

Building Agreement

1. INTERPRETATION

1.1 “The Employer” means:

.....
(name of person/firm/company)
.....
.....
.....

1.2 “The Contractor” means:

Anker Trust
Registration number: IT 1381/2004
Herein represented by André Cornelius Kleynhans
(ID no: 610604 5018 081)
P/A PP Smit Attorneys, Mainroad Jacobsbaai

1.3 “The Work” means all labour and material needed for the successful completion of the project.

1.4 “The Contract amount” means the amount of R.....

1.5 “The Contract documents” mean:

- 1.5.1 This contract
- 1.5.2 The building proposal to be replaced with an approved building plan (Annexure A)
- 1.5.3 List of building specifications (Annexure B)

The above documents, together with the approved building plan, represents the entire agreement between the parties

2. COMPLETION OF WORK

- 2.1 The Contractor must complete the work as specified in the contract documents to the reasonable satisfaction of the employer.
- 2.2 The Contractor must supply all material and equipment necessary for the completion of the work.
- 2.3 The Employer may not give instructions or in any way interfere with the employees or subcontractors of the contractor or with any other person in service of or acting upon instructions of the contractor.

3. BUILDING PLANS

The contractor will supply an approved building plan drafted by a qualified architect for the building of the unit. The building plan will be in line with the building guidelines for the development as imposed by the local government.

The Contractor negotiated a fee with the architect for the completion of the plan and will be responsible for settling the fee.

The Employer may contribute ideas for the finalisation of the building plans. If the Employer however request substantial changes to the building proposal, which results in the architect rendering a larger fee as the one negotiated with the contractor, then in such an event the employer will be responsible for the additional cost.

The Employer must at all times use the contractor's nominated architect and must abide by the latter's interpretation of the applicable building guidelines.

4. PAYMENT

- 4.1 If the contract is financed by the employer or an other financial institution, excluding a building loan, payment will be made as follows:

- 4.1.1 First payment: Deposit (=10% of total)
- 4.1.2 Second payment: Window sill height(=20% of total)
- 4.1.3 Third payment: Wall plate height (=40% of total)
- 4.1.4 Forth payment: Completion of plaster inside and outside (= 60% of total)
- 4.1.5 Fifth payment: Building complete with electrical work, plumbing, floors and cupboards (=90% of total)
- 4.1.6 Sixth payment: Final completion (100% of total)

- 4.2 Any late payments will bear interest at the rate of 2% above ABSA prime rate on home loans.
- 4.3 The Contractor must give the Employer 7 days written notice prior to the completion of each of the stages stipulated in 4.1 above. If he fails to do so the penalty clause as stipulated in 4.2 will not be applicable.
- 4.4 If the contract price is financed by a building loan against registration of a bond the payment method stipulated in 4.1 above will be replaced by the banks standard prescribed payment procedure.

In such an event the employer herewith ceed the total proceeds of the building loan to the contractor and gives him conditional authorization to accept direct proceed payments from the bank. The Employer undertakes to sign all the necessary authorizations to effect these payments.

- 4.5 If only a portion of the contract price is financed by a building loan and the balance by the Employer or other financial instruction, then in such a event the portion financed by the Employer or such other financial institutions will first be used to effect payment as stipulated in 4.1. The building loan portion will then be used to finance the balance in accordance with the procedure as stipulated in 4.4.

5. MATERIAL

The contractor will be responsible for the supply of all building material and specifications as stipulated in annexure B hereto. If the employer wishes to use material other than specified in annexure B he must deliver the material on site timely and if the material are more expensive than listed in annexure B, he must bear the extra cost.

6. DEFECT LIABILITY

- 6.1 The date of practical completion of the building project will be the date of payment of the final instalment (100% of contract price) to the contractor.
- 6.2 After practical completion the Employer takes possession of the building and must supply the contractor within 30 days with a list of defects or unfinished work.
- 6.3 As soon as the Contractor finished the work or repaired the defects stipulated on the list, and the work is accepted by the Employer, then the work will be deemed completed.
- 6.4 Any visible defect, shrinking or other defect which becomes apparent within three(3) months after practical completion and which is the result of poor workmanship and defective material, must be repaired by the Contractor within a reasonable time after notification from the Employer.
- 6.5 The Contractor will however not be responsible for any defects or damage resulting from subsoil water or storm water, ground that contains clay or any other geological weakness.
- 6.6 Any leak in the roof or damage to the roof which is a result of poor workmanship or inferior material must be repaired by the contractor within a reasonable time after written notification from the Employer.
- 6.7 The Contractor will not be liable for any damages which is a result of normal usage or wear and tear.

- 6.8 The Employer herewith indemnifies the contractor against any damages suffered as a result of hidden defects other than specified above.

7. PROOF OF OWNERSHIP

- 7.1 The Employer warrants that he is the registered owner of the property and that he will remain the owner for the entire course of the agreement and will not alienate the property without the contractor's written consent.
- 7.2 Any material delivered at the building site remains the property of the contractor until the Employer paid for it as specified in clause 4 above.

8. BREACH

8.1 Breach by the contractor

- 8.1.1 If the contractor breaches the agreement in any of the following ways:
 - 8.1.1.1 Stop work before practical completion without valid reason.
 - 8.1.1.2 Fails to proceed with the work at a reasonable pace.
 - 8.1.1.3 Fails to remedy or repair defects as stipulated in clause 6 above
Then in such an event, if the contractor remains in breach after written notification from the Employer to repair the breach within 30 days, the Employer may cancel the agreement and claim damages.
- 8.1.2 If the contractors estate are finally liquidated, then the employer may cancel the agreement by way of pre paid registered mail.

8.2 Breach by the employer

- 8.2.1 If the Employers estate are provisionally or finally liquidated the contractor may cancel the agreement by way of pre paid registered mail.

8.2.2 If the Employer breaches any of the terms of this agreement, which terms are all substantial, the contractor may cancel the agreement after written notice to the employer to repair the breach within 14 days and after expiration of the 14 days period the breach is still not repaired.

8.2.3 If the Employer fails to make any payments as specified in clause 4 above the contractor may immediately stop work and may cancel the agreement after written notice to the Employer to make full payment within 7 days

8.3 A certificate issued by a quantity surveyor will serve as sufficient proof of any monies owed to the Contractor in terms hereof.

9. JURISDICTION

The parties agree to jurisdiction of the magistrates court even if the amount in dispute exceeds R100,000.00. If either party however chooses to institute action in the High court he/she is free to do so.

10. WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties and no variation thereto will be of force unless it is reduced to writing and signed by both parties.

11. DOMICILIUM

The parties choose the addresses on page 1 of this document as their respective *domicilium citandi executandi*

12. CONTRACT PERIOD

The building work will commence within 7 months of date of registration and must be completed within a further 7 months.

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13. EXTENSION OF TIME

If the commencement or completion of the building work is delayed due to *vis major* or any other unforeseen circumstances (including the builders holiday) outside the contractors control and the building work, due to those reasons, cannot commence or be completed timely, then in such a event the contractor is entitled to a reasonable extension.

14. ESCALATION OF BUILDING COST

If the building costs escalate in the period from signing of the contract to commencement of building, the contractor will be entitled to let the contract price escalate with the same percentage.
The escalation will be calculated by a quantity surveyor and presented in the form of a certificate.

Signed aton this.....day of.....20

As Witnesses:

1. _____

Contractor

2. _____

Signed at.....on this.....day of.....20

As Witnesses:

1. _____

Employee

2. _____