

LUMP SUM CONTRACT

Dated April 6 1958

Colpn

Agreement

AND

SCHEDULE OF CONDITIONS

OF

BUILDING CONTRACT

BETWEEN

Robin Boyd

D. P. Boyd

AND

John Humphrey



Issued under the sanction of the
ROYAL AUSTRALIAN INSTITUTE OF ARCHITECTS
and the
MASTER BUILDERS' FEDERATION OF AUSTRALIA

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Articles of Agreement made the

Stamp to be affixed here if required by State Law

..... day of April 6 19 58

BETWEEN Robin Boyd

of (or whose registered office is situate at) 158 RIVERSDALE ROAD Camberwell

(hereinafter called "the Proprietor") of the one part and

of (or whose registered office is situate at) John Murphy 49 Fourth Street, Beaumaris

(hereinafter called "the Builder") of the other part. WHEREAS the Proprietor is desirous of * erecting & completing a house

(hereinafter called "the Works") at 290 Walsh Street South Yarra

and has caused Drawings and a Specification showing and describing the work to be done to be prepared by or under the direction of Graeme Romberg & Boyd

of 340 Albert St., C.2

his Architect: AND WHEREAS the said Drawings numbered 1 to 7

inclusive (hereinafter referred to as "the Contract Drawings"), and the said Specification have been signed by or on behalf of the parties hereto:

NOW IT IS HEREBY AGREED

1. For the consideration hereinafter mentioned the Builder will upon and subject to the Conditions annexed hereto execute and complete the works shown upon the Contract Drawings and described by or referred to in the said Specification and Conditions.

2. The Proprietor will pay to the Builder the sum of Five thousand one hundred and ninety six pounds, fifteen shillings

(£ 5196 15 : 0) (hereinafter referred to as "the Contract Sum") or such other sum as shall become payable hereunder at the times and in the manner specified in the said Conditions.

3. The term "the Architect" in the said Conditions shall mean the said

of or, in the event of his ceasing to be the Architect for the purpose of this contract, such other Architect as shall be nominated for that purpose by the Proprietor, not being an Architect to whom the Builder shall object for reasons considered to be sufficient by the Arbitrators or Umpire as the case may be in accordance with clause 26 of the said Conditions. Provided that no person so appointed under this contract shall be entitled to disregard or overrule any decision or approval or direction given or expressed by any former Architect.

*State nature of intended works.

*In Witness whereof the parties hereto have hereunto set their hands the day and year first above written.

Signed by the said Proprietor

.....
Robin Boyd
.....
Patricia Boyd
.....

in the presence of

Name.....
Address.....
.....
Description.....

Signed by the said Builder

.....
.....
.....
.....

in the presence of

Name.....
Address.....
.....
Description.....

***Footnote.**—If either or both parties to this contract is a company or public body, the authority under which they operate, such as articles of association, charter, proclamation or statute, etc., should be examined to ensure that authority exists to carry out the terms of contract. If so authorised, the common seal of the company or body concerned should be affixed to this contract with the correct attestation as is usually set out in the articles of association, etc., concerned.

Note.—*Alternatives must be struck out in clauses 15 and 25(d)*

THE CONDITIONS HEREINBEFORE REFERRED TO

Scope of
Contract.

1. The Builder shall carry out and complete the Works in accordance with this contract in every respect, in accordance with the directions and to the reasonable satisfaction of the Architect. If the Builder shall find any discrepancy in or divergency between the Contract Drawings and/or Specification he shall immediately refer the same in writing to the Architect and specifically apply in writing for any necessary instructions from the Architect in relation thereto. The Architect may in his absolute discretion and from time to time issue further drawings, details and/or written instructions, written directions and written explanations (all of which are in these Conditions collectively referred to as "Architect's Instructions") in regard to:

- (a) The works generally.
- (b) The variation or modification of the design, quality or quantity of the Works or the addition or omission or substitution of any work.
- (c) Any discrepancy in or divergency between the Contract Drawings and/or Specification.
- (d) The removal from the site of any materials brought thereon by the Builder, and the substitution of any other materials therefore.
- (e) The removal and/or re-execution of any works executed by the Builder.
- (f) The postponement of any work to be executed under the provisions of this contract.
- (g) The dismissal from the Works of any person employed thereupon who may be incompetent or misconduct himself.
- (h) The opening up for inspection of any work covered up.
- (i) The completion of any items requiring attention as in any list issued at practical completion of the Works.
- (j) The amending and making good of any defects under clause 12 of these Conditions.

If any verbal instructions, directions or explanations involving a variation are given to the Builder or his foreman upon the Works by the Architect such instructions, direction or explanations may be confirmed in writing by the Builder to the Architect within seven days, and if not dissented from in writing by the Architect to the Builder within a further seven days shall be deemed to be Architect's Instructions and the Builder shall forthwith comply with such Architect's Instructions.

If within seven days after receipt of a written notice from the Architect requiring compliance with Architect's Instructions the Builder does not comply therewith, the Proprietor may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions and all costs incurred in connection therewith shall be recoverable from the Builder by the Proprietor as a debt or may be deducted by him from any monies due or to become due to the Builder under this contract.

If compliance with Architect's Instructions involves any variation, such variation shall be dealt with under clause 9 of these conditions and the value thereof shall be added to or deducted from the Contract Sum.

If compliance with Architect's Instructions involves the Builder in loss or expense beyond that provided for in or reasonably contemplated by this contract, then, unless such instructions were issued by reason of some breach of this contract by the Builder, the amount of such loss or expense shall be ascertained by the Architect and shall be added to the Contract Sum.

