FORM OF CONTRACT FOR
HOUSING AND MINOR WORKS

CONTRACT FOR
...........................................................................................................(works)

BETWEEN
............................................................................................................. (employer)

AND
............................................................................................................. (builder)

ON
............................................................................................................. (erf and locality)

Interim publishing authority:
The Association of South African Quantity Surveyors
Copyright

APRIL 1994 EDITION
GUIDELINES FOR THE USE OF THIS CONTRACT

These guidelines do not form part of the contract

NOTE: Two copies of the contract are to be completed by the contracting parties and the top copy retained by the employer. The other copy is to be handed to the builder as soon as the employer has completed the acceptance of tender

Step 1

The employer and principal agent are to complete the schedule of contract particulars before issuing the document to the tenderers (builders)

Step 2

The builder must complete the builder's tender (offer to build) and write on that part of the contract form where shown the following in the presence of the person who is to witness his or her signature:

• the place of signature (the city, town or village where the signing takes place)
• the date that the builder signs the tender form
• his own signature
• write in block capitals the full personal name of the person who has signed the document and the name of the builder's company or firm
• the witness must sign where shown
• write the address where the builder can be found as his own place of business, such as his home or office
• write the address where post can be received by the builder
• write the telephone and (if the builder has one) the telefax number where the builder can be contacted

Step 3

The employer, to accept the tender, must complete the acceptance of tender by writing on that part of the contract form where shown the following in the presence of the person who is to witness his or her signature:

• the place of signature (the city, town or village where the signing takes place)
• the date that the employer signs the tender form
• his own signature
• write in block capitals the full personal name of the person who has signed the document and the name of the employer
• the witness must sign where shown
• write the address where the employer can be found as his place of business
• write the address where post can be received by the employer
• write the telephone and (if the employer has one) the telefax number where the employer can be contacted

**Step 4**

The builder shall provide the employer with a contract guarantee in terms of clause 2.01, and shall take out insurance in terms of clause 2.05

**Step 5**

The employer shall take out insurance of the works in terms of clause 4.01 and thereafter hand over the site to the builder in terms of clause 4.02
FORM OF CONTRACT FOR HOUSING AND MINOR WORKS

This contract is a document which sets out the manner in which the work is to be done by the builder and paid for by the employer. The builder when tendering must study the contract and satisfy himself that he understands the contract conditions, what he is to do, also when by whom he is to do, also when and by whom he is to be paid. After signing the contract, the builder and employer will be bound by the conditions set out herein.

SCHEDULE OF CONTRACT PARTICULARS

Name of employer ……………………………………………………………………………………………
Physical address of employer ……………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
Postal address of employer ……………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
Telephone number ………………………………………………………………………………………
Telefax number ……………………………………………………………………………………………
Name of principal agent …………………………………………………………………………………
Physical address of principal agent ……………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
Postal address of principal agent ………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
Telephone number ………………………………………………………………………………………
Telefax number ……………………………………………………………………………………………
SCHEDULE (CONTINUED)

The contract documents comprise this contract document, preliminaries, drawings numbered ..........................................................................................................................
specifications, bills of quantities, schedule of materials (delete if not applicable)

Contract guarantee (percentage of contract sum) ..........................................................

First amount (excess) of each insurance claim payable by builder

............................ (amount in words: ............................................................)

Date for possession of the site (handing over to the builder) ........................................

Date for practical completion .........................................................................................

Law of this contract shall be the law of (country) ..........................................................

Tender closing date ............................................. Time ..............................................

Place of submission of tender ....................................................................................... 

Period for holding good tender (days) ............................................................................

Penalty (amount) ............................................................................................................ per day

Special work to be done by specialist builders in terms of clause 13.00

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

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

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

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

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

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

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

........................................................................................................................................
BUILDER’S TENDER (OFFER TO BUILD)

The builder hereby offers to build the works for the employer in terms of these conditions of contract for the contract sum of

…………………………… (amount in words: …………………………………………
……………………………………………………………………………………………..)

