



ASOFIA

Australian Shop & Office Fitting
Industry Association
Limited

Australian Shop & Office Fitting Industry Association Ltd.

FIT OUT CONTRACT

THIS AGREEMENT

is made the _____ day of _____ (month) _____ (year)

BETWEEN

of

(the Purchaser)

ACN Number

ABN Number

AND XXXXXXXXXXXXX

of

(the Contractor)

Licence number (if applicable)

ACN Number XXX XXX XXX

ABN Number XX XXX XXX XXX

The Contractor will carry out the Works for the Purchaser defined below:

(Title of job)

(Brief description):

(Site address):

The CONTRACT SUM is:

(
(in words)

(\$ _____)

1. SCOPE OF CONTRACT

- 1.1 The Purchaser shall make the Site available to the Contractor from the Commencement Date until the date that the Works have been completed and the Contractor is paid in full in accordance with Clause 9.
- 1.2 The Contractor shall commence the Works as soon as the Site is made available and will complete the Works by the Completion Date.
- 1.3 This Agreement shall be the entire agreement between the Contractor and the Purchaser. There shall be no variation to this Agreement unless expressly agreed in writing by both the Contractor and the Purchaser.
- 1.4 If the Purchaser does not make the site available to the Contractor on the Commencement Date, the Completion Date shall be extended by the number of days between the Commencement Date and the date the Works commenced.
- 1.5 (a) Until full payment of all of the Payments by the Purchaser, the Goods and Materials shall remain the property of the Contractor.
(b) If the Purchaser fails to make full payment in accordance with Clause 9, the Purchaser grants the Contractor a licence to enter the Site and remove any of the Goods and Materials and sell them.
(c) Notwithstanding Clauses 1.5(a) and 1.5(b), risk in the Goods and Materials passes to the Purchaser immediately upon delivery. The Contractor shall not be liable for any loss or damage caused to the Goods and Materials after they have been delivered to the Site. The Purchaser shall insure the Goods and Materials for their replacement cost, against all risk of loss or damage due to any cause and shall deliver to the Contractor a copy of that policy and receipt for payment of premium.
- 1.6 Upon full payment by the Purchaser to the Contractor in accordance with Clause 9, property in the Goods and Materials shall pass to the Purchaser.
- 1.7 The Purchaser warrants that the Works when completed will become Tenant's Fixtures pursuant to the terms of the Lease.
- 1.8 Where appropriate, clauses in the Agreement shall apply to each Separable Portion and references to the Works and to work under the Agreement shall mean so much of the Works as is comprised in the relevant Separable Portion.
- 1.9 If the Agreement does not make provision for matters applicable to a Separable Portion, the respective clauses applicable shall bear such proportion or extent applicable to the whole of the Works as the value of the Separable Portion bears to the Contract Sum.
- 1.10 This Agreement shall be governed by the laws of the State or Territory of Australia where the Site is situated. Any clause prohibited or void under such law shall be severable without invalidating the remaining provisions of the Agreement.
- 1.11 The Contract Sum is calculated on the basis of the accuracy of the Bill of Quantities and the Contractor accepts no responsibility for the accuracy of the Bill of Quantities. Where appropriate the materials and services comprising the Works will be charged by the Contractor at the rate for each item included in the Bill of Quantities. Payment for any item of quantity omitted from the Bill of Quantities which is required to complete the Works shall be dealt with as a variation pursuant to Clause 2.
- 1.12 Prevention of the Contractor by the Purchaser from starting, continuing or completing the Works for any cause whatsoever, shall be a breach of the Agreement. The Purchaser will pay to the Contractor all reasonable costs for materials, labour and delay costs resulting from such prevention.
- 1.13 The Purchaser warrants that all of the necessary approvals have been obtained from all of the relevant authorities to enable the Works to be carried out and evidence of such approvals shall be produced by the Purchaser prior to the Commencement Date.
- 1.14 The Contractor is not responsible for and does not warrant the suitability for the Purchaser's purpose of the Goods and Materials or the Works.

2. VARIATIONS

The Purchaser may from time to time issue instructions to the Contractor regarding the Works with which the Contractor shall comply.

- 2.1 Such instructions may require Additional Work.
- 2.2 On receipt of such instructions the Contractor shall, before proceeding with the Additional Work, request from the Purchaser a written authority accepting the variation price or variation to the Contract Sum and any necessary extension of time to the Completion Date.
- 2.3 The value of the Additional Work shall be calculated by reference to: the rates paid for labour; the cost of materials; sums properly paid to subcontractors and a reasonable allowance for overheads and profit of the Contractor.