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Drawings and Specification, etc.

2. The Contract Drawings and the said Specification shall remain in the custody of the Architect so as to be available at all reasonable times for the inspection of the Proprietor or the Builder. The Architect without charge to the Builder shall on the signing of this contract furnish him on request with a copy of all Contract documents signed by the Proprietor together with two copies of the Contract Drawings and of the Specification, and shall within a reasonable time also furnish him with such further Drawings as are reasonably necessary to enable him to carry out all Architect's Instructions and with any further details which in the opinion of the Architect are necessary for the execution of any part of the work. If any Bills of Quantities are provided, nothing contained therein shall confer any rights or impose any obligations beyond those conferred or imposed by the Contract Documents, namely, by the Contract Drawings, Specification and Conditions referred to in the Articles of Agreement. The Builder shall keep one copy of all Drawings and the Specification on the Works so as to be available to the Architect or his representative at all reasonable times. Upon receiving final payment the Builder shall forthwith return to the Architect all drawings and specifications bearing his name.

None of the documents hereinbefore mentioned shall be used by either of the parties hereto for any purpose other than this contract.

Local and other authorities' notices and fees.

3. (a) The Builder shall comply with and give all notices required by any Act of Parliament or by any regulation or by-law of any local authority or of any public service company or authority which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected, and he shall pay and indemnify the Proprietor against any fees or charges legally demandable under such Act of Parliament, regulation or by-law in respect of the Works. Prior to the issue of the final certificate the Builder shall surrender to the Architect all plans and certificates issued by such authorities.

(b) The Builder before making any variation from the Contract Drawings or Specification necessary for such compliance shall give to the Architect written notice specifying and giving the reason for such variation and applying for instructions in reference thereto.

(c) If the Builder within seven days of having applied for the same does not receive such instructions he shall proceed with the work conforming to the provision, regulation or by-law in question and any variation thereby necessitated shall be deemed to be a variation under clause 9 of these Conditions.

Setting out of Works.

4. The Architect shall furnish to the Builder, either by way of accurately dimensioned drawings or by personal direction and supervision at the time of setting out the Works such information as shall enable the Builder to set out the enclosing walls of the building at ground level after which the Builder shall be responsible and shall at his own cost amend any errors arising from his own inaccurate setting out, unless the Architect shall otherwise direct. The Builder shall not be responsible for any errors in such information so furnished by the Architect nor for any additional costs due to or caused by any such errors and any such additional costs shall be added to the Contract Sum.

Materials and Workmanship to conform to description.

5. All materials so far as procurable and workmanship shall be of the respective kinds described in the Specification and the Builder shall upon the request of the Architect furnish him with evidence to prove the description and quality of the materials supplied.

Foreman.

6. The Builder shall constantly keep upon the Works a competent general foreman and any instructions or directions given to him by the Architect shall be deemed to be given to the Builder in pursuance of clause 1 of these Conditions.

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Access for
Architect
to Works.

7. The Architect and his representatives shall at all reasonable times have access to the Works and/or to the workshops or other places of the Builder where work is being prepared for the contract, and in so far as work in virtue of any sub-contract is to be so prepared in workshops or other places of a sub-contractor (whether or not a nominated Sub-Contractor as defined in these Conditions) the Builder shall also by a term in the sub-contract so far as possible secure a similar right of access to those workshops or places for the Architect and his representatives and shall do all things reasonably necessary to make such right effective.

Clerk of
Works.

8. The Proprietor by the Architect may appoint a Clerk of Works, and shall give notice forthwith in writing to the Builder of such appointment. The Clerk of Works shall act solely as inspector under the Architect, and the Builder shall afford him every facility for examining the work and materials. The Builder shall have the right within three days of receiving notice of such appointment to object in writing delivered to the Architect to any person so appointed and if the question as to whether he should continue in his position be not settled at the expiration of seven days after such objection the matter shall be referred to arbitration in accordance with clause 26 of these Conditions. The Builder shall not be entitled, on account of any objection made by him to the Clerk of Works in the manner aforesaid, to refuse to act under such Clerk of Works pending the decision of the objection.

Ascertainment
of prices
for
variations.

9. No variation shall vitiate the contract, but, unless a price therefor shall have previously been agreed, all variations authorised or sanctioned by the Architect shall be valued and the sum involved shall be added to or deducted from the contract sum as the case may be.

In ascertaining such value measurements shall be made and supplied by the Builder to the Architect. If the Architect is not satisfied therewith, he may make measurements himself or cause such measurements to be made by a Quantity Surveyor and shall supply the same to the Builder and any fees to be paid for any such measurements shall be added to the Contract Sum. The valuation of such variations unless previously or otherwise agreed shall be made as far as possible in accordance with the following rules:

- (a) The priced Bill of Quantities or, if no such Bill of Quantities has been provided appropriate current rates shall determine the value of any variation to which such rates may reasonably apply.
- (b) Where there are no appropriate current rates a fair valuation of the variation according to the measurements adopted by the Architect shall be made.
- (c) If in the opinion of the Architect the valuation of the variations cannot be ascertained by either of the above methods the Builder upon notification to that effect shall proceed with the Works and shall present in such form as the Architect may direct a correct record of the cost of the variations together with evidence supporting the same. Any Certificate issued to the Builder by the Architect pursuant to this Clause shall include reasonable allowance for overhead and profit but shall not include any discount on materials other than $2\frac{1}{2}\%$ cash discount.

