



**NEW ZEALAND'S MOST
QUALIFIED BUILDERS**

SAMPLE

**PRELIMINARY SERVICES
BUILDING CONTRACT**

Preliminary Services Contract

This Contract is intended for use where the Builder has been asked to do some preliminary work in connection with a proposed building project, either prior to the project commencing, or as part of a feasibility study to determine if the project will go ahead.

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|-----------|--|
| Quote No. | |
| Date: | |

| | | | |
|------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------|--|
| Builder's Legal Name <small>(Full legal name of the person(s), firm or company carrying on the building business)</small> | <small>"The Builder"</small> | CB Reg No. | |
| Builder's Trading Name | | Phone No. | |
| Builder's Representative | | Fax No. | |
| Postal Address | | Mobile No. | |
| Physical Address | | Email | |

| | | | |
|---------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------|--|
| Legal Name(s) of Owner(s) <small>(Full legal name of the person(s), firm or company owning the Property)</small> | <small>"The Owner"</small> | Builder's job ref No. | |
| Address of the Property | | Phone No. | |
| Owner's Representative | | Fax No. | |
| Postal Address | | Mobile No. | |
| Physical Address | | Email | |

| Method of Calculation of Contract Price (select one) | |
|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Fixed Price + | The Builder agrees to provide the Preliminary Services (including, where appropriate, the supply of materials and the engagement of subcontractors as necessary) and the Owner agrees to pay the Original Contract Price shown below, adjusted for any Variations. |
| <input type="checkbox"/> Cost & Margin | The Builder agrees to provide the Preliminary Services (including, where appropriate, the supply of materials and the engagement of subcontractors as necessary) and the Owner agrees to pay the Builder for the services and materials provided by the Builder and the Builder's subcontractors, plus the Agreed Margin. |

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| Street Address of the Property | |
| Description of Services - Brief Description of the Preliminary Services to be performed by the Builder. Where the Preliminary Services are more fully described on any other document such as a plan, drawing, specification or quotation that document may be listed here and attached to this Contract. | |

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|-----------------------------------------------------------------------------------------------|--|
| List the person or persons who will be carrying out the Preliminary Services | |
| List any person or persons who will be supervising the Preliminary Services (if appropriate) | |
| List the materials or products to be used in carrying out the Preliminary Services (if known) | |

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------|--------|
| Builder to be Head Contractor for the Intended Project? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> maybe | | | |
| Building Contract (if known) | | | |
| Expected start date of the Preliminary Services* | (Day) | (Month) | (Year) |
| Expected completion date of the Preliminary Services** | (Day) | (Month) | (Year) |
| *Or the date referred to in clause 2, whichever is the later **Subject to clause 3 and 4 | | | |

| | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|----|
| COST & MARGIN OPTION - The following rates apply to services provided by the Builder or the Builder's employees. Rates are subject to adjustment for extended working hours and for work on any day other than a Working Day. | | FIXED PRICE + OPTION - The Original Contract Price is shown below and is subject to adjustments for Variations: | |
| Tradesman | \$ per hour inc GST | Total Excluding GST | \$ |
| Apprentice | \$ per hour inc GST | Plus GST | \$ |
| Agreed Margin | % (applicable to all services, materials & subcontractors) | Total Including GST | \$ |

Margin applicable to (tick all that apply) Labour Materials Subcontractors

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------|------------------------------------|----|
| Estimate Provided - if the estimate provided is intended to be a guaranteed fixed price for the Building Work, please use the Fixed Price+ option instead | \$ | incl GST | Deposit (applies to both options): | \$ |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------|------------------------------------|----|

Validity: Unless the Owner has signed this Contract within 30 days after it was completed by the Builder it may be withdrawn or amended at the sole discretion of the Builder.

