

**BUILDING AGREEMENT**  
**2001 Edition**



***Law Society of Ireland***



Issued jointly by and © Law Society of Ireland  
and Construction Industry Federation.

Dated the                      day of                      20

.....  
("EMPLOYER")

with

.....  
("CONTRACTOR").

Site No. ....

.....Estate

.....  
Solicitors.....

.....



**BUILDING AGREEMENT**  
**2001 Edition**

**THIS AGREEMENT** made the                      day of                      **Two**  
**Thousand and**                      **Between**

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

of  
(hereinafter called "the Contractor") of the other part.

**WHEREAS:**

**A. In this Agreement:**

- (i) "The Contract Price" shall mean the sum of €                      (to include V.A.T.) being the price of the works (as hereinafter defined).
- (ii) "The Closing Day" shall be the day 14 days after the Completion Date as hereinafter defined.
- (iii) "The Completion Date" shall be the earlier of
  - (a) the date upon which the Employer shall agree in writing that the Works have been completed, or,
  - (b) the date upon which the Employer shall receive from the Contractor a notice in writing that the Works have been completed.
- (iv) "The Plans" shall mean the lay-out plan, drawings and specifications for the Works agreed by or on behalf of the parties and a copy of which has been furnished by the Contractor to the Employer on or before the date hereof.
- (v) "The Site" shall mean that piece or plot of ground situate at  
  
in the County of                      and indicated as Site No.                      on  
the Estate Lay-out Plan.
- (vi) "The Works" shall mean the dwellinghouse and premises specified in the Plans together with such necessary ancillary works and services as may be necessary to render the dwellinghouse and premises reasonably habitable when completed.

- B. The Employer is desirous of constructing a dwellinghouse on the site in accordance with the Plans.**
- C. The Contractor has agreed to execute and carry out the Works in accordance with the Plans for the Contract Price.**

## NOW IT IS HEREBY AGREED AS FOLLOWS

### COVENANT TO BUILD

1. The Contractor will for the Contract Price build and completely finish in a good substantial workmanlike manner and deliver to the Employer the works on the Site in accordance with the Plans and subject to the conditions annexed hereto numbered 1 to 17.

### COMPLETION PERIOD

2. The Contractor shall complete the Works and make same fit for habitation and use (vacating the Site and clearing away all scaffolding, unused materials and rubbish therefrom) within \_\_\_\_\_ calendar months from the date hereof.

### METHOD OF PAYMENT

3. The Contract Price shall be paid by the Employer to the Contractor in the manner following:

On the signing hereof: €

Stage Payments  
(if any)

On the Closing Day the balance of the Contract Price

Defects Period

4. If the Contractor is not registered under the National House Building Guarantee Scheme, the period referred to in Condition 8(b)(i) hereof shall be the period of – – calendar months after the Completion Date or the date of payment of the balance of the Contract Price whichever is the earlier.

Agreement  
subject to loan

5. This Agreement shall be subject to the Employer obtaining approval for loan of €  
from  
on the security of the Works PROVIDED ALWAYS that if this loan has not been approved in writing on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ either party shall be entitled to rescind this Agreement and in the event of this Agreement being rescinded on foot of this Clause, the Employer shall be refunded his deposit but without interest, costs or compensation upon returning to the Contractor's Solicitors all documents furnished to the Employer.

6. The said conditions and Plans shall be read and construed as forming part of this Agreement.

**IN WITNESS** whereof the parties have hereunto set their hands the day and year first herein  
**WRITTEN**

**SIGNED by the Employer in the presence of:-** )  
)  
)  
)  
)  
)

**SIGNED by/on behalf of the Contractor** )  
**in the presence of:-** )  
)  
)  
)  
)

## THE CONDITIONS HEREINBEFORE REFERRED TO

1. The Contractor shall be entitled to possession of the Site for the purpose only of performing this Agreement and the Contractor shall commence and actively carry out and complete the Works and make same fit for habitation and use (vacating the Site and clearing away all scaffolding, unused materials and rubbish therefrom) within the time specified in Clause 2 of this Agreement and shall leave the whole of the Works and the Site in a clean and proper state PROVIDED that the completion period shall be extended for a reasonable time if the Contractor is delayed in performing this Agreement by any cause which is not reasonably within his control or by the interference of the Employer or the default of the Employer in paying any monies payable to the Contractor under this Agreement after notice requiring payment shall have been given by the Contractor.

Possession  
of Site

2. (a) The materials and workmanship shall be of the respective kinds described in the Plans and where not so described shall be of reasonable quality.