Quantities.

10. Any Bills of Quantities or other statements as to quantities of work supplied to the Builder shall not form nor be deemed to form any part of this contract.

Unfixed
materials when
taken into
account to be
the property of
the Proprietor.

11. Where in any certificate of which the Builder has received payment the Architect has in accordance with clause 25 (a) and (b) of these Conditions included the value of any unfixed materials and goods intended for the Works, such materials and goods shall become the property of the Proprietor and shall not be removed except for use upon the Works unless the Architect has authorised in writing such removal, and the Builder shall be responsible for any loss of or damage to the same.

Defects
after
completion.

12. Any defects, shrinkage or other faults which may appear and be notified in writing to the Builder within the Defects Liability Period stated in the Appendix after practical completion, and due to materials or workmanship not in accordance with this contract, shall upon the direction in writing of the Architect, and within such reasonable time as shall be specified therein, be amended and made good by the Builder at his own cost unless the Architect shall decide that he ought to be paid for the same, or any part thereof, and in case of default, the Proprietor may recover from the Builder the cost of making good the Works.

Assignment
or
Sub-letting.

13. Neither party to the contract shall assign the contract without the written consent of the other.

- (a) The Builder shall not sub-let any portion of the Works without the written consent of the Architect provided that consent shall not be unreasonably withheld.
- (b) All specialists or others who have been nominated or selected by the Architect as provided in Clause 21 are to be sub-contractors employed by the Builder and are referred to in these Conditions as "nominated sub-contractors," but no nominated sub-contractor need be employed upon or in connection with the works against whom the builder shall make reasonable objection or who will not enter into a sub-contract binding the sub-contractor by the like obligations to the builder in respect of the subject matter of the sub-contract as the Builder assumes by this contract to the Proprietor. The Builder shall be entitled to require that any such sub-contract shall contain adequate terms and conditions relating to:—
 - (i) Insurance by the Sub-Contractor.
 - (ii) Indemnity against damages for delay caused by any act or default of the Sub-Contractor.
 - (iii) Acceptance by the Sub-Contractor of the decisions and directions of the Architect or Arbitrator or Arbitrators so far as they concern the subject matter of the sub-contract.
 - (iv) Acceptance by the Sub-Contractor of certification by the Architect as a condition precedent to payment by the Builder.
- (c) The consent of the Architect to such subletting or to the employment of nominated sub-contractors shall not relieve the builder from responsibility.

Injury to
persons and
property.

14. (a) *Injury to Persons.* The Builder shall be solely liable for and shall indemnify the Proprietor in respect of and shall insure against any legal liability, loss, claim or proceedings whatsoever arising under any statute (other than as provided in the next sub-clause) or at Common Law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the execution of the Works unless due to any act or neglect of the Proprietor or of other persons for whom the Proprietor is responsible.

(b) *Workers' Compensation, etc.* The Builder shall insure against any liability, loss, claim or proceedings whatsoever, whether arising at Common Law or by virtue of any statute relating to Workers' Compensation or Employer's Liability, by any person employed by him in or about the execution of the Works and shall procure that every sub-contractor (whether or not a sub-contractor nominated in accordance with clause 21 of these Conditions) shall be insured against any such liability in the case of employees of such sub-contractor.

(c) *Injury to Property.* The Builder shall be liable for and shall indemnify the Proprietor against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property, real or personal, insofar as such injury or damage arises out of or in the course of or by reason of the execution of the Works, PROVIDED ALWAYS that the same is due to any negligence, omission or default of the Builder, his servants or agents, or of any sub-contractor, AND SUBJECT ALSO as regards loss or damage by fire and/or explosion and/or lightning and/or civil commotion to the provisions contained in clause 15 of these Conditions.

(d) Should, however, any portion of the building be utilised by the Proprietor or tenant of his or their employees during the progress of the Works the Builder shall not be liable for any injury to or the death of any person or loss or damage to property which may be occasioned by reason of such utilisation of such portion of the premises by any such person or persons.

(e) The extent that the Builder shall be required under the foregoing sub-clauses to effect insurance shall, unless prescribed in the Appendix, be subject to the approval of the Proprietor for adequacy of protection. The Builder shall before proceeding with the work lodge evidence with the Architect that such insurance has been effected. Should the Builder make default in so doing the Proprietor may insure against any risk with respect to which default has occurred and may deduct the premiums paid from any monies due or to become due to the Builder.

Insurance.

*15. [A] The Builder shall in the joint names of himself and the Proprietor insure against loss and damage whether by fire and/or explosion and/or earthquake and/or lightning and/or storm and tempest and/or civil commotion and to the extent approved by the Proprietor from time to time as to adequacy for at least the full reinstatement value (plus the requisite amount to cover Architects, Engineers, Quantity Surveyors and Consultants' fees) of all work executed and materials and goods upon the site, including any unfixed materials or goods, which by virtue of clause 11 of these Conditions have become the property of the Proprietor, and shall keep such work, materials and goods insured until the Works are delivered up; such insurance shall be with a company or companies approved by the Architect, and the Builder shall deposit with him the cover notes, policies and premium receipts; should the Builder make default, the Proprietor may insure as aforesaid and deduct the premiums paid from any monies due or to become due to the Builder.