- 2.4 In making an allowance to the Purchaser for omitted items of work, the Contractor shall be entitled to retain a reasonable allowance for overhead and profit.
- 2.5 The Contractor may request satisfactory evidence from the Purchaser of the Purchaser's capacity to pay the cost of the Additional Work.

3. COMPLETION

- 3.1 The Works shall have reached Completion when they are reasonably fit for use or occupation by the Purchaser, save for the existence of any minor defects which do not significantly inconvenience the Purchaser or cause a legal impediment to the use and occupation by the Purchaser, and the Contractor has given the Purchaser notice that the Works have been completed.
- 3.2 Notwithstanding Clause 3.1, Completion shall be deemed to have taken place when the Purchaser occupies the Site and commences trading.
- 3.3 Where the Agreement specifies that Separable Portions of the Works shall be executed to Completion within a period or by a date different from the Completion Date, the Contractor shall execute the Separable Portions of the Works to Completion by the date or dates specified in Item C of the Appendix.
- 3.4 If a part of the Works has reached Completion but another part of the Works has not reached Completion and the parties cannot agree upon the creation of Separable Portions, the Contractor may determine that the respective parts shall be Separable Portions. If the Purchaser disagrees with the Contractor's determination, the dispute shall be dealt with in accordance with Clause 8.
- 3.5 In using the Separable Portion that has reached Completion, the Purchaser shall not hinder the Contractor in the performance of the Works.

4. ACCELERATION

If the working days available to the Contractor, between the Commencement Date and the Completion Date are reduced by one or more weeks through no fault of the Contractor, the Contract Sum shall be increased in accordance with the formula set out in Item M of the Appendix. The Payments shall be adjusted accordingly.

5. DEFECTS LIABILITY PERIOD

- 5.1 The Contractor shall, after Completion, undertake the Repairs as agreed between the Contractor and Purchaser for a period as specified in Item D of the Appendix from the Completion Date. If the parties are unable to agree on the Repairs, the dispute shall be dealt with in accordance with Clause 8. The Contractor shall not be liable to the Purchaser for any Defects which become apparent after the period specified in Item D of the Appendix. Material and/or processes that are not manufactured by the Contractor and are specified for use by the Purchaser are covered by warranty to the extent of such warranty obtainable from the suppliers of such materials and or process. Apart from such warranty as mentioned, no other warranty either expressed or implied (to the extent permitted to be excluded at law) is given by the Contractor to the Purchaser.
- 5.2 Where the Contractor is requested to execute a portion of the Works on a progressive basis, references to the Works shall mean so much of the Works as is comprised in the Separable Portions. The Purchaser agrees that it will accept and place the Works into maintenance on a progressive basis and any maintenance and/or warranty period shall start from either the date nominated in Item E of the Appendix or the date the Purchaser accepts the Separable Portions. Any additional costs involved shall be borne by the Purchaser.

6. EXTENSIONS OF TIME

- 6.1 Should the progress of the Works be delayed by a cause beyond the control of the Contractor, including provision of the critical dimensions of the site by the Purchaser, the Completion Date shall be extended.
- 6.2 The Contractor shall notify the Purchaser of any delays where an extension of time is sought within a reasonable time of the occurrence of the delay and with the notification, state the period for which extension of the Completion Date is sought. Should the Purchaser not object in writing within 5 days of the giving of the notice then the Completion Date is deemed to be extended to the date set out in the notice.

7. GOODS AND SERVICES TAX

- 7.1 GST Definitions. In this Clause:

GST means GST within the meaning of the GST Act;

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
Supply means the supply within the meaning of the GST Act arising from this Agreement; and except where the contrary intention appears, expressions used in this Clause have the meanings given to them in the GST Act.

- 7.2 Supply is not GST Free
The Contractor and the Purchaser agree that:
(a) the Supply is a taxable supply as defined in the GST Act;
(b) the Contract Sum is either a GST exclusive price or a GST inclusive price, as determined by Item F of the Appendix.
- 7.3 Purchaser to pay any GST assessed
(a) the Purchaser will pay to the Contractor at the time of making the Payments the amount of the GST arising from the Supply; and
(b) the Contractor will deliver to the Purchaser in return for the Payments a tax invoice in a form which complies with the GST Act.

7.4 Enduring Clause
This clause is an enduring clause which survives the date of the Supply and survives the termination of the Agreement. The rights and obligations of the parties under this clause endure for ten years from and including the date of the Supply.