Materials &  
Workmanship

- (b) If the Contractor shall be unable to procure or produce any materials, fittings or appliances when required for the Works, the Contractor shall be entitled to use other materials, fittings and appliances of a similar nature and cost PROVIDED ALWAYS that the Contractor may use a material, fitting or appliance which is more expensive than that provided for in the Plans without extra cost to the Employer but if the only other material, fitting or appliance reasonably available is less expensive than the kind described in the Plans an appropriate allowance in respect thereof shall be made to the Employer.

Non availability  
of Materials

- (c) No minor deviation from or minor variation of the Plans shall vitiate this Agreement.

Minor Changes

- (d) If the Employer and the Contractor shall agree that any additional or alternative work shall be done, the Contractor shall carry out the same in a good substantial workmanlike manner and the Employer shall if the Contractor so requires pay for the work before execution.

Extras &  
Variations

- (e) Whenever the Employer is required to notify the Contractor of the Employer's instructions upon or choice of any materials, fittings, appliances or finishes in the carrying out of the Works and the Employer fails so to notify the Contractor within a period of fourteen days after written request by the Contractor for such instructions or choice then the Contractor may take any necessary decisions as to such materials, fittings, appliances or finishes and shall be entitled to recover from the Employer any loss suffered as a result of the Employer's delay.

Employer's  
choice of  
Materials

3. The Contractor shall at his own expense conform to the provisions of any statute, bye-law or regulation applicable for the time being and affecting the Works and the Site and shall give all necessary notices to and obtain all necessary sanctions of the Local, Planning or any other Authority in respect of the Works and shall keep the Employer indemnified against all fines, penalties, expenses and loss incurred by reason of any breach of any statute, bye-law or regulation or the failure to give any such notice or the failure to obtain any such sanction.

Local & other  
Authorities'  
requirements

4. (a) Should the Employer fail to pay to the Contractor the Contract Price (other than the balance due on The Closing Day) in the manner specified or any part thereof within 10 days after notice thereof shall have been given, interest shall be payable thereon from the date of such notice until the date of payment at a rate of 4% per annum above the Single A Bank over-draft rate charged from time to time during such period by the Irish Clearing Banks to borrowers.

- (b) Should the Employer fail to pay to the Contractor within the time specified in such notice the Contract Price (other than the balance due on The Closing Day) in the manner specified, the Contractor after 7 days notice to the Employer may suspend the carrying out of the Works until payment shall have been made with interest in accordance with sub-clause (a) of this Condition.

Whenever the carrying out of the Works is so suspended the time for completion shall be extended by two days for each day of such suspension. A suspension under this sub-clause shall not prejudice the right of the Contractor to elect to treat the non-payment of such a sum as a repudiation of the Agreement under sub-clause (d) of this Condition.

- (c) Should the Employer fail to pay to the Contractor on or before The Closing Day, the balance of the Contract Price due on The Closing Day, interest shall be payable thereon from The Closing Day until the date of payment at a rate of 4% per annum above the Single A Bank Overdraft Rate charged from time to time during such period by the Irish Clearing Banks to borrowers.
- (d) Should the Employer fail to pay to the Contractor the Contract Price in the manner specified in Clause 3 of the Contract, the Contractor may give written notice to the Employer of such non-payment and should the Employer fail to pay any such amount within a period of 14 days from the service of such notice, such a failure shall at the election of the Contractor be deemed to be a repudiation of this Agreement. Any such election by the Contractor shall be made by notice in writing to the Employer whereupon the Contractor shall be entitled to recover from the Employer damages for any losses suffered by the Contractor by reason of such failure to pay, including interest on monies properly due at the rate of interest mentioned in sub-clause (a) of this Condition.
- (e) The Employer shall not be entitled to occupy the Works or the Site until all monies due on foot of this Agreement shall have been paid to the Contractor.

5. If the Contractor should be adjudged bankrupt or, being a company enter into liquidation (other than for the purpose of reconstruction or amalgamation) or if a receiver shall be appointed or if the Contractor shall enter into an arrangement with or for the benefit of his creditors or become unable or refuse or neglect to carry out and complete the Works, the Employer may determine this Agreement by notice in writing to the Contractor or his assignee or liquidator or receiver. On the delivery of such notice the Contractor shall be entitled to payment only for work actually done by him or materials brought to and left on the Site in pursuance of this Agreement PROVIDED ALWAYS that if the Employer shall be obliged to expend a greater amount to complete the Works than is payable on foot of this Agreement, he shall be entitled to recover from the Contractor or to deduct from any balance due to the Contractor any reasonable amount so expended by the Employer.