The employer has, until the expiry of the tender, that is …………………………………, the right to accept this offer, no offer at all, or any other offer

Should the employer accept this tender by signing this document on page 4, the tenderer becomes the builder and is bound to perform in accordance with the provisions of this contract

Place of signature …………………………………………………………………………………
Date of signature …………………………………………………………………………………
Signature of builder ………………………………………………………………………………
Full name of signatory (builder) …………………………………………………………………
Name of builder …………………………………………………………………………………
Signature of witness ………………………………………………………………………………
Full name of signatory (witness) …………………………………………………………………
Physical address of builder ………………………………………………………………………
……………………………………………………………………………………………………
……………………………………………………………………………………………………
Postal address of builder ………………………………………………………………………
……………………………………………………………………………………………………
……………………………………………………………………………………………………
Telephone number ………………………………………………………………………………
Telefax number ……………………………………………………………………………………

ACCEPTANCE OF TENDER

The employer hereby accepts the tender by the builder

Place of signature ...........................................................................................................

Date of signature ...........................................................................................................

Signature of employer ...................................................................................................

Full name of signatory (employer) ...................................................................................

Name of employer .......................................................................................................... 

Signature of witness ........................................................................................................

Full name of signatory (witness) ......................................................................................

Physical address of employer ...........................................................................................

Postal address of employer ..............................................................................................

Telephone number .......................................................................................................... 

Telefax number ................................................................................................................
CONDITIONS OF CONTRACT

1.00 DEFINITIONS

Definitions of words used in this contract are set out below

1.01 Acceptance of tender

means the signing of the contract by the employer which brings this contract into force

1.02 Builder

means the person, partnership, company, close corporation, community of builders or other legal body that contract to build the works and is so identified in the schedule

1.03 Certificate of final completion

means the certificate to be issued by the principal agent when the works have been fully completed in terms of clause 1.11 hereof

1.04 Certificate of practical completion

means the certificate to be issued by the principal agent when, in his opinion, the works have reached the stage of practical completion in terms of clause 1.17 hereof

1.05 Contract documents

means this contract document, preliminaries, drawings, specifications, bills of quantities or schedule of materials; also any documents annexed to the contract documents by agreement between the parties

1.06 Contract guarantee

means the guarantee in the exact words of the guarantee form as provided with this document and to be provided by one or more guarantors on behalf of the builder. This guarantee is to provide for the guarantor(s) to be responsible to finish the contract and/or for payment of the employer of an amount of up to a maximum of 10% (ten percent) of the contract sum, in the event that the builder does not complete the works

1.07 Contract sum

means the amount entered on page 3 of this document

1.08 Days

means calendar days (that is actual days including Saturdays, Sundays, public holidays and builders’ holidays, etc)
CONDITIONS OF CONTRACT (CONTINUED)

1.09 Employer

means the person, partnership, company, close corporation, community body or other legal body so defined in the schedule

1.10 Final account

means the amount to be paid to the builder in terms of clause 10.00 hereof

1.11 Final completion

means the completion of all work in this contract including rectification of all defective and incomplete work to the reasonable satisfaction of the principal agent

1.12 Notice in writing

means a written notice delivered by either party to the other, together with reasonable proof of the date of delivery

1.13 Payment

means payment by the employer to the builder of the amount(s) so certified by the principal agent within 10 days of the issuing of the payment certificate

1.14 Payment certificate

means a certificate issued by the principal agent entitlement the builder to payment by the employer for work done and materials on site

1.15 Penalty

means the amount to be paid by the builder to the employer for each day the works are finished late due to the builder's default at the amount per day stated in the schedule

1.16 Period of liability for defects

means the period commencing on the date of issue of the certificate of practical completion and ending on the 90th day thereafter

1.17 Practical completion

means that stage of completion when the works are, in the opinion of the principal agent, completed sufficiently for it to be properly used for the purpose for which it was constructed

1.18 Principal agent

means the person stated in the schedule or his nominee who will inspect the works and perform the other duties so provided for in this contract
CONDITIONS OF CONTRACT (CONTINUED)

1.19 Site

means the place where the works are to be constructed. The builder is to build the works only on the land so defined in the contract documents

1.20 Specialist builders

means those other builders directly paid by the employer to do work on the site and not forming part of this contract

1.21 Tender closing date and time

means the date and time of day on that date when the employer will open tenders for the works

1.22 Variations

means changes to the works that the principal agent issues to the builder as instructions in writing. Should the builder do extra work not described in a written instruction from the principal agent, such work will not be paid for by the employer

1.23 Works

means the construction which is to be done by the builder in terms of this contract and as set out in the contract documents

2.00 BUILDER’S OBLIGATIONS

The builder shall:

2.01 Before starting work on site, arrange for a contract guarantee to be provided on the form in this document from a person or organisation acceptable to the employer

