



Victoria Government Gazette

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SPECIAL

Domestic Building Contracts Act 1995

FORM OF CLAUSE PURSUANT TO SECTION 15(2)(b)

Cost Escalation Clause

This applies only to Domestic Building Contracts entered into prior to 1 July 2000 and for which work will not be completed until on or after 1 July 2000.

To the extent that this clause constitutes a Cost Escalation Clause within the meaning of the **Domestic Building Contracts Act 1995**, the Director, Office of Fair Trading and Business Affairs has approved the clause pursuant to Section 15(2)(b) of the **Domestic Building Contracts Act 1995**.

Definitions

“**GST Law**” means the **A New Tax System (Goods and Services Tax) Act 1999** and includes any Act or Regulation that deals with GST

“**GST**” has the meaning given to it in the GST Law

“**Director**” means the Director, Office of Fair Trading and Business Affairs, Victoria

- 1.(a) If the Builder has carried out Domestic Building Work under the Contract on or after 1 July 2000 and
 - (b) in accordance with GST Law the Builder has carried out a valuation on the Domestic Building Work and has calculated that **the resulting amount of GST will cause an INCREASE to the Contract Price and**
 - (c) the Builder has given to the Building Owner written notice of the amount of the GST payable, how it has been calculated and a statement confirming that the increase in the Contract Price is because of the GST Law —
then the Builder may claim from the Building Owner that amount of the GST.
2. The amount of the GST claimed by the Builder under clause 1(c) must, unless otherwise agreed, be paid by the Building Owner with each relevant Progress Payment or if only the Final Payment is due, then with that Final Payment.
3. If the Domestic Building Work has not reached Completion by the Completion Date then the Builder is not entitled to claim from the Building Owner any amount of the GST which is attributable to that part of the Domestic Building Work carried out after the Completion Date unless the Building Owner and the Builder otherwise agree.
4. This clause is void unless —
 - (a) before the Contract was entered into, the Builder gave the Building Owner a Notice in a form approved by the Director, explaining the effect of the clause and
 - (b) the Building Owner places her, his or its signature or seal or initials next to the clause.

Building Owners Signature _____

Domestic Building Contracts Act 1995
NOTICE PURSUANT TO SECTION 15(3)

Increase in Contract Price due to Cost Escalation Clause

This applies only to Domestic Building Contracts entered into prior to 1 July 2000 and for which work will not be completed until on or after 1 July 2000.

Notice to the Building Owner: To the extent that the clause referred to as a Cost Escalation Clause constitutes a "*Cost Escalation Clause*" within the meaning of the **Domestic Building Contracts Act 1995**, the Director, Office of Fair Trading and Business Affairs has approved this Notice. It is required to be given to the Building Owner by the Builder before the Contract is entered into because the Contract contains a "*Cost Escalation Clause*" which means the Contract Price for the Domestic Building Work under the Contract may be increased as a result of GST to reflect —

- Increased costs of labour (services) and/or
- Increased costs of materials (goods)

Definitions

"GST Law" means the **A New Tax System (Goods and Services Tax) Act 1999** and includes any Act or Regulation that deals with GST

"GST" has the meaning given to it in the GST Law

"Director" means the Director, Office of Fair Trading and Business Affairs, Victoria

GST will be payable to the Australian Taxation Office by the Builder on all Domestic Building Work (labour and materials) carried out under the Contract on or after 1 July 2000 in accordance with GST Law.

However, GST is designed to be paid by the ultimate consumer – the Building Owner. The Building Owner is not obliged to pay GST where the Contract is entered into before 1 July 2000 **unless** the Building Owner agrees to the inclusion of a clause which allows for a change in the Contract Price. If the Building Owner and the Builder do not agree the Builder must nevertheless pay the GST to the Australian Taxation Office.

