

CONTRACT TERMS AND CONDITIONS

The contractor undertakes for the stipulated consideration to supply and install a Patio - "The Works" - on the construction site in a good, substantial, workmanlike manner in accordance with approved plans, specifications, and contractual terms as stated below.

Clause Number:

- OUR MAIN OBLIGATIONS:** The Contractor undertakes on a contractual basis to build and complete for the Client the patio(s) as described on the reverse of this document on the Contract listed in 'The Works' in accordance with the terms and conditions of this Contract, inclusive of all Standard Specifications and agreed documents between the parties for the Contract Price. Where there is a difference or inconsistency between the Contract Documents, the structure will be constructed in the following order of precedence: any special conditions, Contract to Build, Standard Specifications, Quotation drawing. Whilst every effort is made to ensure that accurate pricing and descriptions are maintained, we reserve the right to decline orders if they are based on inaccurate information or errors made by either party.
- EXCLUSIONS:** Only works listed in this contract, as defined above, are included in the contracted works and contract price. It is accepted that all other works are excluded. Any previous written quotations, correspondence or communication, between both parties are excluded to the extent that only that they are inconsistent with this contract. Any previous oral communication is excluded.
- SPECIAL CONDITIONS:** Any special conditions relating to these works must be written on the Quotation/Contract Document in the section titled Special Conditions or they will Not be considered part of this Contract.
- CLIENT WARRANTIES:** Before the contractor is obliged to start the works, the client must give the contractor written evidence that:
 - The Client owns or has written permission from the Owner or is otherwise entitled to have the works carried out on the proposed site.
 - All permits and licenses that are required for the performance of the works by any relevant Statutory Authority have been obtained pursuant to all statutes, codes, rules, regulations and the Client must provide a copy of all permits and licenses relevant to the works to the contractor prior to the works commencing.
- CLIENT ACKNOWLEDGMENT:** If this contract is for works over the value of \$7500, the Client acknowledges that they have been given and have read a copy of the Home Building Contracts Act 1991 (Notice to Homeowner) before signing the contract.
- YOUR JOINT AND SEVERAL LIABILITY:** If there is more than one Owner then:
 - All of the obligations are joint and several against all Owners.
 - The contractor is only required to give notices to one of the Owners and,
 - Only one signature, of any one of the Owners will bind all of the other Owners to this Contract, or quote or notice.
- PAYMENT:** You must pay the contractor the contract price by way of the progress payments listed on the front page of this contract. If you do not make a payment within 7 days of demand, you will be in serious breach of this contract. Until payment of the invoice price the title to any Goods or Services supplied shall NOT pass to the Client, but the Client shall remain responsible for the care of said Goods and/or Services until payment is made in full, and upon non-payment within the trade Terms, the contractor shall have the right, and is hereby authorized by the Client, to enter into and upon any premises or vehicle, where the Goods and/or Services may be stored or in use from time to time, and even if they are considered fixtures, under control of a third party, with or without others, with such force as is necessary, and to retake possession of and remove the same, and the Client hereby indemnifies the contractor against any claim, action or damages arising out of any such action, and against the cost of the same.
- CONTRACT PRICE:** The contract price for the works will remain valid for 120 days from the date of contract signing. If the works are not started within this period of time due to delay caused by the Client, the contract becomes void and any costs incurred up to that point to be taken from monies previously paid by the Client
- LATE PAYMENT:** If the Client defaults in payment of any account, then ALL monies owing to the Supplier shall be immediately due and payable and; (A) the debt will be subject to collection charges which will Ipso Facto be added to the account, and Interest at the rate under The Magistrates Court (Civil Proceedings) Act 2004 and Civil Judgements Enforcements Act 2004 will be claimed up to and including the date on which the debt is paid in full and; (B) All expenses incurred by the contractor in recovering the monies due, including Solicitors charges, All Debt Collectors Fees up to and including Forty percent of the amount owing, Court Costs, Process serving Costs, Disbursements, any costs in relation to Security documents, and any Fees on Dishonor, shall be a debt due and owing to the contractor by the Client, payment of which is hereby and herein guaranteed under any and all circumstances. The contractor may suspend the works, without penalty, until payment is received in full.
- DEPOSIT PAYMENTS:** A deposit payment may only be refunded if the shire rejects the building application, minus fees incurred by the contractor up to that time. If the Client simply changes their mind about the patio after the shire application has been submitted the deposit payment will be forfeited.
- ACCESS AND USE OF FACILITIES:** The Client, or its assigns or representatives must provide to the contractor uninterrupted access to the site to carry out the works; and will provide the contractor with adequate access to available water and electricity at the cost of the Client
- TIME FOR PERFORMANCE:** Subject to this contract, the contractor shall:
 - Commence works within 28 working days from shire approval or as soon thereafter as may be reasonably practicable, calculated from the latest of the following dates:
 - On which the Client has fully prepared the site ready for construction
 - On which the Client has made a variation to the contract
 - On which the Client has made their progress payment in full
 - Subject to this contract, the contractor shall complete the works (bring the works to practical completion) within 28 days from the commencement date. The contractor will be entitled to an extension of time for completion of the works due to delay caused by Force Majeure beyond the contractor's sole control including:
 - Any alteration to the works
 - Any instruction or delay in instruction by or any omission of the Client
 - Any delay caused by the Client to make a selection
 - Any delay caused by the failure of the Client to allow the contractor reasonable access to the site.
 - Any delay in the supplies of materials or transport or labour which are subject to Force Majeure
 - The contractor shall give the Client a notice of any extension of time to which the contractor is entitled within seven (7) working days of the contractor being aware of both the cause and the extent of the delay.
 - The contract period will be extended by the duration of any delay.
- PRACTICAL COMPLETION:**
 - Practical completion means when the works are completed except for any omissions or defects which do not prevent the works from being reasonably capable of being used for its intended purpose.
 - The contractor will notify the Client when practical completion has been reached and if the Client has any items that require completion or rectification; these will be noted and handled in accordance with Clause 32. (Defects Liability Period)
 - Final payment is due on statement of practical completion by the Contractor
- SECURITY:** The Client charges the site in favor of the contractor to the value of any unpaid amounts due under this contract and irrevocably authorizes and consents to the contractor lodging an absolute caveat in respect to the contractor's interest herein. Title of any goods delivered to the site under the contractor's obligations pursuant to this contract shall not pass to the Client until the progress payment which incorporates such goods in the stage of completion has been paid for by the Client.
- SURPLUS MATERIALS:** Unless otherwise stated, only suitable new materials will be used in the works, and any surplus materials remain the contractor's property.
- UNFORSEEN CONDITIONS:**
 - The contractor will not be held responsible for any problem with the site that is only revealed when carrying out the works.
 - The contractor will require a variation for any extra work required to address and repair the problem.
 - Should the Client fail to accede to the contractor's request then the contractor has the right to cancel the contract at the Client's cost.

