

## ESCALATION CLAUSE FOR SPECIFIED BUILDING MATERIALS

The contract price for this residential construction project has been calculated based on the current prices for the component building materials. However, the market for the building materials that are hereafter specified is considered to be volatile, and sudden price increases could occur. The Builder agrees to use his best efforts to obtain the lowest possible prices from available building material suppliers, but should there be an increase in the prices of these specified materials that are purchased after execution of contract for use in this residential construction project, the Owner agrees to pay that cost increase to the Builder. Any claim by the Builder for payment of a cost increase, as provided above, shall require written notice delivered by the Builder to the Owner stating the increased cost, the building material or materials in question, and the source of supply, supported by invoices or bills of sale.

Specified Building Material	/	Current Price per (Unit of Measurement)	/	Date	/	Supplier
1)	/		/		/	
2)	/		/		/	
3)	/		/		/	
4)	/		/		/	
5)	/		/		/	
6)	/		/		/	

### SPECIAL CIRCUMSTANCES – RIGHT OF TERMINATION

Should there be a rise in the cost of any specified building material or materials, exclusive of any other price changes, that would cause the total contract price to increase by more than \_\_\_\_\_(%), the Builder shall, before making any additional purchases of specified material or materials, provide to the Owner a written statement expressing the percentage increase of the contract price, the building material or materials in question, and the dollar amount of the price increase to be incurred. The Owner may then, at his option, terminate the contract by providing within \_\_\_\_\_ business days both written notice of termination to the Builder, and payment to the Builder for all costs expended in performance of the contract to the date of termination, plus payment of a prorated percentage of the Builder's profits based on the percent of completion. Should both notice of termination and full payment not be forthcoming within \_\_\_\_\_ business days, as provided herein, the Builder shall have the option to terminate the contract, or to proceed with the contract and purchase the specified building materials at the increased price. If termination is elected, the Builder shall provide to the Owner a written notice of termination, and the Owner shall be required to pay the Builder for all his costs expended in performance of the contract to the date of termination, plus payment of a prorated percentage of the Builder's profits based on the percent of completion. If the Builder elects to proceed on the contract, he may then purchase the specified material or materials at the increased price, and the Owner shall be required to pay the increased cost incurred.

**CAUTION -** The sample language provided in this clause is intended for general informational purposes only, and may not be appropriate for some agreements. Care should be taken in the drafting of any contractual clause, and it is recommended that an attorney be consulted concerning both applicable law, and the phrasing of particular contract provisions.