The Builder shall upon settlement of any claim under the policies aforesaid proceed with due diligence to rebuild or repair the Works and replace or repair the materials or goods destroyed or damaged. Any amount so payable in respect of such settlement shall forthwith be paid into a bank mutually agreed upon by the parties in an account in the joint names of the Proprietor and the Builder, and the proportion of such monies payable to the Builder shall be paid to him out of the said account by instalments under certificates of the Architect, and the Builder shall not be entitled to any payment in respect of the rebuilding or repair of the Works or the replacement or repair of the materials or goods destroyed or damaged other than the monies received under the said policies exclusive of the sum provided for Architects, Engineers, Quantity Surveyors and Consultants' Fees which shall be payable to those persons.

~~*[B] The existing structures and the Works and unfixed materials (except plant, tools and equipment) shall be at the sole risk of the Proprietor as regards loss and damage by fire and/or explosion and/or earthquake and/or lightning and/or civil commotion and the Proprietor shall maintain a proper policy of insurance against such risks, which policy and the receipt for the last paid premium for its renewal he shall upon request produce for inspection by the Builder and, if any loss or damage affecting the Works is so occasioned by fire and/or explosion and/or earthquake and/or lightning and/or civil commotion, the Proprietor shall pay to the Builder the full value of all work and materials then executed and delivered calculated as provided in clause 9 of these Conditions, and this contract as to subsequent work may at the option of either party be determined by notice by registered post from either party to the other, provided that on receipt of such a notice the other party may himself give notice in pursuance of clause 26 of these Conditions that a dispute or difference has arisen on the question whether such determination will be just and equitable.~~

~~If the Proprietor shall have failed upon request to produce any receipt showing the policy to be effective the Builder shall be entitled to insure the said structures and Works against the said risks and upon production of the receipts for any premiums to add their amount to the Contract Sum.~~

**Footnote.—In clause 15 sub-paragraph [A] applies to a new building and sub-paragraph [B] to an existing building to be altered or extended: therefore strike out sub-paragraph [A] or [B] as the case may require. Where [B] applies it is prudent that the insurance effected include the requisite amount to cover Architect's and Quantity Surveyor's fees, if any.*

Date for Possession and Completion.

16. On or before the Date for Possession stated in the Appendix to these Conditions complete possession of the site and/or premises shall be given to the Builder who shall thereupon begin the Works forthwith and regularly and diligently proceed with the same and shall complete the same on or before the Date for Completion stated in the said Appendix subject nevertheless to the provisions for extension of time contained in clause 18 of these Conditions.

Damages for non-completion.

17. If the Builder fails to complete the Works by the date stated in the Appendix to these Conditions or within any extended time fixed under clause 18 of these Conditions and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, the Builder shall pay or allow to the Proprietor such sum (calculated at the rate stated in the Appendix by way of Liquidated and Ascertained Damages for the period during which the said Works shall so remain or have remained incomplete) as in the opinion of the Architect, subject to arbitration in accordance with clause 26 hereof, is proper to be paid or allowed, and the Architect shall be entitled, in issuing any certificate under the provisions of clause 25 hereof, to deduct such sum from the amount otherwise payable under such certificate.

In the event of no further monies being payable to the Builder or in the event of such sum as aforesaid exceeding the amount remaining payable to the Builder, the Proprietor shall be entitled to recover the same, or any such excess, as a debt due by the Builder to the Proprietor.

Delay and extension of time.

18. If the works be delayed by any of the following causes:

- (i) On account of Architect's Instructions or variations;
- (ii) In consequence of any notice reasonably given by the Builder in pursuance of clause 3 (b) of these Conditions;
- (iii) By weather sufficiently inclement to prevent the Builder proceeding with the Works;
- (iv) By reason of such loss or damage by fire and/or explosion and/or earthquake and/or lightning and/or civil commotion as is referred to in clause 15 of these Conditions;
- (v) In consequence of proceedings being taken, or threatened by, or disputes with adjoining or neighbouring owners;
- (vi) By the delays (not being delays caused by any act or default of the Builder) of any persons engaged or nominated by the Proprietor or the Architect in pursuance of clause 23 hereof;
- (vii) By the Builder not having received in due time necessary instructions or details from the Architect for which he shall have specifically applied in writing;
- (viii) By delay on the part of nominated Suppliers which the Builder has in the opinion of the Architect taken all practicable steps to avoid or reduce;
- (ix) By reason of civil commotion, any combination of workmen or strikes or lockouts affecting any of the trades employed upon the Works;
- (x) On account of the delay of any local and/or other authority in giving any necessary approval PROVIDED THAT the Builder has in the opinion of the Architect taken all practicable steps to obtain such approval;
- (xi) By any other matter, cause or thing beyond the control of the Builder;

then in any such case the Architect shall in writing make a fair and reasonable extension of time for completion of the Works either when the delay occurs or subsequently. Upon the happening of any event causing such delay the Builder shall immediately give notice thereof in writing to the Architect, but he shall nevertheless use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the Works.

19. (a) *Default.* If the Builder shall make default in any of the following respects, viz.

- (1) If without reasonable cause he wholly suspends the Works before completion.
- (2) If he fails to proceed with the Works with reasonable diligence or in a competent manner.
- (3) If he refuses or persistently neglects to comply with notices in writing from the Architect requiring him to remove defective work or improper materials and by such refusal or neglect the Works are materially affected,

and if he shall continue such default for fourteen days after a notice by registered post specifying the default has been given to him by the Architect, the Proprietor may, without prejudice to any other rights or remedies, thereupon by notice by registered post determine the employment of the Builder under this contract; provided that notice in pursuance of this clause shall not be given unreasonably or vexatiously and shall be void if the Proprietor is at the time of the notice in breach of this contract.

