

This AGREEMENT made this *twenty second* day of *June* 1992.

BETWEEN

THE AUSTRALIAN CAPITAL TERRITORY a body politic in the right of the Crown created pursuant to section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Commonwealth) (hereinafter called "the Principal")

AND

BRAMBLES AUSTRALIA LIMITED (formerly known as Brambles Holdings Limited) ACN. 000164938.

a company duly incorporated under the Corporations Law trading as Gardner Perrott of 51 Collie Street Fyshwick in the Australian Capital Territory (hereinafter called "the Contractor").

WHEREAS

- A. By contract dated 10 September 1991, Contract No C89/148, the Contractor agreed with the Principal that the Contractor would remove loose asbestos insulation material from 750 dwellings for the consideration and on the terms and conditions more particularly set out in the contract ("the Contract").
- B. Various claims were made by the Contractor on the Principal and a number of disputes arose.
- C. The Contractor and the Principal have resolved such claims and disputes on the conditions hereafter set forth

NOW IT IS HEREBY AGREED AS FOLLOWS

1. RELEASE

The Contractor hereby releases and forever discharges the Principal from all claims, demands, suits or causes of action or proceedings of whatsoever nature that arose or may have arisen or might arise in respect of the matters referred to in the Schedule.

2. PAYMENT

The Principal shall pay to the Contractor the sum of one million eight hundred and fifty seven thousand dollars (\$1,857,000.00) in the manner set out in the Clause 3 hereof ("the Payment").

3. MANNER OF PAYMENT

(a) The Payment shall be divided into twelve equal amounts. ("the Equal Payments").

(b) On the date of this Agreement the number of equal Payments that equal the number of Separable Parts for which Certificates of Practical Completion have been issued under clause 42.2 of the General Conditions of Contract which form part of the Contract ("the General Conditions of Contract") shall be due and payable by the Principal to the Contractor and paid on or before seventh (7) July 1992.

(c) The Principal shall pay to the Contractor an Equal Payment within fourteen days of date of the issue of each Certificate of Practical Completion under clause 42.2 of the General Conditions of Contract in respect of each Separable Part issued after the date of this Agreement.

4. RISE AND FALL

(a) Any Equal Payment due and payable to the Contractor after 30 June 1992 under clause 3 (c) of this Agreement shall be adjusted in accordance with Clause 3.41 of the Contract Conditions of Particular Application which form part of the Contract ("the Contract Conditions of Particular Application") provided that the base date for the indices

shall be 1 July 1992 and the current date for the indices shall be the date of Practical Completion of each relevant Separable Part.

- (b) There shall be no adjustment for Equal Payments due and payable to the Contractor under clause 3 (b) of this Agreement.

**5. FURTHER CLAIMS AND DISPUTES**

- (a) The Contractor will not make any claim or demand for any reason whatsoever (including any claim or demand for the payment of additional money) whether under or in connection with the Contract at law, in equity or under any statute in respect of the matters set out in the Schedule whether arising before or after the date of this Agreement.
- (b) For the purposes of this Clause the matters set out in the Schedule shall include any claim, demand or dispute of the same or of a similar nature to those referred to in the Schedule in respect of the Works or part of the Works or Work under the Contract whether arising before or after the date of this Agreement.
- (c) In this clause, where the context permits, "claim or demand" includes suits, causes of actions or proceedings whether any court or under arbitration or the Commercial Arbitration Act 1986.

**6. VISIBLE AND ACCESSIBLE LOOSE ASBESTOS**

Clause 3.10 of the Contract Conditions of Particular Application is amended by inserting the following:

- 3.10(j) For the purposes of this Contract:
  - (i) visible means perceptible by the sense of sight or large enough to be seen, not merely exposed to view;
  - (ii) loose asbestos, in relation to a building, means asbestos that is not securely affixed to a building or it means asbestos which is distinct from asbestos incorporated in an Asbestos Containing Material and includes adhering to surfaces;

(iii) accessible includes that which can be removed with the aid of tools and devices of the type or similar to those commonly available at the date of this Agreement in the asbestos removal industry in the ACT including (but not limited to): conduits of all available sizes, bent to suit; purpose made hooks for accessing confined spaces; or hacksaw blades, brushes and scrapers.