2.02 When notified of the acceptance of tender, commence to build the works on the date for possession of the site and carry out the works in accordance with the contract documents, to the reasonable satisfaction and in accordance with the written instructions of the principal agent

2.03 Provide all of the necessary materials, labour, plant and equipment to build the works, including water and electricity, etc for the works and build the works as set out in these contract documents

2.04 Comply with all applicable statutory provisions and local authority requirements

2.05 Insure his workmen and employees against death or injury arising out of the execution of the works
CONDITIONS OF CONTRACT (CONTINUED)

2.06 In the event of a loss leading to a claim against the insurance policies stated in clause 4.0.1, pay the first amount (excess) as stated in the schedule of each such claim to the employer. Such amounts may be deducted from any payment due by the employer to the builder.

2.07 Comply with all written instructions of the principal agent to make variations to the works.

2.08 Complete and hand over the works by the date for practical completion stated in the schedule, or any extensions thereof in terms of 6.01.

2.09 Make good at his own expense all incomplete and defective work within the period of liability for defects.

2.10 To Pay to the employer any penalty for delay as due to the employer on demand by the principal agent. Such amounts may be deducted from any payment due by the employer to the builder.

3.00 IMPROPER CONDUCT BY THE BUILDER

3.01 The builder hereby warrants that he has not made, nor shall he make any promises to any person of the employer, nor to any relative or business associate or political associate of the employer to do or not to do anything as an inducement to award this contract to the builder nor to allow any other such wrongful inducement to gain an advantage in the carrying out of the contract. Such conduct is hereby deemed to be improper conduct.

3.02 The establishment by the employer or principal agent of proof of improper conduct by the builder shall be grounds for immediate cancellation of the contract by the employer and of payment by the builder to the employer of any loss suffered by the employer due to such cancellation.

4.00 EMPLOYER'S OBLIGATIONS

The employer shall:

4.01 Insure the works and materials on site with a Builder's All Risks Policy insuring against loss by fire, explosion, earthquake and for public liability and riot with a registered insurer subject to the provisions of Clause 2.06 hereof.

4.02 Hand over the site to the builder and point out boundary pegs on the date of possession of the site.

4.03 Make payment to the builder for the work as certified by the principal agent and as set out herein.

4.04 Take possession of the works when the works have been completed by the builder.
CONDITIONS OF CONTRACT (CONTINUED)

5.00 PRINCIPAL AGENT’S DUTIES

The principal agents shall:

5.01 Regularly inspect the works to satisfy himself that it is being built as shown in the contract documents

5.02 Give any instructions and/or explanations and/or variations to the builder including any relevant advice to assist the builder to understand the contract documents

5.03 Certify payment to the builder for work done and, in the discretion of the principal agent, for materials delivered to the site

5.04 Grant or refuse any extension of time requested by the builder to the date of practical completion

5.05 Inspect the works to decide when it is at the stage of practical completion and, when satisfied, certify that practical completion has occurred

5.06 Inspect the works to decide when it is at the stage of final completion and, when satisfied, certify that final completion has occurred

5.07 Decide on the settlement of any disputes that may arise between the builder and the employer, subject to the conditions of clause 17.00

6.00 DELAY AND EXTENSION OF TIME: PENALTY

6.01 If the carrying out of the works is delayed by bad weather, public disorder or any other reason decided by the principal agent at his sole discretion to be reasonable, then the date for practical completion of the works is to be extended by the period so decided by the principal agent

6.02 If the delay is due to causes that are the fault of the builder, then the principal agent may certify this fact in writing to the builder and to the employer and the employer may then withhold penalties from the builder as set out in clause 11.00

7.00 DEFAULT BY BUILDER

If the builder:

7.01 Stops work on site for more than 14 days and or

7.02 Fails, in the opinion of the principal agent, to carry out the works with reasonable diligence and/or
CONDITIONS OF CONTRACT (CONTINUED)

7.03 Refuses to comply with an instruction issued by the principal agent

7.04 Then the employer shall, by notice in writing, inform the builder of such default and, if such default shall continue for a further period of 7 days, cancel this contract and employ others to complete the works. The cost of such work by others shall be a debt due by the builder to the employer

7.05 Whereupon no further payment will be due to the builder by the employer until the works are completed by the replacement builder(s) and the builder’s final account and that of the replacement builder(s) have been ascertained and any loss to the employer arising from the cancellation has been identified. Such loss shall be deducted from any payment due by the employer to the builder, including payments from the retention fund.