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| Signatures (Signed for and on behalf of the Owner and the Builder by their duly authorised signatories) | |
| Owner | Builder |
| Important: By signing this Contract the Owner agrees to pay the Final Contract Price inclusive of all Variations and to be bound by this Contract and the General Terms and Conditions on the following pages. | |
| If part 4A of the Building Act 2004 applies to this Contract, the Owner acknowledges that the Builder has supplied, and the Owner has received, the disclosure information and the checklist prescribed in regulation 5 of the Building (Residential Consumer Rights and Remedies) Regulations 2014. | |
| Name | Name |
| Signature | Signature |
| Date | Date |

EXPLANATION

1. The Owner (either personally or through an associated entity or nominee) proposes to undertake a building project on or in connection with the Property described on the Front Page.
2. The Owner wishes to have certain Preliminary Services performed in connection with that project.
3. The Owner has requested the Builder to provide those Preliminary Services, and the Builder has agreed to provide them.
4. Although the Owner intends to enter into contracts with one or more specialist tradesmen or professional advisers to ensure that the project is carried out as planned, either it is not desirable and/or possible for those contracts to be entered into at this stage, or the Owner wishes to enter into this contract independently of those other contracts.
5. If the Owner and the Builder have agreed that the Builder will be the head or principal contractor for the project, then the Builder will be engaged on the terms of the Certified Builders Association of New Zealand Inc. building contract which has been specified on the Front Page, or such other contract as they may agree upon.

GENERAL TERMS AND CONDITIONS

1. In this Contract, unless inconsistent with the context, the following expressions shall have the following meanings:

"Building" means the structure that is the intended outcome or tangible result of the Project.

"Building Consent" means a Building Consent issued for the Project by a building consent authority under the Building Act 2004.

"CCA" means the Construction Contracts Act 2002.

"Code Compliance Certificate" means a certificate issued by a building consent authority under section 95 of the Building Act 2004, and once section 6(3) of the Building Amendment Act 2012 comes into force, means a "Consent Completion Certificate" as defined in that Act.

"Contract" means this Preliminary Services Contract.

"Deposit" means the figure described as the deposit on the front page.

"Final Contract Price" has the meaning given to it in clause 7 or clause 8 (as the case may be).

"Margin" means the percentage figure inserted alongside the words "Agreed Margin" on the front page.

"Original Contract Price" means the figure described as such on the front page.

"Parties" means the Owner and the Builder.

"Preliminary Services" means the services to be provided by the Builder (and/or the Builder's subcontractors and suppliers) as described on the front page, and any other services that the parties may agree will be added to or substituted for the Preliminary Services, from time to time.

"Project" means the combination of the Preliminary Services and all other inputs required to achieve the completion of the structure that the Owner intends to have built.

"Project Documents" means the plans, drawings, specifications, or other documents which contain the detailed descriptions, diagrams and instructions relating to the Project, including any document detailing the scope of work (to the extent that it has not been superseded).

"Property" means the place or location that the Project relates to, as identified by the address and/or legal description entered on the front page.

"Served" means sufficiently served within the meaning of section 80 of the CCA or Regulation 9 of the Construction Contracts Regulations 2003 and "Serve" has a corresponding meaning. For the purposes of those Regulations the Parties shall be deemed to have unconditionally consented under Regulation 10(1)(b).

"Variation" means any services or materials that are not, whether expressly or by necessary implication, provided or allowed for in this Contract at the time it is signed by the Builder, and any other event or circumstance described in this Contract which is, or is to be treated as, a Variation, and includes any preparatory work done in connection with a proposed Variation whether or not it proceeds.

"Working Day" means any calendar day other than a Saturday, Sunday, statutory holiday, any applicable regional holiday, and the period 24 December to 5 January inclusive.

2. The Builder shall commence the Preliminary Services within a reasonable time after:
 - a) the Contract has been signed by both parties; and
 - b) any deposit payable in accordance with clause 12 has been paid; and
 - c) any necessary Building Consent or resource consent or other requisite consents or licences or consent amendments that are a prerequisite to the Preliminary Services being performed, have been issued.
3. The Builder shall carry out and perform the Preliminary Services diligently and conscientiously, and shall complete the Preliminary Services as soon as is reasonably practicable.
4. The expected completion date stated on the front page shall be automatically extended by a reasonable time where delays arise due to:
 - a) Variations;
 - b) Any strike, lockout, or other industrial action;
 - c) Loss or damage to the Building Work other than loss or damage caused by the Builder's breach of its obligations under this Contract;
 - d) Flood, volcanic, or seismic events;
 - e) Inclement weather;
 - f) Failure to obtain consent or approval through no fault of the Builder;
 - g) Failure by the Owner to give timely directions;
 - h) Unforeseen physical conditions;