8. DISPUTE RESOLUTION

Should any dispute arise between the Purchaser and the Contractor which has not been resolved or settled within 7 days from the date of such, the matter shall be referred to the arbitration of the nominee of the Chairperson of the Chapter for the time being of the Institute of Arbitrators and Mediators Australia in the State or Territory where the Site is situated and their findings shall be final and binding on both parties. At arbitration, neither party shall be legally represented without the consent of the other party.

9. PAYMENTS

- 9.1 On signing of the Agreement, the Purchaser shall pay the Contractor the Deposit set out in Item G(i) of the Appendix.
- 9.2 Immediately before the Contractor establishes on the Site, the Purchaser shall pay to the Contractor a second progress payment set out in Item G(ii) of the Appendix.
- 9.3 Final Payment is to be made on Completion. The Certificate will be retained by the Contractor until Final Payment is made.
- 9.4 If the Purchaser disputes that Completion has occurred and/or disputes payment of the Final Payment, the Purchaser shall not be allowed access to the Site or provided with the Certificate, until the Final Payment is paid into the trust account of the Australian Shop & Office Fitting Industry Association Ltd (ASOFIA). ASOFIA shall hold the Final Payment on trust for the Contractor until receipt by ASOFIA of a certificate from an arbitrator appointed pursuant to Clause 8, that Completion has occurred. On receipt of that Certificate ASOFIA will pay the Final Payment (excluding any interest accrued) to the Contractor.
- 9.5 Failure to make any Payment after it becomes payable by the Purchaser shall entitle the Contractor to cease all work until the Payment has been made. If the Payment has not been made within 7 days of any invoice provided to the Purchaser by the Contractor, the Contractor may elect to treat such non-payment as either repudiation of the Agreement or a fundamental breach of the Agreement. The Contractor must notify the Purchaser of its election and if payment still remains unpaid at the expiration of 7 days after notification of the Contractor's election, the Contractor may serve notice on the Purchaser that the Contractor's engagement under the Agreement is determined.
- 9.6 If notice is given to the Purchaser pursuant to Clause 9.5, the Contractor may in addition to making the election referred to in Clause 9.5:
(a) re-possess any of its equipment in the possession or control of the Purchaser and for this purpose may enter any premises owned, occupied, leased or controlled by the Purchaser;
(b) retain any monies paid;
(c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
(d) be discharged from any further obligations under the Agreement; and
(e) pursue any additional or alternative remedies provided by law.

- 9.7 Interest shall be payable at the rate stated in Item H of the Appendix. Interest shall accrue on a daily basis on any Payments not made at the specified payment time.
- 9.8 The Purchaser hereby charges its interest in the Lease with the due payment to the Contractor of all moneys that may become payable to the Contractor by virtue of the Agreement. If requested to do so by the Contractor, the Purchaser agrees to grant the Contractor a mortgage of the Lease and appoints the Contractor its power of attorney to execute a Mortgage of Lease document.
- 9.9 The Purchaser shall provide security for the due performance of its obligations under the Agreement by the provision of a Bank Guarantee in a form approved by the Contractor from a Bank licensed under the provisions of the Banking Act 1959 payable on the demand of the Contractor in the amount of the Contract Sum. Such Bank Guarantee shall be returned to the Purchaser upon payment by the Purchaser of all monies owing under the Agreement.

- 9.10 Should the Contractor be required to pay a security deposit to cover any damage to the Site or its surrounds to the Building Owner, the Purchaser agrees to pay such security deposit in full. The purchaser will obtain a refund of the security deposit directly from the building owner and will have no claim on the contractor for any amount retained by the building owner.

10. SOURCES OF PURCHASER'S FINANCE

- 10.1 The Purchaser undertakes that it has sufficient funds available in the sums required to meet the payments due under Clause 9 in a timely manner from the sources identified in Item I of the Appendix. If it is found that the information provided is inaccurate or untrue the Contractor may, without prejudice to its right otherwise to recover damages, determine the Agreement immediately.

10.2 Should the Purchaser arrange leasing or other finance of the Works, the Purchaser must provide to the Contractor within 14 days of the signing of the Agreement appropriate evidence of the leasing or other finance arrangements, together with a letter of authority from the leasing or finance company with acknowledgment that the Works include Separable Portions of the Works and that release of monies to the Contractor will be made upon an invoice and satisfactory evidence of Completion including the Separable Portions.

