



MBA EAST CAPE BUILDING AGREEMENTS GUIDE 2022

1. MASTER BUILDERS SOUTH AFRICA AGREEMENTS

1.1 House Building and Small Contracts Agreement - March 2005

This agreement is intended to be used for the building of individual residential houses and other smaller contracts where no nominated or selected subcontractors are appointed.

The agreement allows for, but does not require, the appointment of a principal agent.

1.2 Agreement for Renovation and Refurbishment Work to Existing Premises - May 2010

The agreement is intended to be used where an existing building is to be repaired, renovated and/or refurbished for an agreed lump sum contract price.

The agreement is not suitable where a principal agent and nominated or selected subcontractors are appointed, where the works are of a complex nature or where the construction period exceeds 3 months.

It is also generally not recommended for contract values that exceed R1 million (*as escalated by inflation after the date of issue of the agreement in 2010*).

1.3 Domestic Subcontract Agreement - May 2018

This agreement is intended to be entered into between a principal contractor and a domestic subcontractor (as opposed to a nominated or selected subcontractor) where the principal agreement used is the JBCC Principal Building Agreement Edition 6.2 May 2018.

In general, domestic subcontractors supply labour as well as material and are chosen by the principal contractor and not the client or principal agent.

1.4 Labour Only Subcontract Agreement - February 2006

This agreement is intended to be entered into with subcontractors who supply only labour and not materials. The agreement can be used in conjunction with any principal agreement

The agreement should be used with reference to applicable labour legislation and the MBSA Labour Only Tax Directive dated 15 March 2005 reference CON181356.

2. JOINT BUILDING CONTRACTS COMMITTEE (JBCC®) AGREEMENTS

2.1 JBCC® Principal Building Agreement (PBA):

2.1.1 PBA - Edition 6.2 May 2018

The PBA is suitable for all building contracts and may be used with a Bill of Quantities, or a Schedule of Rates and drawings.

The PBA is synchronized with the N/S Subcontract Agreement to appoint nominated and selected subcontractors binding them to the same conditions as the principal contractor. The agreement is divided into seven sections comprising 30 clauses.

In addition to being a legal document, the content has been structured as a checklist to administer the execution of the works and to minimize potential disagreement – to effectively use expensive man-hours of all the role players in a building project.

The agreement is signed between the employer and the contractor - in conjunction with the Contract Data in which all contract variables are recorded, initially by the employer to solicit offers from contractors, and completed by the contractor and submitted as the form of tender.

2.1.2 PBA Contract Data - Edition 6.2 May 2018

The PBA Contract Data follows the sequence of clauses in the PBA – completed by the employer (principal agent) with space to record the names of the parties and agents, a description of the works, followed by space per clause to record pertinent information e.g., the law of the country, the composition of the contract document as a whole, insurance requirements (by whom, who pays the deductible), site information, features to be protected, working hours etc.; work to be carried out by nominated subcontractors or a direct contractor; intended dates for completion of the works as a whole or by section – and penalties, if applicable and criteria to be met for the certification of practical completion; payment 'conditions'.

The contractor completes the remainder of the Contract Data detailing the type and value of guarantees, a record of industry holidays during the anticipated construction period, the payment and adjustment of preliminaries, and the tender amount and the contractor's details.

For state contracts a separate form of tender in the CIDB format will have to be completed.

2.2 Nominated/Selected (N/S) Subcontract Agreement

2.2.1 N/S Subcontract Agreement - Edition 6.2 May 2018

The N/S Subcontract Agreement is modelled on the PBA with all common clauses retaining the same numbering. 'Unique' clauses deal with the obligations and rights of nominated and/or selected subcontractors.

To ensure a 'fair deal' each N/S subcontractor must be appointed by the contractor using an unaltered printed or electronic version N/S Subcontract Agreement and the completed N/S Subcontract Contract Data.

2.2.2 N/S Subcontract Contract Data – Edition 6.2 May 2018

The N/S Subcontract Contract Data follows the sequence of clauses in the N/S Subcontract Agreement – completed by the contractor as 'employer' of the subcontractor.

The project information is the same as in the PBA Contract Data. The contractor (specialist agent) must highlight the subcontract performance criteria. The subcontractor must complete the remainder of the Contract Data detailing the type and value of guarantees, the payment and adjustment of preliminaries, the tender amount and the subcontractor's details.

For state contracts a separate form of tender in the CIDB format will have to be completed.

2.3 JBCC® Minor Works Agreement (MWA)

2.3.1 MWA - Edition 5.2 May 2018

The MWA is suitable for use where the works are of a minor and simple nature.

The employer appoints a principal agent to administer the contract and direct contractors can be appointed for specialised work and installations that will not fall within the contractor's responsibilities or liabilities related to the works.

The MWA may be used with a Bill of Quantities or a Schedule of Rates and drawings. The Agreement is divided into seven sections comprising 22 clauses. In addition to being a legal document the content has been structured as a checklist to administer the execution of the works and to minimise potential disagreement – to effectively use expensive man-hours of all the role players in a building project. The agreement is signed between the employer and the contractor - in conjunction with the MWA Contract Data in which all contract variables are recorded, initially by the employer to solicit offers from contractors, and completed by the contractor and submitted as the form of tender.

2.3.2 MWA Contract Data - Edition 5.2 May 2018

The MWA Contract Data follows the sequence of clauses in the MWA Agreement – completed by the employer (principal agent) with space to record the names of the parties and agents, a description of the works, followed by space per clause to record pertinent information e.g., the law of the country, the composition of the contract document as a whole, insurance requirements (by the employer, deductible paid by contractor), information about the site, features to be protected, working hours etc.; work to be carried out by a direct contractor; the intended date for completion of the works as a whole – and penalties, if applicable and criteria to be met for the certification of practical completion; payment 'conditions'.

The contractor completes the remainder of the MWA Contract Data detailing the type and value of Guarantees, a record of industry holidays during the anticipated construction period, the payment and adjustment of preliminaries, and the tender amount and the contractor's details.

For state contracts a separate form of tender in the CIDB format will have to be completed.

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