The Builder is unable as at the date of this Contract to accurately calculate the amount of the GST payable by the Building Owner in respect of the Domestic Building Work to be carried out under the Contract on or after 1 July 2000. This is because the Builder cannot accurately predict at what stage the Domestic Building Work will have reached by midnight 30 June 2000.

The Builder cannot claim from the Building Owner the GST payable on the Domestic Building Work carried out under the Contract on or after 1 July 2000 unless, in accordance with GST Law, the Builder calculates that the amount will result in an increase to the Contract Price.

In calculating the amount of GST payable by the Building Owner, the Builder must take account of any indirect tax savings including the abolition of wholesales sales tax.

The Builder is entitled to adjust each relevant Progress Payment or if only the Final Payment is due, then that Final Payment, to reflect the increase in the Contract Price arising from the GST Law.

Although the Builder is unable to accurately calculate the amount of GST payable by the Building Owner, the Builder estimates the likely increase in the Contract Price as a result of the GST payable will be \$ _____. The Building Owner is warned that this is an estimate only but in any event the Contract Price will not increase by more than ten (10) per cent on that part of the Contract Price for which the Builder is entitled to claim the GST.

The Director has approved the Cost Escalation Clause contained in the Contract as required under Section 15(2)b of the **Domestic Building Contracts Act 1995**.

If the Building Owner agrees to the inclusion of the Cost Escalation Clause in the Contract, the Building Owner must indicate acceptance by placing his, her or its signature, seal or initials next to the Cost Escalation Clause.

Read, signed and dated by the Building Owner prior to entering the Contract.

Signature of Building Owner

Date

NOTE: The Trade Practices Act 1974 prohibits price exploitation in relation to price changes brought about by GST Law with penalties up to \$10 million for corporations and \$500,000 for individuals.

Stamp to be placed next to the Contract Price pursuant to Section 33(2)(a)

WARNING TO BUILDING OWNER – This Contract contains a clause which allows for a change to the Contract Price under the **Domestic Building Contracts Act 1995** (“the Act”). This means that **THE CONTRACT PRICE MAY INCREASE**. You should not sign this Contract until you have read and understood the notice pursuant to s33(2)(b) which forms part of this warning notice and/or the Notice pursuant to s15(3) of the Act.

Signature of Building Owner

Date

Domestic Building Contracts Act 1995
FORM PURSUANT TO SECTION 33(2)(b)
Changes to Contract Price

This applies only to Domestic Building Contracts entered into prior to 1 July 2000 and for which work will not be completed until on or after 1 July 2000.

Warning to the Building Owner: To the extent that the clause which allows for a change to the Contract Price does not constitute a "Cost Escalation Clause" within the meaning of section 15 of the **Domestic Building Contracts Act 1995**, this Form has been approved by the Director, Office of Fair Trading and Business Affairs. It is required to be placed next to the Contract Price. It must also specify the clauses in the Contract that allow for the Contract Price to change. The Contract contains a clause which allows for a change to the Contract Price.

Definitions

"GST Law" means the **A New Tax System (Goods and Services Tax) Act 1999** and includes any Act or Regulation that deals with GST

"GST" has the meaning given to it in the GST Law

"Director" means the Director, Office of Fair Trading and Business Affairs, Victoria

GST will be payable to the Australian Taxation Office by the Builder on all Domestic Building Work (labour and materials) carried out under the Contract on or after 1 July 2000 in accordance with GST Law.

However, GST is designed to be paid by the ultimate consumer – the Building Owner. The Building Owner is not obliged to pay GST where the Contract is entered into before 1 July 2000 **unless** the Building Owner agrees to the inclusion of a clause which allows for a change in the Contract Price. If the Building Owner does not agree, the GST must nevertheless be paid by the Builder to the Australian Taxation Office.

A clause in the Building Contract which allows for a change to the Contract Price means that the Contract Price may increase or in some cases decrease.

In most cases where the Domestic Building Work to be carried out under the Contract will be completed after 1 July 2000 there will be an INCREASE in the Contract Price.