11. INSURANCES

- 11.1 The Contractor shall effect a policy of insurance which shall cover public liability for the amount stated in Item J of the Appendix in respect of all incidents arising out of the Works in the event of:
(a) Death or bodily injury (including illness) to any person not being a person who at the time of the incidents engaged in or upon the service of the insured under a contract of service or apprenticeship; and
(b) Damage to property not belonging to nor held in trust by, nor in the custody or control of, the insured.
- 11.2 The existing structures on the site including the Works will be at the sole risk of the Purchaser who shall keep the Works adequately insured against loss as set out in Clause 1.5.(c).
- 11.3 The Contractor shall insure for Workers' Compensation and Employers' Liability in accordance with the laws of the appropriate State or Territory of Australia.
- 11.4 The insurances referred to in this clause shall be effected before the Works are commenced and shall be maintained effective until Completion and either party shall if required by the other produce evidence of the currency of such insurance.

12. P.C. ITEMS AND PROVISIONAL SUMS

Where Prime Cost Items or Provisional Sums are included in this Agreement, such sums shall be expended in favour of such persons as the Purchaser shall direct. The whole or any portion or such sums remaining unexpended at Completion shall be deducted from the Contract Sum. Where the expenditure exceeds the allowance, the difference shall be added to the Contract Sum.

13. SITE CONDITIONS

- 13.1 The Purchaser, or where appropriate (with the knowledge of the Purchaser) the Building Owner, is responsible for:
(a) The provision of electric light, power, water and other necessary facilities at the Site.
(b) Any damage caused to the Contractor's materials, tools or equipment by anyone other than the employees of the Contractor or its agents or sub-contractors.
(c) Access to the Site and provision of required clear space around the work area.
- 13.2 No allowance has been made in the Contract Sum for electrical, plumbing or any other work that may become necessary due to demolition or to meet the requirements of local authorities. Such additional work shall be dealt with as a variation pursuant to Clause 2.
- 13.3 Unless specifically referred to in the description of the Works, the Contract Sum does not include scaffolding or demolition. Should these become necessary for the proper execution of the Works such additional work shall be dealt with as a variation pursuant to Clause 2.

14. GLASS AND GLAZING

- 14.1 If glass and glazing is specifically allowed for in the Works, the Contractor's responsibility for each pane of glass ceases when the pane is placed in position. Where the Works include the supply of glass to be imported, a period of not less than four months is to be allowed between the receipt by the Contractor of the correct glass sizes and the commencement of glazing.
- 14.2 As glazing is progressively completed, glass will be left clear of excess glazing compounds but no allowance for subsequent cleaning has been made. Subsequent cleaning shall be dealt with as a variation pursuant to Clause 2 of this Agreement.

15. GUARANTEE OF COMPANY

15.1 If the Purchaser is a company the Purchaser shall simultaneously with the execution of the Agreement obtain the execution of the Agreement as guarantors by such directors and shareholders of the Purchaser as the Contractor may require.

15.2 Those persons who execute the Agreement as guarantors hereby jointly and severally guarantee the performance and observance of the terms and conditions in the Agreement to be performed and observed on the part of the Purchaser. The guarantors shall indemnify the Contractor against all losses, costs and expenses whatsoever (including but not limited to any legal costs and disbursements on a solicitor and own client basis) which may be incurred by reason of any default on the part of the Purchaser in the performance and observance of the Agreement. This guarantee shall be binding upon the guarantors and their executors, administrators or legal personal representatives and shall be a continuing guarantee. This guarantee shall not be discharged, diminished or impaired by reason of the guarantors' death or bankruptcy or by any time or indulgence granted by the Contractor to the Purchaser.

16. DEFINITIONS

In this Agreement:

Additional Work means increases or decreases in or omissions from the Works, the execution of additional work or changes in the character or quality of any material or work;

Agreement means this Agreement.

Bill of Quantities means the Bill of Quantities issued by the Purchaser (if any).

Building Owner means the registered proprietor of the Site.

Certificate means the Certificate of Occupancy or other permit to occupy the Site issued by the relevant authority when Completion Has occurred.

Completion means completion as set out in Clauses 3.1 and 3.2.

Contract Sum means the Contract Sum set out on page 1 of the Agreement.

Commencement Date means the date set out in Item A of the Appendix.

Completion Date means the date set out in Item B of the Appendix.

Defects means any defects of the Works in materials or workmanship.

Deposit means the sum set out in Item G(i) of the Appendix.

Final Payment means the sum set out in Item G(iii) of the Appendix.

Goods and Materials means the goods and materials supplied for the Works.

Lease means the Lease between the Purchaser and the registered proprietor of the Site.

Payments means the amounts set out in Item G of the Appendix.

Prime Cost Items means the amounts set out in Item K of the Appendix.

