall be liable only in respect of the workmanship and materials to the extent referred to in this Agreement and the parties expressly agree that the Builder shall not be liable for any consequential resulting or other loss or damage suffered by the Owner. The Builder' liability shall be limited to the replacement of any defective workmanship or materials pursuant to clause 7.

EXECUTION BY THE PARTIES:

SIGNED for on behalf of
NEW HOMES (NZ) LIMITED

..... Date:

SIGNED for on behalf of

..... Date:

FIRST SCHEDULE

1. Land - Not included but described as **<Street Address>**, **<Suburb>**, **<City>**
Lot <number>, **DP <number>**

2. Contract Price - \$ **<price>** inc GST

3. Item Three -

(a)	Deposit	10%	\$ <price>
(b)	Slab down. Framing up ready for roofing	25%	\$ <price>
(c)	Roof on and closed in with walls and doors (lock-up stage)	30%	\$ <price>
(d)	Services installed and linings fixed, substantial completion	20%	\$ <price>
(e)	Practical completion	10%	\$ <price>
(f)	Retention Sum – 60 days	5%	\$ <price>

Total \$ **<price>**

ADDENDUM:

1. Allowed for Supply and fixing in the above contract sum.

- a) Dishwasher
- b) Blinds to all windows
- c) Provision of power for spa/bath in common bathroom
- d) Replacing of garage door with aluminium ranch slider.

SECOND SCHEDULE

DRAWINGS - As per copy of Working Drawings and Building Consent
construction of dwelling at

as enclosed for the

THIRD SCHEDULE

SPECIFICATIONS

DESCRIPTION OF WORKS ALLOWED FOR IN THIS CONTRACT ARE AS FOLLOWS:

- 1 Preliminaries and General**
Built to NZS 3604 building by-laws
Set out of building, excavation of building platform, excavation of footings
Service connections to be completed - power, telephone, water
Kitchen and cupboards, electrical work, and carpet/vinyl/floor tiles to be finalized with subcontractor
Color scheme to be finalized before "lock-up" stage
- 2 Concrete**
As per plan.
- 3 Carpentry**
Timber frame and trusses - kiln dried 90 x 45 framework and trusses
Aqualine & bracing where required
20-mm particle flooring board on sub floor. Glued and nailed
- 4 Walls**
As per plan
- 5 Roof**
Megani Slate tiles with chips.
- 6 Plumbing and Drainage**
Plumbing and drainage as per plan and Council standards.
Copper piping
2 x front and rear yard garden taps
180 litre mains pressure hot water cylinder with 3kw element, for 7-m head
- 7 Insulation**
Insulation - Pink Batts R2.6 to ceilings and R1.8 to walls where required
- 8 Windows**
As per plan.
- 9 Doors**
Front entry door - solid timber Island Kauri with deadbolt lock/latch set
Garage door - pressed panel coloursteel sectional door with auto and 2 x remotes
Security door at garage rear
Interior doors - with 30-mm pine jamb, paint quality doors and jambs
Standard door hardware to all interior doors
Interior finishing trim -60x10 skirting's with 55-mm gib cove to lounge, dining and kitchen etc.
40 mm BC to all cupboards; mouldings 60 mm bull nose pine skirting for paint finish
- 10 Wardrobes and cupboards**
Built-in wardrobes - with shelves and rails as per Owner's reasonable choice with quality sliding doors.
Walk in wardrobe - all shelves provided
All cupboard storage with reasonable shelves; 100 x 25 shelving to hot water cylinder cupboard; pantry, linen, and storage cupboards under stairs with doors.
Standard cupboard handles
- 11 Painting**

Full interior & exterior painting. 1 coat sealant and 2 coats finish minimum

12 Floor coverings

Quality ceramic Italian tiles (slip resistant) or quality vinyl in kitchen, bathrooms and entry. Quality carpet 80 to 100% wool or synthetic as per Owner's choice with 5 year warranty.
Quality vinyl flooring to traffic areas, entry and kitchen.

13 Laundry

Supertub – Rotec 1400 series or ST4000 or similar with fold down shelf
Tiling to splash back to laundry tub

14 Bathroom and Ensuite

Italian (Elite Tapware) showers Bath WC, & Vanities as per plan.
1 x Heated towel rail
1 x protected Power outlets
1 Heat fan & exhaust
As per plan

15 Kitchen

Appliances supplied and installed - benchtop stove with under bench oven, smooth top hob, vented and ducted range hood and waste master unit; quality Parmco appliances (white or stainless steel);
Provision for dishwasher
Halogen lights over breakfast bar

16 Electrical

As per plan.

Power points:

2 per room

Downlights x 2 in each room

17 Other

TV outlets with 6-m coaxial cable supplied
Telephone pre wired with 6 x telephone jack points

18 Security

Fully installed security systems

19. Guarantee

As per Landmarx Builders Warranty.