(b) *Bankruptcy of Builder.* If the Builder commits an act of bankruptcy or executes a Deed of Assignment or Deed of Arrangement or enters into a composition or other arrangement with his creditors or being a company enters into liquidation whether compulsory or voluntary the Proprietor may, without prejudice to any other rights or remedies, by notice by registered post determine the employment of the Builder under this contract.

(c) In either of the cases for which the two preceding sub-clauses provide the following shall be the respective rights and duties of the Proprietor and Builder, viz.:

- (1) The Proprietor may employ and pay another builder or other person or persons to carry out and complete the Works and he or they may enter upon the site and use all temporary buildings, plant, machinery, appliances, goods and materials thereon, and may purchase all materials necessary for the carrying out and completion of the Works.
- (2) The Builder shall, if so required by the Proprietor or Architect, assign to the Proprietor without further payment the benefit of any agreement for the supply of materials and/or for the execution of any works for the purposes of this contract and the Proprietor shall pay for any such materials or works supplied or executed under such agreement after the said determination the price fixed by such agreement in so far as it has not been already paid by the Builder.
- (3) The Builder shall during the execution or after the completion of the Works under this clause remove from the site as and when required, within such reasonable time as the Architect may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Proprietor may (without being responsible for any loss or damage) remove and sell any such property of the Builder, holding the proceeds less all costs incurred to the credit of the Builder.
- (4) Until after completion of the Works under this clause the Proprietor shall not be bound by any other provision of this contract to make any payment to the Builder but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefor the Architect shall certify the amount of expenses properly incurred by the Proprietor and, if such amount added to the monies paid to the Builder before such determination exceeds the total amount which would have been payable on due completion in accordance with this contract, the difference shall be a debt payable to the Proprietor by the Builder; and if the said amount added to the said monies be less than the said total amount, the difference shall be a debt payable by the Proprietor to the Builder.
- (5) The Builder and/or any person nominated from time to time by him and approved by the Architect may have access to the Works at reasonable times to inspect, survey and measure the same.

20. (1) If the Proprietor within the period after the presentation of any certificate of the Architect which is named in the Appendix to these Conditions and thereafter for seven clear days after written notice from the Builder does not pay to the Builder the amount due on that certificate, or if the Proprietor interferes with or obstructs the issue of any such certificate, or if he commits an act of bankruptcy or executes a Deed of Assignment or Deed of Arrangement or enters into a composition or other arrangement with his creditors or being a company enters into liquidation whether compulsory or voluntary or if the whole or substantially the whole of the Works (other than work required under clause 12 of these Conditions) is delayed for six weeks by one or more of the causes which are named in sub-clauses (v), (vi) and (vii) of clause 18 of these Conditions, the Builder may, without prejudice to any other rights or remedies, thereupon by notice by registered post to the Proprietor or Architect determine the employment of the Builder under this contract.

(2) If the Architect shall refuse or neglect to issue any certificate during the progress of the Works for a period of ten days after the same shall have become due and shall have been requested in writing by the Builder, the Builder shall be entitled to interest on the sum to which he has become entitled at the percentage rate per annum stated in the Appendix from the date upon which the certificate should have been issued and may give the Proprietor notice in writing that if the said certificate be not issued within forty-eight hours after the giving of such notice he will suspend operations of the said Works, and if he does give such notice he must at the same time deliver a copy thereof to the Architect. If the Architect shall not issue the certificate within the said forty-eight hours the Builder may suspend such operations, in which case he shall give the Proprietor immediate notice in writing that the Works are so suspended and that if the certificate be not issued within thirty days after such notice has been given the employment of the Builder under this contract will be determined. If the certificate be not issued within such thirty days the Builder may, without prejudice to any other rights or remedies, thereupon by notice by registered post to the Proprietor or Architect determine the employment of the Builder under this contract.

(3) Upon such determination by the Builder under either (1) or (2) hereof, then without prejudice to the accrued rights or remedies of either party or to any liability of the classes mentioned in clause 14 of these Conditions which may accrue either before the Builder or any sub-contractor shall have removed his or their temporary buildings, plant, machinery, appliances, goods or materials or by reason of his or their so removing the same, the respective rights and liabilities of the Builder and the Proprietor shall be as follows, viz.:

(a) The Builder shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury or damage of the classes for which before such determination he was liable under clause 14 of these Conditions remove from the site all his temporary buildings, plant, machinery, appliances, goods and materials and shall give facilities for his sub-contractors to do the same, but subject always to the provisions of sub-clause (b) (iii) of this clause.

(b) The Builder shall be paid by the Proprietor:

- (i) The contract value of the works completed at the date of such determination subject to clause 9 of these Conditions.
- (ii) The value of work begun and executed but not completed at the date of such determination, the value being ascertained *mutatis mutandis* in accordance with clause 9 of these Conditions.
- (iii) The cost of materials or goods properly ordered for the Works for which the Builder shall have paid or of which the Builder is legally bound to accept delivery, and on such payment by the Proprietor any materials or goods so paid for shall become the property of the Proprietor.
- (iv) The reasonable cost of removal under sub-clause (a) of this clause.
- (v) Any loss or damage caused to the Builder owing to such determination.

Provided that in addition to all other remedies the Builder upon such determination may take possession of and shall have a lien upon all unfixed materials intended for the Works which may have become the property of the Proprietor under this Contract until payment of all monies due to the Builder from the Proprietor.