Provisional Sums means the amounts set out in Item L of the Appendix.

Repairs means making good any defects of the Works in materials or workmanship.

Representative means a competent representative authorised by the Contractor to receive instructions from the Purchaser.

Separable Portion or Separable Portions of the Works means a part of the Works specified in the specifications, documents and drawings or as requested by the Purchaser, to be a Separable Portion or Separable Portions of the Works.

Site means the Site described on page 1 of this Agreement.

Tenant's Fixtures means the Works, which will become the property of the Purchaser upon Completion.

Works means the Works described in drawings and/or plans described in the specifications as attached, and the annexed documents marked ' ' to ' ' and related drawings numbered ' ' to ' ' all of which have been signed for and on behalf of the Purchaser and the Contractor for the purpose of identifying them in this Agreement and shall together comprise the Agreement between the Purchaser and the Contractor. The Works as so shown and/or described include 'Separable Portions of the Works'.

THE PARTIES AGREE that the Purchaser will pay the Contractor the Contract Sum or such other sums as shall become payable under the Agreement. In consideration for those payments the Contractor will complete the Works.

Signed by the Purchaser

SIGNED for and on behalf of the Purchaser by an authorised person:

Name (PRINT):

Capacity (PRINT):

Signed by the Contractor

SIGNED for and on behalf of the Contractor by an authorised person:

Name (PRINT):

Capacity (PRINT):

Signed by a Guarantor pursuant to clause 15

SIGNED by the first Guarantor:

Name (PRINT):

SIGNED by the second Guarantor:

Name (PRINT):

DATE OF AGREEMENT / /

NOTE

This Agreement is copyright.

The Contractor named in this contract is a member of the Australian Shop & Office Fitting Industry Association Ltd. ASOFIA shall not be liable to any party in respect of this agreement including but not limited to any losses, costs, damages or expenses incurred by the parties in respect of the Works.

The Purchaser should check with ASOFIA and verify the membership of the Contractor

Membership No: XXXX

*Australian Company Number XXX XXX XXX
(if applicable)*

APPENDIX

A. DATE ON WHICH THE PURCHASER WILL MAKE THE SITE AVAILABLE:
(Clause 1.1)

B. DATE FOR COMPLETION OF THE WORKS: (Clause 3.1 and 3.2)

C. THE DATES FOR COMPLETION OF EACH SEPARABLE PORTION OF THE WORK
(Clause 3.3)

D. DEFECTS LIABILITY PERIOD FOR THE WORKS: (Clause 5.1)

unless otherwise stated 13 weeks.

E. DEFECTS LIABILITY PERIOD FOR EACH SEPARABLE PORTION OF THE WORKS
(Clause 5.2)

F. GOODS AND SERVICES TAX (Clause 7)
The Contract Sum does include GST.
The Contract Sum does not include GST.
(strike out whichever alternative does not apply)

G (i) DEPOSIT payable on signing of this Agreement (Clause 9.1) % of Contract Sum.
Unless otherwise stated 33%.

G (ii) FIRST PROGRESS PAYMENT (Clause 9.2) % of Contract Sum.
Unless otherwise stated 40%.

G (iii) FINAL PAYMENT (Clause 9.3) % of Contract Sum.
Unless otherwise stated 27%.

H. INTEREST ON OVERDUE PAYMENTS (Clause 9.7) % per annum.

I. SOURCES OF PURCHASER'S FINANCE (Clause 10.1)

(a) funds standing to the credit of the Purchaser

at bank \$

(b) funds advanced by way of loan

from bank \$

(c) funds available to the Purchaser financed by lease

from \$

on the security of the Works. \$

(d) funds advanced by the building owner. \$

Contract Sum \$

K. PRIME COST ITEMS (Clause 12)

Item \$

Item \$

Item \$

Item \$

Item \$

Item \$

Item \$

L. PROVISIONAL SUMS (Clause 12)

Item \$

Item \$

Item \$

Item \$

Item \$

Item \$

Item \$

M. CONTRACT SUM INCREASE

(Clause 4) ~~Wks reduced~~ / Wks expected x100 = % increase the Contract Sum

SPECIAL CONDITIONS

Clauses inserted below are special conditions to and form part of the Agreement. In the event of any inconsistency between a special condition below and one or more of clauses 1-16, the special condition shall prevail.

J. PUBLIC LIABILITY INSURANCE

(Clause 11.1) \$

SAMPLE



ASOFIA

Australian Shop & Office Fitting
Industry Association
Limited

Revised October 2008 by


HARRISLEGAL

www.harrislegal.com.au