- i) The Builder exercising its right to suspend the Building Work under this Contract;
 - j) Act, omission or default by the Owner or any person for whose acts or omissions the Owner is responsible;
 - k) A separate contractor's act or omission;
 - l) Unavailability or shortage of materials;
 - m) Any other event which is beyond the reasonable control of the Builder and for which the Builder is not responsible.
5. In carrying out the Preliminary Services the Builder will have a broad discretion, provided the Preliminary Services are reasonably necessary or desirable to achieve the intended objective, and subject to the Owner's overriding direction at all times.
 6. The Owner will pay the Builder the Final Contract Price for the performance of the Preliminary Services, on the basis specified on the front page, and at the times and in the manner specified in this Contract.
 7. If the method of contract price calculation selected on the front page is Fixed Price +, then the Final Contract Price will be the Original Contract Price adjusted for any Variations.
 8. If the method of contract price calculation selected on the front page is Cost & Margin, then the Final Contract Price will be calculated by reference to the hours of work expended by the Builder and the Builder's employees and contractors in carrying out the Preliminary Services, using the rates set out on the front page, plus the materials and other direct costs incurred by the Builder in carrying out the Preliminary Services. Onto those amounts shall then be added a margin for the Builder's administration, overhead and profit, calculated by reference to the percentage shown on the front page. The Builder's margin shall be applied to all services, materials & other inputs that form part of the Preliminary Services, whether provided by the Builder, or by suppliers of materials or trade services to the Builder.
 9. The Builder shall carry out all Variations that the Owner or the Owner's authorised agent instructs or requests the Builder to carry out, provided that any such Variation does not impose an unreasonable burden on the Builder. Wherever reasonably practicable any Variation shall be recorded in writing and the estimated cost of the Variation advised to the Owner by the Builder, but any failure to do so shall not disqualify the Owner from his/her/its entitlement to have the Variation carried out, nor disqualify the Builder from his/her/its entitlement to be paid for the Variation in accordance with the provisions of this contract.
 10. If the method of contract price calculation selected on the front page is Cost & Margin, then any Variations shall be charged for in the same manner as the rest of the Preliminary Services. If the method of contract price calculation selected on the front page is Fixed Price +, then any Variations shall be charged for as if the Variation was carried out under the Cost & Margin option.
 11. The Builder shall be entitled to charge for and recover all costs that the Builder would not have incurred but for the Variation and that are reasonably necessary to carry out the Variation to the standard required by this Contract, plus the Builder's Margin.
 12. The Deposit shall be paid by the Owner upon signing the Contract, and the Builder is not obliged to commence the Preliminary Services until the deposit has been paid. The Deposit shall be held by the Builder and applied towards payment of the Builder's invoice (or if more than one, the final invoice), or as provided by clause 47.
 13. If the Preliminary Services take more than two weeks to complete, the Builder may issue an invoice on a fortnightly basis for the proportion of the Preliminary Services that have been completed up to the date of the invoice. The Builder is entitled to issue the final invoice immediately after completion of the Preliminary Services, but may issue later invoices if any portion of the Preliminary Services has not yet been invoiced, for example where prior invoices contain errors, or subcontractors or suppliers submit late but valid invoices to the Builder.
 14. The Owner must pay the invoiced amount in full within 5 Working Days of the invoice being delivered or sent to the Owner. If the Owner does not consider that all or any part of the invoiced amount is payable, the Owner must, within 5 Working Days after the invoice was delivered or sent to the Owner:
 - a) reply in writing to the Builder stating the amount that the Owner considers payable (the undisputed amount), and specifying the reasons why any part of the invoiced amount is disputed, and the method in which the disputed amount has been calculated; and
 - b) pay the undisputed amount.
 15. If the Builder's invoice is or is accompanied by a payment claim made under the CCA, then any payment schedule as defined in section 5 of that Act must be provided to the Builder within 5 Working Days of the payment claim being served on the Owner.
 16. The Owner shall pay the Builder's invoice(s) on the due date(s), irrespective of when the Owner's bank or financier is prepared to advance any monies required by the Owner in order to meet the Owner's payment obligations under this Contract. It is the Owner's responsibility to ensure that sufficient funds are available to comply with the Owner's payment obligations under this Contract.
 17. The Owner may at any time request the Builder to provide a receipt or statement recording or evidencing the payments received from the Owner.
 18. During the course of the Preliminary Services, the Owner (or the Owner's project manager) shall have overall responsibility for the Project site, but the Builder shall have a free and uninterrupted right of access to it (in conjunction with all other contractors or suppliers providing goods or services in connection with the Project) sufficient to enable him to comply with his obligations or exercise his rights under this Contract.
 19. Unless otherwise agreed in writing between the Parties, the Owner shall obtain all project information memoranda, Building Consents, resource or other consents or licences, and consent amendments required for the Preliminary Services and the Project.
 20. The Owner shall promptly provide all information reasonably required by the Builder to enable the Builder to comply with the Builder's obligations under this Contract, whether prior to the commencement of, during the performance of, or after the completion of the Preliminary Services.