Nominated
Sub-
Contractors.

21. Where prime cost or provisional sums are included in the Specification for persons to be nominated or selected by the Architect to supply and fix materials or to execute work on the site:

(a) Such sums shall be net and shall be expended in favour of such persons as the Architect shall direct.

(b) The sums directed by the Architect to be paid to nominated Sub-Contractors for work, materials or goods comprised in the sub-contract shall be paid by the Builder within 7 days of receiving payment from the Proprietor of any sub-contractor's account included in a certificate from the Architect approving the value of such work, materials or goods less only any retention money which the Builder may be entitled to deduct.

(c) Before any certificate is issued to the Builder he shall, if requested by the Architect, furnish to him reasonable proof that all nominated Sub-Contractor's accounts included in previous certificates have been duly discharged, in default whereof the Proprietor may pay such accounts upon a certificate of the Architect and deduct the amount so paid from any sums otherwise payable to the Builder.

(d) If the Architect desires to secure final payment to any nominated Sub-Contractor before final payment is due to the Builder, and if such Sub-Contractor has satisfactorily indemnified the Builder against any latent defects, then the Architect may in a certificate under clause 25 of these Conditions include an amount to cover the said final payment, and thereupon the Builder shall pay to such Sub-Contractor the amount so certified and the limit of retention money named in clause 25 of these Conditions and/or the Appendix shall be reduced in proportion to the amount so certified and the Builder shall be discharged from all liability for the work or materials covered by such certificate except for any latent defects.

(e) Nothing contained in these Conditions shall render the Proprietor in any way liable to any nominated Sub-Contractor.

(f) Where the Builder in the ordinary course of his business directly carries out works for which provisional sums are included in the Specification the Builder provided he has intimated his desire to do so shall be permitted to tender for the same or any of them without prejudice to the Proprietor's right to reject the lowest or any tender. If the Builder's tender is accepted, he shall not sublet the work without the consent of the Architect.

(g) The Architect shall furnish to the Builder all necessary directions regarding the selection and supply of the work and/or goods comprised in such provisional sums sufficient time to prevent delay being occasioned in the progress of the Works.

(h) In the event of the total amount expended in respect of prime cost or provisional items referred to in this clause exceeding the total amount included in the Specification the excess together with Builder's remuneration of 2½% upon such excess shall be added to the Contract Sum. In the event of the total amount so expended being less than the amount included in the Specification the difference shall be deducted from the Contract Sum.

Nominated
Suppliers.

22. (1) Where prime cost or provisional sums are included in the Specification in respect of any materials or goods to be fixed by the Builder,

(a) Such sums shall be net, and shall include the cost of packing and of carriage and delivery at the Works.

(b) All specialists, merchants, tradesmen or others who have been nominated or selected by the Architect to supply such materials or goods are hereby declared to be suppliers to the Builder and are referred to in these Conditions as "nominated Suppliers." All payments by the Builder for such materials or goods shall be in full and shall be paid within 30 days of the end of the month during which delivery is made.

(c) The Builder shall not be entitled to any trade or other discount, except a discount (not exceeding 2½%) for prompt payment.

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(d) The Architect shall furnish to the Builder all necessary directions regarding the selection and supply of the work and/or goods comprised in such provisional sums in sufficient time to prevent delay being occasioned in the progress of the Works.

(e) In the event of the total amount expended in respect of prime cost or provisional items referred to in this clause exceeding the total amount included in the Specification the excess together with Builder's remuneration of 10% upon such excess and such charges for fixing as the Architect and Builder shall agree upon (or in default of such agreement as shall be determined by arbitration in accordance with clause 26 of these Conditions) shall be added to the Contract Sum. In the event of the total amount so expended being less than the amount included in the Specification the difference shall be deducted from the Contract Sum.

(2) If any specialists merchants tradesmen or others are nominated or selected by the Architect to supply materials or goods to be fixed by the Builder for which no provisional sum is included in the Specification or otherwise disclosed at the time of tendering for the work the subject of this contract such specialists merchants tradesmen or others shall be deemed to be nominated suppliers and the provisions of Section (1) of this clause shall apply save that the Builder shall be entitled to a remuneration of 10% on the final cost of the materials or goods supplied and to such payment for fixing as the Architect and Builder shall agree upon or in default of such agreement as shall be determined by arbitration in accordance with clause 26 of these Conditions.

Artists and tradesmen.

23. The Proprietor, by the Architect, shall have full power to send artists or workmen upon the premises to execute fittings and other works that are not included in the contract, provided that such operations shall be carried on during ordinary working hours, and in such a manner as not to impede the progress of the works included in this contract; but the Builder shall not be responsible for any damage that may happen to any such fittings or other works by reason of any act or default of such artists or workmen. No such person shall be employed upon the Works against whom the Builder shall make what the Architect considers reasonable objections. Every such person shall for the purposes of clause 14 of these Conditions be deemed to be a person for whom the Proprietor is responsible and not to be a sub-contractor.

The fittings and works referred to in this clause shall be limited to those of a special character not usually undertaken by the Builder.

Notice of Practical Completion.

24. When in the opinion of the Builder the Works are practically completed, the Builder shall give to the Architect notice thereof in writing. In the event of the Builder failing to give notice as abovementioned the Architect may issue a notice to the Builder and the Proprietor stating the date on which the works were practically completed and the Defects Liability Clause shall commence as from such date.