Insolvency of  
Contractor

6. (a) The Contract Price shall be adjusted by the amount of any increase or decrease in the cost to the Contractor of performing this Agreement due to increases or decreases after the date of this Agreement in the cost of labour, materials, fuel, provision of plant or other expenses.
- (b) The Contract Price shall be adjusted by the amount of any increase or decrease in the cost to the Contractor of performing this Agreement due to any alteration after the date of this Agreement in the rate of V.A.T.
- (c) The Contractor shall give the Employer written notice of any change in the Contract Price as soon as is reasonably possible.

Price Variation

7. (a) The Contractor shall be liable for and shall indemnify the Employer in respect of all losses, claims, demands, actions or proceedings whatsoever arising under any statute or at common law in respect of:-
- (i) personal injury to or the death of any person arising out of or in the course of or caused directly or indirectly by ownership or occupation of the Site or by the execution of the Works or any part thereof, unless such injury or death shall be due to any act or neglect on the part of the Employer, his servants, agents, licensees or invitees;
  - (ii) any injury or damage of whatsoever kind to any property real or personal arising out of or in the course of or caused directly or indirectly by ownership or occupation of the Site or by the execution of the Works or any part thereof, unless the same shall be due to any act or neglect on the part of the Employer, his servants, agents, licensees or invitees.
- (b) Without prejudice to the Contractor's liability to indemnify the Employer under sub-clause (a) of this Condition, the Contractor shall effect such policies of insurance (if any) as may be reasonably appropriate but which shall in any case include Employer's Liability and Public Liability.

8. (a) If the Contractor is registered under the National House Building Guarantee Scheme and is entering into a collateral agreement for the furnishing of a Guarantee under that Scheme for the Works the Contractor HEREBY AGREES with the Employer that he shall without payment:-

- (i) make good any major defects which arise within a period of eighteen months after the Completion Date or the date of payment of the balance of the Contract Price, whichever is the earlier;
- (ii) make good any minor defects which arise within a period of six months after the same date

PROVIDED that the Contractor shall not be liable for the defects or losses specified in sub-clause (d) of this Condition.

- (b) If the Contractor is not registered under the National House Building Guarantee Scheme and a Guarantee under that Scheme for the Works is not being furnished to the Employer, the Contractor hereby agrees with the Employer that he shall without payment:

- (i) make good any major defects which arise in the period specified in Clause 4 of this Agreement;
- (ii) make good any minor defects which arise within a period of six months after the Completion Date or the date of payment of the balance of the Contract Price, whichever is the earlier

PROVIDED that the Contractor shall not be liable for the defects or losses specified in sub-clause (d) of this Condition.

- (c) It shall be a condition precedent to the operation of sub-clauses (a) and (b) of this Condition that the Employer shall furnish to the Contractor particulars in writing of such alleged defects before the expiration of the relevant periods.
- (d) The following defects and/or losses shall be excluded from the Contractor's liability pursuant to sub-clauses (a) and (b) of this Condition:-



- (i) hair cracks in plaster work;
- (ii) defects or damage in paint work or decoration;
- (iii) normal shrinkage or expansion of timber;
- (iv) defects in plaster work or damage occurring in the Works by reason of the operation of any central heating system;
- (v) damage or defects caused by negligence or abuse on the part of the Employer, his servants, agents, licensees or invitees;
- (vi) damage or defects caused by fair wear and tear;
- (vii) items covered by a separate guarantee issued to the Employer by any manufacturer;
- (viii) consequential loss arising as a result of any defect or the remedying thereof.

(e) Nothing in this Agreement or in any collateral or ancillary document shall deprive the Employer of his rights at Common Law which are hereby confirmed. Provided always and it is acknowledged by both parties hereto that such rights at Common Law do not conflict with the rights of parties to determine any dispute by arbitration as provided for by Clause 11 hereof.

9.

Assignment

(a) The Contractor or the Employer shall not without the prior written consent of the other assign this Agreement or any part thereof.

Sub-Contract

(b) The Contractor shall not be entitled to sub-contract the execution of the entire of the Works to any third party without the prior written consent of the Employer.

10.

Services

(a) Subject to the Employer complying with the requirements of all appropriate Authorities, the Contractor shall at his own expense make all arrangements for the supply to the Works of water and electricity and for the drainage therefrom of foul sewage and waste water.

(b) The Contractor shall at his own expense ensure that the sewers, water mains, roads, pavements and public lighting servicing or giving access to the Works shall be provided and laid as soon as practicable to a standard acceptable to the appropriate Local Authority and shall at the like expense ensure that same be maintained to such a standard until adopted and taken over by such Local Authority. The Employer shall not be entitled to delay his performance of this Agreement until the services mentioned in this sub-clause have been completed or taken in charge. The Contractor undertakes to have the said services taken in charge by the Local Authority as soon as possible.

Arbitration

11.