21. In the event of any conflict or inconsistency between any of the Project Documents, the Project-specific documents such as the plans and drawings and any detailed scope or description of the proposed work shall take precedence over standard form or generic documents. Figured dimensions shall take precedence over scaled dimensions.
22. If any error, omission, mistake or discrepancy in any of the Project Documents, or any conflict or inconsistency between any of the Project Documents, results in the Builder incurring costs or suffering a loss which could not reasonably have been anticipated at the time the Builder signed this Contract, those costs or that loss may be charged to the Owner by the Builder.
23. The Builder is entitled to rely on the designer of the Building, the relevant Building Consent authority, and any publicly or privately owned accreditation entity charged with approving building designs, products or processes, to ensure that the Contract Documents and any directives issued by any of those parties, if faithfully adhered to, will result in compliance with the Building Code. Notwithstanding this, the Builder is not obliged to carry out any Preliminary Services that the Builder reasonably believes does not comply with the Building Code, and may require the Owner to approve a Variation in order to ensure compliance.
24. The Owner shall ensure that at all times neither the Owner nor any other contractor or supplier providing goods or services to the Owner in connection with the Project unreasonably interferes with, inhibits or constrains the performance of the Builder's obligations or the exercise of the Builder's rights under this Contract.
25. The Builder shall not be responsible for any damage done to the Property or any buildings or structures erected on it, by the Owner or by any other contractor or supplier providing goods or services to the Owner in connection with the Project.
26. For as long as the Builder is still performing his obligations or exercising his rights under this Contract, the Builder may take whatever steps he deems reasonably necessary to comply with his own obligations under the Health and Safety in Employment Act 1992 and all other statutory or regulatory requirements imposed on him in connection with the Project. However the fact that the Builder has obligations under the Health and Safety in Employment Act 1992 and other statutory or regulatory requirements, does not absolve the Owner and all other contractors or suppliers providing goods or services to the Owner in connection with the Project from complying with their own obligations of a similar nature.
27. The Owner must arrange contract works insurance if the Preliminary Services involve changes, alterations, renovations, restoration, repairs or maintenance to existing structures. If the Preliminary Services involve constructing an entirely new stand-alone structure then the Builder is responsible for arranging contract works insurance. Irrespective of who arranges the contract works insurance, given that such insurance typically expires on completion of the Preliminary Services, the Owner must ensure that the relevant structure is insured from that point onwards.
28. The amount insured must be at least as much as the Original Contract Price, plus a reasonable allowance for Owner-supplied materials, expediting expenses, removal of debris, professional fees, increased costs during construction, increased costs during re-construction, and materials in storage (off the Project site).
29. The Owner must arrange contract works insurance against loss or damage to the Owner's existing structures made available by the Owner to enable the performance of the Preliminary Services, or existing structures adjacent to them, and to the Owner's contents. This insurance must be for the full replacement value, and for consequential loss arising from loss or damage to those structures and contents.
30. The Builder must arrange public liability insurance for loss or damage to any property, or illness, injury or death to any person, that arises from the performance of the Preliminary Services.
31. In the event of loss or damage to any structure, object or information that results from the performance of the Preliminary Services, and which is not caused by the Builder or any party for whom the Builder is responsible:
- The Builder is not required to carry out any restoration work at the Builder's own expense.