If, upon receipt of such notice, the Architect is satisfied that the Works are practically completed he shall within seven days (unless otherwise stated in the Appendix) issue both to the Builder and to the Proprietor a notice stating the date upon which the Works were practically completed as aforesaid and the Defects Liability Period referred to in clause 12 of these Conditions shall commence as from such date. Such notice shall also be evidence of completion within the meaning of clauses 16 and 17 hereof.

If upon receipt of such notice the Architect is not satisfied that the works are practically completed he shall within seven days (unless otherwise stated in the appendix) give to the Builder notice in writing of the matters and things required to be done for practical completion and the Builder shall comply therewith and give notice in writing to the Architect that he has so complied. The Architect shall within fourteen days of receipt of such notice give to the Builder and the Proprietor Notice of Practical Completion provided the Builder has so complied to the Architect's reasonable satisfaction. Should the Architect not be so satisfied he shall give a further notice in writing to the Builder of the matters and things still remaining to be done for practical completion and the provisions of the Sub-clause shall apply to such further notice or to such subsequent notices as may be necessary as though it were the notice firstly hereinbefore mentioned.

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In the event of failure by the Architect to comply with the provisions of this clause, the Works shall be deemed to have been practically completed.

Progress
and Final
Certificates
and Payments.

25. (a) When the value, as computed by the Architect, of the work executed and of the materials and goods delivered upon the site for use in the Works and not included in any former certificates shall from time to time amount to the sum named in the Appendix to these Conditions or to less at the Architect's reasonable discretion, the Builder shall subject to clause 21 (c) of these Conditions be entitled to receive within seven days of his written application for the same a certificate from the Architect stating the amount due to the Builder from the Proprietor, and shall on presenting any such certificate to the Proprietor be entitled to payment therefor within the period named in the Appendix. The Builder shall furnish a detailed statement of the amount claimed.

(b) The amount so due shall, subject to clause 21 (c) of these Conditions, be the total value of the work properly executed and of the materials and goods delivered upon the site for use in the Works up to and including a date not more than seven days before the date of the said certificate, less the amount to be retained by the Proprietor (as hereinafter provided) and less any instalments previously paid under this clause. Provided that such certificate shall only include the value of the said materials and goods as and from such time as they are reasonably, properly and not prematurely brought upon the site and then only if adequately stored and/or protected against weather or accident.

(c) The amount which may be so retained by the Proprietor shall be the percentage of the value of the work and materials aforesaid which is named in the Appendix as Percentage of Certified Value Retained and up to the amount there named as Limit of Retention Fund PROVIDED THAT where the limit named in the Appendix or the limit reduced in pursuance of clause 21 of these Conditions, as the case may be, has been reached, the full value of the work and materials shall be certified by the Architect.

(d) * (A) In the event of the amount to be retained in virtue of this clause exceeding £1000 such amount shall constitute a fund called the "Retention Fund" which shall be dealt with as may be agreed and in default of agreement in the following manner:

The amounts retained to constitute the Retention Fund shall forthwith as they are so retained be paid into the Bank named in the Appendix, and shall be placed in an account in the joint names of the Proprietor and Builder, on deposit at interest, and the principal and interest shall be held upon trust for the Proprietor as security for the due completion of the Works, until these are practically completed.

On practical completion of the Works the Builder shall subject to clause 17 of these Conditions be entitled to a certificate for one-half of the Fund, in addition to any other amounts certified by the Architect, including interest accrued to date, the other half in the said joint names being held upon trust for the purpose aforesaid until the issue of the Architect's final certificate whereupon the said half and further interest thereon shall subject to sub-clause (g) hereof be paid to the Builder. Provided that if the Proprietor shall commit an act of bankruptcy or being a company shall enter into liquidation whether compulsory or voluntary or shall repudiate this Contract or the Builder shall determine his employment thereunder, the said Retention Fund in the said joint names (including interest) shall be held upon trust for and the same shall be forthwith paid to the Builder by the Proprietor or other person legally entitled to deal with the same.

* (B) The amounts retained in virtue of this clause shall be dealt with in the following manner:

On practical completion of the Works the Builder shall subject to clause 17 of these Conditions be entitled to a certificate for one-half of the total amounts so retained, in addition to any other amounts certified by the Architect, and the other half shall be (subject to sub-clause (g) hereof) paid to the Builder upon the issue of the Architect's final certificate.

* FOOTNOTE. — In clause 25 (d) strike out (A) or (B) as the case may require.

(e) Upon expiration of the Defects Liability Period stated in the Appendix to these Conditions or upon completion of making good defects under clause 12 of these Conditions, whichever is the later, the Architect shall issue a final certificate of the value of the Works executed by the Builder and such final certificate save in cases of fraud, dishonesty or fraudulent concealment relating to the Works or materials or to any matter dealt with in the certificate and save as regards all defects and insufficiencies in the Works or materials which a reasonable examination would not have disclosed, shall be conclusive evidence as to the sufficiency of the said Works and materials.

(f) Save as aforesaid no certificate of the Architect shall of itself be conclusive evidence that any works or materials to which it relates are in accordance with this contract.

(g) Notwithstanding anything expressed or implied to the contrary in these Conditions the Builder shall not be entitled to receive the final certificate unless and until he has delivered to the Architect if requested to do so a statement in writing signed by the Builder that no wages are due and owing by the Builder in respect of the Works.