Any dispute between the parties hereto shall be referred to arbitration by an Arbitrator who shall in default of agreement between the parties be appointed on the application of either party by either the President of the Law Society of Ireland or the President of the Construction Industry Federation such arbitrator to be appointed from a list of arbitrators approved jointly by the President of the Law Society of Ireland and the President of the Construction Industry Federation or in the event of either of such persons being unable or unwilling to act by the next senior officer of the respective institutions.

Completion date

12. (a) The Contractor shall fix the Completion Date by giving notice in writing to the Employer of the completion of the Works unless the Employer shall previously have notified the Contractor in writing of his agreement that the Works have been completed.

Ruling by  
"Expert" on  
Minor Defects

- (b) Should the Employer consider that by reason of any defects or omissions (hereinafter called "defects") the Works have not been properly completed he shall within seven days of the receipt of such notice from the Contractor notify the Contractor in writing of such alleged defects. If the defects are either agreed between the parties or determined by the expert as provided in sub-clause (d) of this Condition to be of a minor nature and if the Contractor undertakes in writing that he will remedy such defects within a reasonable time, then the Employer shall not be entitled to seek any postponement of the Closing Day nor any abatement of the Contract Price.
- (c) If the defects are agreed between the parties or determined by the expert as provided in sub-clause (d) of this Condition to be of a major nature the Contractor shall not be entitled to rely upon the notice already served by him of the completion of the Works but shall be obliged to fix a new Completion Date by serving another notice in writing of the completion of the Works when the defects have been remedied.
- (d) In the event of a dispute between the parties as to the existence of such defects or as to whether they are of a minor nature any such dispute shall be referred to an expert for determination who shall in default of agreement between the parties be appointed on the application of either party by either the President of the Law Society of Ireland or the President of the Construction Industry Federation, such expert to be appointed from a list of experts approved jointly by the President of the Law Society of Ireland and the President of the Construction Industry Federation or in the event of either of such persons being unable or unwilling to act by the next senior officer of the respective institutions. The decision of the expert shall be final and binding on both parties and he shall have power to award the costs of determination against either party.
- (e) An expert appointed in accordance with sub-clause (d) of this Condition shall have no jurisdiction to consider any other matters in dispute between the parties which other matters shall be referred to arbitration under Condition 11 hereof.

Legal Costs

13. Subject to the provisions of Conditions 11 and 12 hereof each party will pay his own legal costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

Notices

14. (a) Any notice to be given hereunder shall be in writing and may be given:-
- (i) by handing it to the party to be served or his Solicitor and when so handed shall be deemed to have been delivered; or
- (ii) by sending it by pre-paid post
- (A) to the party to be served at his address herein set out or such other address as such party shall have previously communicated in writing to the other of them,  
or
- (B) to his Solicitor at his office address

and any such notice sent by post shall be deemed to have been

delivered at the expiration of three days from the date of posting; or

(iii) by delivering it by hand

(A) to the address of the party to be served at the address herein setout or such other address as such party shall have previously communicated in writing to the other of them, or

(B) to the office address of the Solicitor for the party to be served

and any such notice shall be deemed to have been delivered at the expiration of one day from the date of delivery; or

(iv) by sending it by way of fax machine to the Solicitor for the party to be served and any such notice shall be deemed to have been delivered at the expiration of one day from the date it is sent.

(b) Where the last day for taking any step on foot of this Agreement would, but for this provision, be a day other than a Working Day, such last day shall instead be the next following Working Day provided that for the purpose of this Agreement the expression "Working Day" shall not be deemed to include (i) any Saturday, Sunday, Bank or Public Holiday nor (ii) any of the seven days immediately succeeding Christmas Day nor (iii) any day on which the registers or records wherein it shall be appropriate to make searches referable to this Agreement shall not be available to the public nor (iv) any day which shall be recognised by the solicitors' profession at large as being a day on which their offices are not open for business.

(c) Any notice given to the Employer's Solicitor in any of the methods set out in sub-clause (a) of this Condition shall be deemed for the purposes of this Agreement to have been given to the Employer.

(d) Consequential loss within the meaning of Condition 8 (d)(viii) herein shall include without prejudice to the generality of the expression any cost or expense in respect of the alternative accommodation, transport or storage of furniture, loss of wages, salaries, earnings or benefits or damages for temporary inconvenience.

15. In this Agreement the singular includes the plural and where two or more persons together constitute a party hereto the agreements by them herein contained shall be deemed to be joint and several by such persons.

Singular  
includes Plural

16. In this Agreement the masculine includes the feminine and neuter genders.

Masculine  
includes  
Feminine &  
Neuter

17. The marginal notes to this Agreement are for assistance only and shall not form part of the terms of the Agreement.

Exclusion of  
Marginal Notes



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