

# FORM OF WARRANTY

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Between \_\_\_\_\_ of

(Hereinafter called "the Warrantor") of the first, and \_\_\_\_\_ of

(hereinafter call "the Principal") which expression shall include his success in title) of the third part.

## WHEREAS:

- (a) the Head Contractor has entered into a contract dated..... with the Principal for the erection of a building and/or other works (hereinafter called the works") on the land at.....
- (b) the said Works are to carried out in accordance with the said Contract with drawings and Specifications prepared by.....Architects.
- (c) the Warrantor has contracted with the Head Contractor of the Works, namely .....(hereinafter called "the Sub-contract Works").
- (d) the Warrantor has agreed to give warranty and indemnity to the Contractor and to the Principal in respect of the sub-contract Works for a period of.....

## IT IS HEREBY AGREED AS FOLLOWS:

- 1. The Warrantor warrants to the Head Contractor and also (as a separate warranty) to the Principal that all work performed and material or parts supplied by the Warrantor shall be in accordance with quality and/or standard now lower than the quality and/or standard stipulated by the relevant drawings and Specification and to the extent that quality and/or standards is not so stipulated, shall be of good materials and workmanship fit for the purpose or purposes for which the same are required to be supplied. This warranty shall be in addition to and shall not derogate from any warranty implied by law.
- 2. a) The Warrantor covenants with Head Contractor and also (as separate covenant) with the Proprietor to replace and/or make good to the reasonable satisfaction of the Principal's Architect, but at the expense of the Warrantor, so much of the sub-contract work as within the period stated on page 1 from the Practical Completion of the Works shall be found to be of a lower quality or standard than that referred to in Clause 1 or shall show deterioration of such extent that in the opinion of the Architect it should be made good or replaced in order to achieve fitness for the purpose or purposes for which the Works were performed or supplied and whether on account of utility performance appearance or otherwise, provided however that this covenant shall not apply to deterioration on damage caused solely by excessive movement of building structure or by exceptional physical or other external cause or agency which is beyond the control of the Warrantor and which it could not reasonably have been expected to foresee or provide against.
- 2. (b) The Warrantor further covenants with the Head Contractor and also (as a separate covenant) with the Principal to meet the reasonable cost of any work necessary to any part to the Works to enable the requirements of sub-clause 2(a) if this Warranty to be carried out and/or necessary to make good the Works afterwards.

- (c) The decision of the principal's Architects as to:
    - (i) Any work or materials failing to comply with quality or standard as above mentioned or otherwise failing to comply with the foregoing warranty and/or
    - (ii) As to the extent of replacement and/or making good which shall be necessary to properly remedy the defects and/or
    - (iii) As to the extent of any work required under sub-clause 2(b) of this Warranty shall be notified in writing to the Warrantor and a copy of the notice shall be given to the Head Contractor and thereon shall be final and binding upon the parties subject only to Clause 3 below.
  - (d) The Warrantor further covenants that within a reasonable time after written notification to the Warrantor of a decision of the Principal's Architect as to remedial work required as aforesaid, the Warrantor will replace and/or make good the sub-contract works or parts thereof and/or meet the cost of any work required by sub-clause 2 (b) of this Warranty accordingly.
  - (e) Within seven days after being notified of a decision by the Architect under any of the proceeding paragraphs, the Warrantor or the Head Contractor may give notice of arbitration thereon and in the event the question shall be referred to arbitration as hereinafter mentioned.
  - (f) If within the time aforesaid (and the Architect's decision as to what is reasonable time in any case shall be final and binding upon the parties) the Warrantor shall fail to fully and properly carry out the said remedial work, the Head Contractor and/or the Proprietor may carry out such work, or cause the same to be carried out, and the Warrantor hereby agrees to indemnify and keep indemnified the Head Contractor and the Principal against all the cost and expenses of and incidental to the carrying out of the remedial work and also against any consequent or subsequent loss or damage sustained by them or either of them as a result of the Warrantor's failure aforesaid.
3. It is mutually agreed between the parties hereto that in the event of any dispute arising with relation to any matter touching on or affecting those present to this agreement, such dispute shall be referred by either party to the independent arbitration of the President for the time being of the Victorian Chapter, Royal Australian Institute of Architects or his nominee in accordance with the subject to the provisions of the arbitration Act 1958 of the State of Victoria or any Statutory modification thereof at the time being in force.
4. So far as shall be practicable the provision of this document shall come into operation as between the Warrantor and the Head Contractor as soon as it has been executed by them, notwithstanding that it may not have been or may not thereafter be executed by the Principal. Upon execution by all parties the provisions shall become fully binding on them.

IN WITNESS WHEREOF the parties hereto have executed this Warranty on the dates hereafter shown.

THE COMMON SEAL OF \_\_\_\_\_ Date of \_\_\_\_\_  
 Or signed by the said Warrantor \_\_\_\_\_ Execution  
 In the presence of \_\_\_\_\_

THE COMMON SEAL OF \_\_\_\_\_ Date of \_\_\_\_\_  
 Or signed by the said Head Contractor \_\_\_\_\_ Execution  
 In the presence of \_\_\_\_\_

\_\_\_\_\_  
 Signed by the said Principal's Representative \_\_\_\_\_ Date of \_\_\_\_\_ Execution  
 In the presence of \_\_\_\_\_