- VARIATIONS:** If the Client wishes to make any variation to the works of the contract documents, the Client or the Client's agent shall give the contractor written request for such variation. The contractor may decline to agree to the variation requested but in the event that contractor is prepared to agree to the variation:
 - The contractor shall prepare and give to the Client or the Client's agent a variation document setting out the terms of, and the cost to be incurred, account of the variation.
 - The Client or the Client's agent shall sign and return the variation documents to the contractor.
 - The contractor shall sign and insert into the variation document the date that he signs it and forward a signed copy to the Client or the Client's agent soon as reasonably practicable thereafter and before the work to which the variation relates is commenced and;
 - The variation shall be carried out as if it were part of the works under the contract.
- RETENTION OF SOIL:** The Client unequivocally states that the contractor is not required or liable to remove any sand, rock or soil that is disturbed on the site during the works.
- ASBESTOS:** This contract does not allow for the removal of or working with asbestos in any circumstance. If the works requires asbestos to be removed, a professional service, this will be arranged by and costs paid for by the Client.
- UNDERGROUND SERVICES:** If reticulation, electrical or other sub surface items are discovered or damaged, and found to be in the way of agreed upon locations, it will be at the Client's expense to have these items repaired, removed and/or relocated.
- ENGINEERING:** The Client accepts that all patios are designed and engineered to fit single skin or insulated roof materials only. If the Client wishes to a roof linings such as timber or gyprock; and/or solar panels to the roof, they do so at their own risk. Metal beams used in the works have a deflection limit span/200. Therefore a sag or deflection in all steel beams is normal and is automatically accepted by the Client.
- POSTS:** The contractor is not responsible for the repair and refit of paving and/or other floor level materials such as concrete or liquid limestone necessary disturbed to locate a post.
- GUTTERS:** All gutters will be square patio gutters unless otherwise stated. Box guttering is the removal of an existing house gutter to be replaced with a large gutter to accommodate the house water and new patio water. These will only be installed if detailed on the contract. If the Client has agreed to a box gutter then the Client has also agreed that the existing number of house downpipes on your house is adequate for the extra water that a new patio will add. All patios that connect to the house will be built level to the house. If the fascia/eaves of the house are not level, the patio may also not be level and ponding may occur. The Client accepts and guarantees that should ponding occur the contractor will not be liable for its repair or maintenance. The contractor is neither liable nor responsible for any existing house gutter problems. In large storm events there may be an overflow of the patio gutters installed by the Contractor, which a designed to overflow on the low side to prevent water entering a house in accordance with the National Construction Code. Patios are class 10a buildings and hence not habitable buildings, not waterproof structures. It is therefore possible that water spray; overflow and condensation can occur and is deemed non-warrantable, non-defect situation. The contractor is not liable for any water damage to any items placed in and under any patio.
- FASCIA REPAIRS:** The works do not include any repairs to an existing fascia or connection point unless stipulated in the contract.
- PAINT:** The Client accepts that small markings on the works can occur during transport and construction. The Client agrees these marks may be repaired with touch up paint on the site. The Client accepts that the steel work in the works will have a powder coated finish. Powder coating is an industrial process and the finish therefore cannot be compared to that of a motor vehicle.
- PULLDOWNS AND ELECTRICITY:** A pull-down fee does not include any electrical work such as removal, disconnections or refitting. It is the Client's responsibility to have any electrical work disconnected by a qualified electrician to make the site safe before the pull-down can occur.
- RISK:** All materials are at the Client's risk once delivered to the site