In calculating the amount of GST payable by the Building Owner, the Builder must take account of any indirect tax savings including the abolition of wholesales sales tax.

The Builder is unable as at the date of this Contract to accurately calculate the amount of the GST payable by the Building Owner in respect of the Domestic Building Work to be carried out under the Contract on or after 1 July 2000 because the Builder cannot accurately predict at what stage the Domestic Building Work will have reached by midnight 30 June 2000.

The Builder cannot claim from the Building Owner the GST payable on the Domestic Building Work carried out under the Contract on or after 1 July 2000 unless in accordance with GST Law the Builder calculates the amount. The Builder must adjust each relevant Progress Payment or if only the Final Payment is due, then that Final Payment to reflect the amount of GST.

Although the Builder cannot accurately calculate the amount of GST payable by the Building Owner, the Builder estimates the likely increase in the Contract Price as a result of the GST payable will be \$ _____. The Building Owner is warned that this is an estimate only but in any event the Contract Price will not increase by more than ten (10) per cent on that part of the Contract Price for which the Builder is entitled to claim the GST.

The Director has approved this Warning Notice contained in the Contract as required under

Section 33(2)(b) of the **Domestic Building Contracts Act 1995**.

The clauses in this Contract that allow for a change in the Contract Price as a result of GST are:

Read, signed and dated by the Building Owner prior to entering the Contract.

Signature of Building Owner

Date

NOTE: The Trade Practices Act 1974 prohibits price exploitation in relation to price changes brought about by GST Law with penalties up to \$10 million for corporations and \$500,000 for individuals.

Domestic Building Contracts Act 1995SUITABLE TERM FOR INCLUSION IN DOMESTIC BUILDING CONTRACTS UNDER
SECTION 123(b)

Change to the Contract Price

This applies only to Domestic Building Contracts entered into prior to 1 July 2000 and for which work will not be completed until on or after 1 July 2000.

Definitions

"GST Law" means the **A New Tax System (Goods and Services Tax) Act 1999** and includes any Act or Regulation that deals with GST

"GST" has the meaning given to it in the GST Law

"Director" means the Director, Office of Fair Trading and Business Affairs, Victoria

This Clause allows the Contract Price to change due to GST

- 1.(a) If the Builder has carried out Domestic Building Work under the Contract on or after 1 July 2000 and
 - (b) in accordance with GST Law the Builder has carried out a valuation on the Domestic Building Work and has calculated that **the resulting amount of GST will cause an increase or a decrease to the Contract Price** and
 - (c) the Builder has given to the Building Owner written notice of the amount of the GST payable, **how it has been calculated and a statement confirming that the change to the Contract Price is because of the GST Law** —
then the Builder may claim from the Building Owner that amount of the GST.
2. The amount of the GST claimed by the Builder under clause 1(c) must, unless otherwise agreed, be paid by the Building Owner with each relevant Progress Payment or if only the Final Payment is due, then with that Final Payment.
3. If as a result of calculating the amount of GST, there should be a decrease in the Contract Price, then the Builder must adjust each relevant Progress Payment or if only the Final Payment is due, then that Final Payment to reflect any decrease.
4. If the Domestic Building Work has not reached Completion by the Completion Date then the Builder is not entitled to claim from the Building Owner any amount of the GST which is attributable to that part of the Domestic Building Work carried out after the Completion Date unless the Building Owner and the Builder otherwise agree.
5. This clause only allows for an increase in the Contract Price if there is a Warning that the Contract Price is subject to change and that Warning —
 - (a) is placed next to that price and
 - (b) is in a form approved by the Director and
 - (c) specifies the provisions of the Contract that allow for the change.
6. If a Warning is not included in the Contract then any provision in the Contract that allows for the Contract Price to change only has effect to the extent that it enables the Contract Price to decrease.

Building Owners Signature _____

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