3.10(k) It is acknowledged that as far as the Principal can determine the extent or detail of asbestos removal that has been achieved in the most recent houses completed at 6 May 1992 is in accordance with the Contract.

3.10(l) Whenever the Contractor requests inspection of a dwelling from which the asbestos has been removed, the Superintendent shall cause inspection to be carried out without undue delay.

7. PROGRAM

Clause 3.08 of the Contract Conditions of Particular Application is amended by the insertion of the following paragraphs:

Each updated construction program shall be supplied

- (i) in a manner the same as or similar to the Contractors document entitled "Summary listing of houses in streams" and dated 4 May 1992; and
- (ii) in a manner the same as or similar to the Contractors document entitled "Asbestos Removal Project (Microschedule) stream details" and dated 12 May 1992.

Notwithstanding the date of Completion of the relevant Separable Part in the Agreement the period of possession of each house by the Contractor shall be subject to the approval of the Superintendent which shall not be unreasonably withheld.

8. REPAIR OF DAMAGE AND RECTIFICATION

(a) In this clause, in the Schedule and in clause 3.34 of the Contract Conditions of Particular Application the word "defect" includes the meaning attributed to that word in clause 3.11 (b) of the Contract Conditions of Particular Application and shall include the repair work defined in clause 3.10 (i) of the Contract Conditions of Particular Application and any omissions from the Works or Work under the Contract.

(b) In an endeavour to resolve differences and disputes between the Principal and the Contractor relating to each house for which prior to 6 May 1992:

- (i) The Superintendent has issued an instruction to rectify defects;
- (ii) the Contractor has notified the Superintendent that all such defects have been rectified; and
- (iii) the Superintendent is of the opinion that any and all such defects have not been rectified as required by the Agreement,

the following procedure shall be adopted prior to any dispute or difference being notified to the Superintendent. Such disputes shall include (but shall not be limited to) disputes or potential disputes under clauses 35, 40, 45 and 48 of the General Conditions of Contract

(aa) The Superintendent and the Contractor shall jointly inspect each such house.

(bb) The inspection of each such house must be carried out within ninety (90) days of the date of this Agreement at a time arranged by the Superintendent.

(cc) Upon each inspection the Superintendent shall confirm, vary, delete or clarify the requirements to rectify each defect. The Contractor shall as soon as practicable thereafter carry out the work so instructed by the Superintendent at no extra cost to the Principal.

(dd) If the Contractor fails to attend an inspection at the time arranged by the Superintendent then the Superintendent may confirm the requirement to rectify the defects in respect of the house the subject of the inspection.

(ee) The inspection may be conducted outside the customary working hours as that expression is defined in clause 3.17 of the Contract Conditions of Particular Application.

(c) Clause 37.2 of the General Conditions of Contract shall be amended as follows:

- (i) the first paragraph shall be deleted
- (ii) the first line of the second paragraph shall be deleted and the following substituted in lieu thereof:  
 "Any defects referred to in clause 3.34 of the Contract Conditions of Particular Application that are not rectified by"

(d) Clause 3.34 of the Contract Conditions of Particular Application shall be amended by the addition of the following paragraph:

"In respect of any houses for which a Certificate of Final Clearance is issued after 6 May 1992 the Superintendent shall not issue a notice under clause 37.2 of the General Conditions of Contract unless the Superintendent has first notified the Contractor of the Superintendent's intention to issue such a notice and has given the Contractor an opportunity to jointly inspect the relevant dwelling house with the Superintendent.

The Superintendent shall arrange a time for the carrying out of the inspection and the Superintendent shall give the Contractor at least twenty four hours notice of the date and time of the joint inspection.

Upon each inspection the Superintendent shall confirm, vary, delete or clarify the requirements to rectify each defect. The Contractor shall as soon as practicable thereafter carry out the work so instructed by the Superintendent at no extra cost to the Principal

except where the requirement is a variation under Clause 40 of the General Conditions of Contract.