8.00 DEFAULT BY THE EMPLOYER

If the employer fails to make payment for work properly done by the builder as provided for in this contract and the builder issues a notice in writing to the employer and the employer does not pay within 7 days of such notice in waiting, then the builder may, without prejudice to any other rights he may have, cancel the contract, stop work and clear the site. The builder shall thereupon be entitled to payment in full, as assessed by the principal agent, for the work done and materials supplied, up to the said date of cancellation.

9.00 RETENTION FUND

9.01 The employer shall withhold from the builder 10% (ten per cent) of all payments made before the issuing of the certificate of practical completion as a retention fund. No interest is to be paid to the builder on the retention fund. The retention fund shall be held by the employer as a guarantee to the employer for the completion of the contract.

9.02 Half of the retention fund shall be paid to the builder on the issuing of the certificate of practical completion and the remainder on the issuing of the certificate of final completion.

10.00 FINAL ACCOUNT

The final value of the works shall be determined by the calculation of omissions and additions to the contract sum as caused by the effect of variations. The valuation of such omissions and additions shall be based on the rates in the bills of quantities or schedule of rates as the case may be. A draft final account shall be prepared by the principal agent or his nominee within 30 days of the issue of the certificate of final completion for approval by the builder. The builder shall review the draft final account and shall make any adjustments as may be necessary and shall return it to the principal agent within 30 days. Thereupon the principal agent shall issue a final payment certificate taking into account any monies due to the builder which amount shall be paid in full and final settlement of all monies due by the employer to the builder.
CONDITIONS OF CONTRACT (CONTINUED)

11.00 PENALTY

The builder shall be liable to pay a penalty to the employer for the number of days the works, in the opinion of the principal agent, remains incomplete beyond the date for practical completion as stated in the schedule, taking into account the builder's entitlement to an extension of time. Such penalty may be deducted from any monies due or to become due to the builder from the employer, including from the retention fund.

12.00 PAYMENT

12.01 The principal agent shall issue monthly payment certificates to the builder for payment by the employer.

12.02 Payment shall be due by the employer to the builder. Should any payment be made later than provided for herein, then the employer shall pay to the builder interest at 3% above the prime rate charged by commercial banks to their clients at that time.

13.00 SPECIALIST WORK

The employer may directly employ specialist builders to do work such as electrical installation on site whilst the works are in progress. The builder shall allow such specialist builders to do their work as and when needed and shall make available all facilities to enable such work to be properly done to the satisfaction of the principal agent.

14.00 PRACTICAL COMPLETION AND FINAL COMPLETION

14.01 The principal agent shall be the sole judge of when the works reach the stage of Practical completion. When the works have reached practical completion the principal agent shall issue a certificate of practical completion, together with a list of any incomplete and defective work. After the end of the period of liability for defects the principal agent shall inspect the works and, if satisfied that all works are complete and defects rectified, shall issue the certificate of final completion.

14.02 Immediately the said list is issued to the builder, he shall do all of the work indicated on the list, failing which the provisions of clause 7.04 shall be invoked by the principal agent.
CONDITIONS OF CONTRACT (CONTINUED)

15.00 CLAUSE HEADINGS

The headings of clauses do not form part of the meaning of words or of the conditions of this contract

16.00 ENTIRE AGREEMENT

This contract constitutes the entire agreement between the employer and the builder and no alteration shall be of any force unless reduced to writing, signed by the parties and appended hereto

17.00 DISPUTES

17.01 Should any dispute arise between the builder and the employer or between the builder and the principal agent, acting on the employer’s behalf, as to any matter or thing arising as a result of this contract, then the dispute is to be referred to the resolution and final decision of a person nominated by the chairman of the Association of Arbitrators (Southern Africa)

17.02 Either party may give a notice in writing to the other party of such dispute and forthwith request the identification of the arbitrator. Such arbitration shall be held in accordance with the Recommended Rules for the Conduct of Arbitration’s published by the Association of Arbitrators (Southern Africa). The arbitrator shall be entitled to open up any matter and decide all disputes placed before him by the parties as an expert. The arbitrator’s decision shall be final and binding on the parties to this contract

18.00 SPECIAL CONDITIONS

(Any special conditions are to be written in hereunder)

………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………
………………………………………………………………………………………………………