 - The Builder will restore all loss or damage to the relevant structure, object or information and the restoration work will be treated as a Variation.
 - The Owner must apply the proceeds of the contract works insurance (if any) towards payment for the restoration work.
 - If the delay in confirming insurance cover after loss or damage to the structure, object or information has occurred, is such that the Builder can no longer reasonably afford to maintain spare capacity to perform the Preliminary Services when required, the Builder may suspend the Preliminary Services as if clause 45 applied, and if the Builder has not cancelled the contract in the meantime, the Builder shall not be obliged to resume the Preliminary Services until the Builder's commitments reasonably allow for a resumption.
32. If any materials specified are not reasonably procurable, the Builder may substitute other materials of a similar nature and quality after consultation with the Owner.
33. If the substitution requires an amendment to the plans, specifications or the Building Consent, the Owner shall be responsible for obtaining and paying for the amendment, and any time spent by the Builder in assisting the Owner with the amendment shall be treated as a Variation and charged in accordance with clauses 9-11.
34. The Builder shall retain legal, equitable and beneficial ownership of and title to any structure, object or information that results from the performance of the Preliminary Services (the "Builder's Inputs"), even once they have been brought onto the Property or delivered to the Owner, until the invoice relating to the Builder's Inputs, and all preceding invoices, have been paid in full.
35. Notwithstanding the attachment or intermingling of the Builder's Inputs to or with any other structure, object or materials, the Builder's Inputs shall retain their identity as personal property of the Builder for as long as the Builder retains legal, equitable and beneficial ownership of and title to them.
36. In the event of the sale of the Property or of the Builder's Inputs by the Owner, the Owner must hold on trust for the Builder that part of the proceeds of the sale that is equal to the amount owing to the Builder at the time of receipt of the proceeds, and immediately pay such proceeds to the Builder on demand.
37. Any defect in the Building which is notified to the Builder in writing within 45 days after completion, or within 12 months after completion of the Preliminary Services if section 362Q of the Building Act 2004 applies to this Contract, shall be rectified by the Builder at the Builder's expense, within a reasonable time. The notification of any defect must be sufficiently detailed so that the Builder knows precisely what is required to be done.
38. In this Contract, a "defect" means any fault or flaw in the Preliminary Services or the Building which is sufficient to constitute a breach of the Builder's obligations under clause 3 or any implied warranties or guarantees, and "rectified" means remedied, re-done, fixed or completed so that the relevant item complies with those obligations. Defects do not include:
- Mere cosmetic blemishes, imperfections, or trivial faults or flaws that are within the tolerances normally regarded as acceptable according to common trade practice.
 - Any failure to achieve standards of finish or detail that are beyond what is required by the Contract Documents (subject to any Variations) and (if applicable) the relevant Building Consent.
 - Any fault or flaw that is attributable to the acts or omissions of, or materials supplied by, anyone who has contracted directly with the Owner.
 - Any fault or flaw that is attributable to any event or occurrence beyond the Builder's reasonable control or the acts or omissions of anyone for whom the Builder is not responsible.
 - Any fault or flaw that is attributable to fair wear and tear, or any failure by the Owner to adequately maintain, preserve, protect and care for the Building.
39. The Builder is both obliged and entitled to rectify any defects in accordance with clause 37. The Owner must give the Builder a reasonable opportunity to rectify any defects that are notified in accordance with that clause and shall not engage anyone else to do so unless and until a reasonable time has elapsed and the Owner has given the Builder at least 20 Working Days' notice of the Owner's intention to engage someone else, or the Builder has permanently and unequivocally abandoned the Project.