- SUBCONTRACTING:** The contractor may subcontract any part of or the whole of the works. The Client must not give instructions to or make inquiry of the contractor's subcontractors or workers.
- BUILDING LICENSE:** The contractor will obtain the suitable building license for the patio works if clearly indicated upon the quotation/contract document. If the contract indicates 'Client has obtained' then the Client hereby asserts that they have obtained an accurate building license for the works and the Client has agreed for the contractor to perform the works. Should the local shire reject the works application and the Client has already made progress instalment payments, the works will be deemed to have already progressed, such as custom materials ordering and therefore no refunds are possible or permissible and none of the monies paid will be refunded or returned.
- STORMWATER:** You the Client assert that you, the Client, not the contractor, will direct all rainwater from the works into soak-wells, storm water drainage or other shire-approved methods upon the property. This contract does not include any connections past the bottom of the down-pipes fitted to the works.
- SHIRE APPLICATIONS AND BONDS:** The Client agrees that should the local shire require a bond payment or any other shire requirement fee before granting a building permit, you the Client will be solely liable to make this payment. The contractor is not responsible for the payment of these auxiliary shire requirements. The contractor has only included the costs of a standard planning application and building licence in this contract.
- DEFECTS LIABILITY PERIOD:** The contractor shall make good at the cost of the contractor, as soon as is reasonably practicable, defects in the works, notified in writing to the contractor by the Client, within a one year period from practical completion.
 - 'Defect' means failure to perform the works in a proper and workmanlike manner and in accordance with this contract: or
 - Supply materials that are of merchantable quality and reasonably fit for the purpose for which the Client required the works to be performed
 - The contractor shall not be liable to remedy any damage or rectify any defects to the works arising from any work carried out on site by the Client or the Client's agents or servants at any time.
- WARRANTY:** The contractor warrants that the works sold under this warranty is at the time of sale, free from defects in material and manufacture and that it conforms to the contractor's standard specifications for the works. When professionally installed according to the contractor's specifications and when maintained according to contractor's instructions and used for its intended purpose, the patio will not separate, fail, become loose or move as a result of manufacturing defect for ten (10) years from the date of sale (the "Structural Warranty Period"). This warranty is void if cleaning is not maintained at a minimum of every 6 months as per the "maintenance of your new patio" document. This warranty does not extend to the painted finish or the surface coating applied to the patio. This warranty does not cover damage or defects resulting from or in any way attributable to:
 - Abuse, lack of maintenance, neglect, abnormal use or misuse, negligence, application of solvents, corrosives or other chemicals to the structure, color change, fading or damage due to exposure to the sun, or other abrasives or other unintended uses;
 - Improper alterations of original manufactured product by the Client or its assigns;
 - Condensation or Moisture problems, which naturally occurs to the underside of a patio in cold climates.
 - Settlement or movement of the structure to which the patio is attached;
 - Natural events such as hurricanes, tornadoes, earthquakes, hail and floods, or Force Majeure;
 - Variations in color and markings that exist in the steel when new or that develop over time because of varying exposure to sunlight or UV light;
 - Installation is over items that transmit radiant heat such as BBQ's, patio heaters, pizza ovens etc. with excessive surface temperatures, or damage caused by excessive humidity.
 - Surface wear and tear is excluded and this warranty does not cover scratch damages caused by negligence or damage caused by other tradesmen working in, around or on the patio structure.
 - Damage to the patio if caused by any negligent or deliberate act or omission by the Client or other person or little damage is caused by any event or circumstance beyond the reasonable control of the contractor (including, without limitation, floods, storms, earthquakes or fire).