If the Contractor fails to attend an inspection at the time arranged by the Superintendent then the Superintendent may confirm the requirement to rectify the defects in respect of the house the subject of the inspection.

The period for the giving of the notice under clause 37.2 of the General Conditions of Contract (if required) shall run from the date the joint inspection took place or was due to take place (whichever is the later)".

9. ADDITIONAL WORK

- (a) In respect of any work carried out by the Contractor which is itemised in Annexure "A" hereto the Superintendent shall pursuant to clause 40 of the General Conditions of Contract issue an order for variation and the Superintendent shall determine the price of any such variation under clause 40.2 of the General Conditions Contract and the determination of the price shall be final and binding on the Contractor. The Contractor shall accept the determination of the Superintendent as final and conclusive.
- (b) A certificate under the hand of the Superintendent as to Superintendents determination shall be conclusive evidence of that determination.
- (c) The price shall be paid to the Contractor within 14 days of the date of the certificate referred to in clause 9 (b) of this Agreement.
- (d) Nothing in this clause shall require the Superintendent to make any determination unless the Contractor has supplied to the Superintendent such information or particulars or such further information and particulars as the Superintendent may reasonably request.

(e) Clauses 45 and 48 of the General Conditions of Contract shall not apply to a determination of the Superintendent under this clause.

**10. CONTRACTORS ACKNOWLEDGMENT**

The Contractor acknowledges that at 6 May 1992 the Contractor was not aware of any claims or demands (including claims or demands for the payment of money) arising out of or in connection with the Contract except those that are referred to in the Schedule.

**11. CONFIRMATION**

Except as varied by this Agreement, the Contractor and the Principal hereby confirm the Contract.

**12. CONFIDENTIALITY**

The Principal and the Contractor agree that the terms of this Agreement shall be and remain confidential and shall not be disclosed to any person, firm or corporation, except as may be required by a Court of Competent Jurisdiction without the consent in writing of the other of them. Any such consent maybe on terms and conditions.

**13. HEADINGS**

The headings are in this Agreement for ease and convenience and do not form part of the Agreement.

**14. SINGULAR, PLURAL PERSONS**

Words importing the singular number shall include the plural and the masculine gender shall include the feminine gender or neuter gender and vice versa and words importing persons shall include corporations.

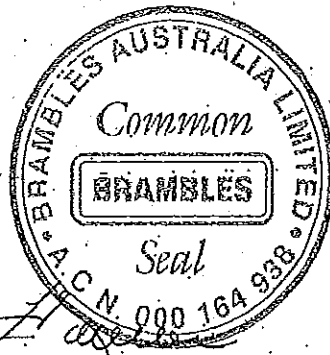
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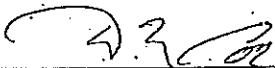
Any claim, demand or dispute notified to the Principal or the Superintendent in writing under the Contract up to and including 6 May 1992.

This Schedule does not include:

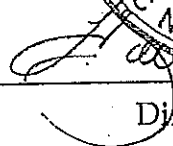
- (a) claims under the Contract of the kind referred to in the letter dated 30 April 1992 from the Principal to the Contractor and the letter dated 19 May 1992 from the Contractor to the Principal; and
- (b) a claim that an Instruction to Contractor issued by the Superintendent to the Contractor after 6 May 1992 is not an instruction to rectify defects and is a variation under clause 40.2 of the General Conditions of Contract.

The COMMON SEAL of  
BRAMBLES AUSTRALIA  
LIMITED was hereto affixed  
in the presence of





Secretary



Director

Signed for and on behalf of the  
AUSTRALIAN CAPITAL  
TERRITORY



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Dated 22 JUNE 1992

AGREEMENT

BETWEEN

AUSTRALIAN CAPITAL TERRITORY

AND

BRAMBLES AUSTRALIA LIMITED

A.C.T. Government Solicitor  
1st Floor, GIO House  
City Walk  
Canberra City

Reference: Mr John Newnan  
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