40. Should the Owner default in any payment due to the Builder, or breach any of the Owner's other obligations under this Contract, the Builder shall be entitled to enter the Property and remove any of the Builder's Inputs and to sell any of them in order to recover any monies owing by the Owner under this Contract. All costs and expenses incurred by the Builder in doing so shall be paid by the Owner on demand or deducted from the proceeds of sale.
41. In the event that any alteration to the Preliminary Services is required:
- as a condition of the granting of any Building Consent or other consent or licence or;
 - as a result of changes to applicable law relating to building; or
 - by any regulatory agency either before or after the Preliminary Services commence,
- and the requirement for the alteration to the Preliminary Services was not reasonably foreseeable by the Builder at the time this Contract first came into effect, the alteration shall be deemed to be a Variation.
42. Provided the Owner has paid to the Builder the Final Contract Price following completion of the Preliminary Services and the Owner is not otherwise in default of the Owner's obligations under this Contract, the Builder shall provide the Owner with all information and documentation as may be reasonably required, and take all reasonable and necessary actions, to enable the Owner to apply for a Code Compliance Certificate at the appropriate time. This clause shall not affect the obligation of any Licensed Building Practitioner engaged by the Builder to provide a Record of Work in relation to any Restricted Building Work carried out or supervised by that Licensed Building Practitioner.
43. The parties agree that the prerequisites to the performance of the Builder's obligations under clause 42 are essential terms of this Contract, the intention being that there shall be a mutual and contemporaneous exchange at the point of completion of the Preliminary Services.
44. If at any time the Owner fails to pay any sum owed to the Builder in full by the due date, the Owner shall pay interest on the amount outstanding from the due date until the date of payment. The interest rate shall be the Builder's default bank overdraft borrowing rate, or one and a half times the Builder's non-default bank overdraft borrowing rate, whichever is the higher. The entitlement to interest is without prejudice to any of the Builder's rights and remedies in respect of the non-payment.
45. If at any time the Owner fails to pay any sum owed to the Builder in full by the due date, or any act, omission or default by the Owner effectively precludes the Builder from continuing the Preliminary Services or performing or complying with the Builder's obligations under this Contract, then without prejudice to the Builder's other rights and remedies, the Builder may suspend the Preliminary Services immediately after serving on the Owner a written notice specifying the payment default or the act, omission or default upon which the suspension of the Preliminary Services is based. All costs and expenses incurred by the Builder as a result of such suspension and any recommencement shall be payable by the Owner as if they were a Variation.
46. If pursuant to any right conferred by this Contract the Builder suspends the Preliminary Services and the default that led to that suspension continues unremedied for at least 40 Working Days, the Builder shall be entitled to cancel this Contract.
47. If at any time the Owner has failed to comply with any of the Owner's obligations under this Contract then without prejudice to the Builder's other rights and remedies the Builder may forfeit the deposit or any sum paid in advance of the Builder's entitlement to payment, and apply it to any damages, costs, interest or other sums to which the Builder is entitled.
48. The Owner shall be liable for all costs and expenses incurred by the Builder as a result of the Owner's default, including but not limited to all costs of debt collection, suspension and (if applicable) recommencement of work, preparation, execution, registration and discharge of securities, and the Builder's actual and reasonable legal costs, including those incurred in the course of litigation, adjudication, negotiation, mediation, arbitration or any other method of dispute-resolution.
49. Unless and to the extent that this Contract expressly or by necessary implication provides otherwise:

- a) each party's total liability to the other in respect of the Preliminary Services, the Project or this Contract, whether in contract, tort or otherwise, shall not in any event exceed the Final Contract Price; and
- b) neither party shall be liable to the other for any consequential, indirect or special loss, damage or injury of any kind whatsoever.
50. If any dispute or disagreement (a "dispute") arises between the parties concerning the Preliminary Services, the Project or this Contract, it shall be resolved in accordance with clauses 50-55. A dispute shall be deemed to have arisen when the first written communication evidencing the dispute (which may include an electronic transmission such as a fax or e-mail, but not a text message) has been delivered or sent by one party to the other.
51. As soon as reasonably practicable after the dispute has arisen, the parties shall meet together or otherwise communicate with each other and attempt to resolve the dispute in good faith through negotiation.
52. After 10 Working Days if the dispute has not been resolved by negotiation, the parties may agree to attempt to resolve it by mediation. Mediation shall not be compulsory unless both parties agree to it, and that agreement may be revoked by either party at any time up until 5 Working Days before the scheduled date for the mediation. The parties shall share the mediator's fees and expenses equally and meet their own costs. If the parties cannot agree on a mediator within 5 Working Days of the agreement to mediate, then either party may request the President or relevant nominating officer of the Arbitrators' & Mediators' Institute of New Zealand Inc ("AMINZ") or of LEADR (NZ) Inc. to select a mediator.
53. If the dispute has not been resolved within 20 Working Days of the dispute arising, and there is no agreement to mediate currently in force, either party may elect to have the dispute resolved by adjudication under the CCA. The party opting for adjudication shall serve a notice to that effect on the other party, and that notice (which may or may not be a notice of adjudication as defined in the CCA) shall be irrevocable unless both parties agree otherwise. Once either party has served a notice of adjudication complying with the requirements of the CCA, if the other party wishes to serve its own notice of adjudication in respect of the same or a different dispute relating to the Project, it must do so within 5 Working Days of service of the first notice, in which case the claims arising from those notices shall be consolidated, and the same adjudicator shall be appointed to hear each claim.
54. If a dispute is referred to adjudication under the CCA, the adjudicator's ruling shall be final and binding between the parties and neither party shall attempt to resolve the dispute by any other method except for judicial review or enforcement of the adjudicator's ruling.
55. Notwithstanding clauses 50-54, nothing in those clauses prevents:
- a) either party from exercising any statutory rights to the extent that those rights cannot be lawfully contracted out of; or
- b) the Builder from commencing and continuing legal proceedings for the enforcement of one or more payment claims under the CCA at any time, provided that once the outcome of the dispute is finally determined, any such legal proceedings, if continued, must be consistent with that outcome.
56. Intellectual property created by the Builder in the course of performing the Preliminary Services shall be jointly owned by the Builder and the Owner. Each of them grants the other a perpetual, royalty-free licence to copy or use that intellectual property. Each party shall retain exclusive ownership of any intellectual property that party owned prior to this Contract coming into effect, and any intellectual property they create or develop independently of the performance of the Preliminary Services.
57. The person or persons purporting to sign this Contract for or on behalf of the Owner, warrant(s) that he/she/they has/have the authority to bind all of the registered proprietors of the Property (jointly and severally if more than one), to the Owner's obligations under this Contract.
58. The terms "Owner" and "Builder" shall also be deemed to include their respective executors, administrators, successors and permitted assigns.
59. Where the Owner is made up of two or more individuals or entities then each of them shall be bound jointly and severally by the Owner's obligations under this Contract.
60. Any references in this Contract to a statute or regulation shall be taken to refer to that statute or regulation as subsequently amended, consolidated or re-enacted.
61. If this is a Contract to which sections 362I-362K of the Building Act 2004 apply or if the Preliminary Services constitute services to which the Consumer Guarantees Act 1993 applies, then to the extent they cannot be contracted out of, the warranties or guarantees implied by those statutes apply notwithstanding any other provision of this Contract.
62. If the Building Work is to be carried out for the purposes of a business, then all guarantees, warranties, rights or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or any similar statutes are expressly excluded. To the maximum extent permitted by law, all guarantees, warranties or provisions that would otherwise be implied by statute or rule of law are expressly excluded, as are any representations or statements made prior to these terms and conditions taking effect.
63. Subject to any provisions implied by statute, this Contract together with the Contract Documents constitute the entire agreement between the Parties in relation to the Project and they supersede any and all other agreements, arrangements, understandings or representations whether spoken or in writing in respect of or in connection with the Preliminary Services.

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