(h) If the Proprietor shall refuse or neglect to pay the amount of any certificate given by the Architect under this clause for a period of ten days after the same shall have been presented to him by the Builder, the Builder shall be entitled to interest on the sum to which he has become entitled, at the percentage rate per annum stated in the Appendix from the date of such certificate until the date of payment.

Arbitration.

26. Subject to the provisions of clause 27 hereof in case any dispute or difference shall arise between the Proprietor, or the Architect on his behalf, and the Builder, either during the progress of the Works or after the determination, abandonment or breach of the contract, as to the construction of the contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including but not limited to any matter or thing left by this Contract to the decision, discretion, ascertainment or valuation of the Architect or the withholding by the Architect of any certificate to which the Builder may claim to be entitled, or the proper amount of any certificate whether issued or withheld, or the measurement and valuation mentioned in clause 9 of these Conditions, or the rights and liabilities of the parties under clauses 19 or 20 of these Conditions) then either party shall give to the other notice in writing of such dispute or difference and at the expiration of seven days unless it shall have been otherwise settled such dispute or difference shall be and is hereby submitted to arbitration in one of the following manners:

(a) If the dispute or difference shall arise under clause 3 of the Articles of Agreement or under clause 8 of these Conditions or if the amount claimed, involved, or in dispute shall exceed £1,500, it shall be submitted to the arbitration of

The President
.....
of *the R.V.I.A.*
.....

or in the event of his death or unwillingness to act to.....

of *his nominee*
.....

being members of the Royal Australian Institute of Architects, and to.....

of.....

or in the event of his death or unwillingness to act to.....

the President

of *the M B A*

being members of a Master Builders' Association, or to an Umpire to be appointed by the Arbitrators before entering on the reference, who, if the said Arbitrators shall fail to agree or to make an award within three months of the submission to them of the dispute or difference, shall enter on the reference in lieu of them.

(b) If the amount claimed, involved, or in dispute shall not exceed £1,500 or if notwithstanding that it exceeds £1,500 the parties shall agree the dispute or

difference shall be submitted to the arbitration of.....

of *the president of the R. A. I. A.*

or in the event of his death or unwillingness to act to.....

of

being a member of the Royal Australian Institute of Architects or of a Master Builders' Association.

The award made by the said Arbitrator, Arbitrators or Umpire, as the case may be, shall be final and binding on both Builder and Proprietor, and neither party shall be entitled to commence or maintain any action upon any such dispute or difference until such matter shall have been referred or determined as hereinbefore provided, and then only for the amount of relief to which the Arbitrator, Arbitrators or Umpire by his or their award finds either party is entitled, and the costs of the submission, reference and award shall be in the discretion of the said Arbitrator, Arbitrators or Umpire, as the case may be.

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In serving notice of dispute or difference and demand for arbitration, the party serving such notice shall provide evidence that he has deposited with the Secretary of a Chapter of the Royal Australian Institute of Architects or the Secretary of a Master Builders' Association such sum not exceeding £100 as is stated in the Appendix by way of security for costs of the arbitration proceedings. Such security shall be applied in accordance with the direction from time to time of the Arbitrator, Arbitrators or Umpire, as the case may be, or in accordance with the consent of both parties to this contract.

Quality of work
or material.

27. Any question regarding the quality of any work executed or material supplied by the Builder shall be left to the sole discretion of the Architect PROVIDED that in any case where the Architect shall object that the quality of any work or materials supplied by the Builder is not in accordance with this contract and shall in writing require the removal and/or re-execution of any such materials or work or the amending and making good of any alleged defects the Builder shall be bound to carry out any such requirement but shall nevertheless be entitled, provided that prior to carrying out any such requirements he shall give to the Architect written notice of intention so to do, to refer to arbitration under the provisions of clause 26 hereof the question whether he shall be allowed payment for such removal, re-execution, amendment or making good, as for variation under this contract.

Notices.

28. Any notice necessary or required to be given hereunder shall be deemed to be sufficiently given if sent by pre-paid post addressed to the person to whom it is necessary or required to be given at the address appearing in the Articles of Agreement.

APPENDIX

	<i>Clause</i>
Defects Liability Period (if none other stated is 6 months from the practical completion of the Works).	12 and 25 (e) <i>three months</i>
Insurance re Injury to Persons and Property.	
Injury to Persons	14 £
Injury to Employees at Common Law.	£
Injury to Property	£
Percentage to be added to full value to be covered by Insurance for Architects, Engineers, Quantity Surveyors and Consultants Fees. (If not otherwise stated — 8½%).	15A <i>Nil</i>
Date for Possession	16 <i>April 6 1958</i>
Date for Completion	16 <i>August 30 1958</i>
Liquidated and Ascertained Damages	17 at the rate of £ _____ per _____
Period for Payment of Certificates	20 (1) and 25 (a) <i>fourteen</i> days
Period for issuing Notice of Practical Completion	24 (a) <i>fourteen</i> days
Value of Works for Progress Certificates	25 (a) £ <i>500</i> _____
Percentage of Certified Value Retained (if not otherwise stated not to exceed 10 per cent.)	25 (c) <i>ten</i> %
Limit of Retention Fund (half of which is to be released in accordance with clause 25 (d))	25 (c) £ <i>400</i> _____
Name and Branch of Bank	25 (d) (A) _____
Rate of Interest	20 (2) and 25 (h) _____ % per annum
Arbitration Security Sum	26 £ <i>25</i> _____

The Appendix should either be completely filled in and all additions initialled or if any items are deleted or left blank they should also be initialled.

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