

REGULATED DOMESTIC BUILDING CONTRACT

Suitable for Domestic Building Contracts \$20,000 and over
(Including the construction of an entire home)

REF No: 22222_____

DATE: 05/10/2020_____

IMPORTANT NOTICE "COOLING-OFF PERIOD"

The *Owner* is able to withdraw from this contract during the Cooling Off Period being five (5) working days from receipt of the signed contract (subject to clause 2).

To withdraw from this contract the *Owner* must complete a written withdrawal notice pursuant to section 35 of the Queensland Building and Construction Commission Act 1991 within the specified timeframe and:

- (a) give it to the *Contractor*, or
- (b) leave it at the *Contractor's* address in this contract; or
- (c) serve it on the *Contractor* in accordance with any provision in the contract providing for service of notices on the *Contractor* by the *Owner*.

A. Owner's Details

Name: (*Owner 1*):

Address: Bob Smith

235 Smith Road

Suburb/State: Hamilton

Postcode: 4006

Home Phone: 3333 8888

Work Phone No: 3890 2000

Fax:

Mobile: 0488 888 888

Email: bob@abcradio.com.au

Date of Birth:

Are you a resident *Owner*? **YES** / NO (delete one)

B. Contractor's Licence (copy must be shown to the Owner)

Owner has checked the *Contractor's* Licence and history via QBCC's online Licence Search ☐ YES ☐ NO

Name (as shown on *Contractor's* Licence) : Resilient Homes Pty Ltd

Address (as shown on *Contractor's* Licence): P O Box 999, Brisbane City

State: QLD

Postcode: 4001

Business Phone No: 0499 999 999

Mobile: 0499 999 999

Fax: 07 3999 9999

Email: admin@resilienthomes.com.au

Contractor's Licence Details

Contractor warrants that the licence details are current and appropriate for the Works ☐ YES ☐ NO

Licence No: 141526

Expiry Date: 10/09/2021

Category shown on licence: Builder – Low Rise

C. Contract Price

Contract Price (excl. GST) \$604,545.46

GST \$ 60,454.54

Contract Price (incl. GST) \$665,000.00

The *Contract Price* excludes any costs payable to a third party for:

- (a) Conveying services to the *Worksite*;
- (b) Connecting or installing services for use at the *Worksite*; or
- (c) Issuing planning or building permits or similar authorisations that are related to the carrying out of the *Works*.

The *Contractor* estimates only that costs payable to third parties shall be : \$

Note: The above Contract Price is subject to variation under Boxes P & Q (Provisional Sum Items & Prime Cost Items), clause 2 (Acceptance/Cooling off Period), clause 4 (Variations), clause 16 (Owner's Responsibilities), clause 20 (Risk), clause 22 (Underground Locations & Hidden Services), and clause 32 (Termination) of the attached conditions.

D. Description of the Works (brief description)**Note:** If there is insufficient space a full description of the Works must be attached as a separate Schedule.

As per Resilent Homes Pty Ltd Quote No. 5559 – Dated 05/08/2020

As per Resilent Homes Pty Ltd Specification 5559a – Dated 06/08/2020

As per AMA Engineering Plans – Job No. 888 – Dated 06/08/2020 Dwg 01-06

As per Resilent Homes Architects Job No. 888 – Dated 06/08/2020 Dwg: 01-11

(Each party to this contract should initial each page of the Plans, Specifications and Foundations Data)

Plans prepared by: Resilent Homes Architects

Date signed: No. of pages 12 Supplied by: Contractor ☐ Owner ☒Specifications prepared by: No. of pages 10 Supplied by: Contractor ☐ Owner ☒

Foundations Data – Refer clause 24)

Foundations Data prepared by: AMA Engineering

Date Signed: No. of pages 7 Supplied by: Contractor ☐ Owner ☒**E. Worksite Details**

Worksite Address: 882 Mt Glorious Road

Suburb/State: Highvale Postcode: 4520

Lot No: 9 On RP / SP / BUP Number: RP228429

Certificate of Title Details:

The Worksite is affected by the following Building Restrictions, Covenants or Easements (Owner to personally detail):

The Owner warrants to the Contractor that the Owner is allowed to build on the Worksite specified herein, that the description of the Worksite above is correct and that all Building Restrictions, Covenants or Easements that may affect the Works to be undertaken under this contract have been fully disclosed above.

F. Dates

Commencement Date: 10/10/2020 (or anticipated commencement date if not known)

Expected Completion Date:

Building Completion Period (Days): 161 days (building period is in calendar days - not working days)

The Works are to be practically completed within the number of building period days stated (which is to include all calculable days allowed as referred to below), subject to any extension of the contract is allowed under clause 11.2

If the commencement date is not known the intended commencement date is decided as follows:

The building period includes the following allowances for:

Calculable Delays:	Inclement weather or the effects thereof:	2
	Weekends, public holidays:	47
	Rostered days off	N/A
	Days not generally available for carrying out Works:	1
	Any other matter	1
Incalculable Delays:	The Works may be delayed due to the following reasons as the period of delay cannot be adequately estimated. (Reasons are to include specific causes and the general effects that the delay is likely to have on the carrying out of the Works)	

Reasons (to be continued on a separate page if necessary):

G. Payment Schedule - The Owner shall make payment to the Contractor as follows:

METHOD A: This part applies unless Method B has been selected as the agreed progress payment method

Type of Contract	% of Price	Stage	\$ (excl. GST)
Build to enclosed stage		Deposit (see below)	
	20%	Base Stage	
	25%	Frame Stage	
	Balance	Completion	
Building to fixing stage		Deposit (see below)	
	12%	Base Stage	
	18%	Frame Stage	
	40%	Lock-up Stage	
	Balance	Completion	
Build to all stages	05%	Deposit (see below)	\$ 33,250.00
	20%	Base Stage	\$133,000.00
	30%	Frame Stage	\$199,500.00
	30%	Lock-up Stage	\$199,500.00
	10%	Fixing Stage	\$ 66,500.00
	05%	Completion	\$ 33,250.00

Notes: Where the *Contract Price* is \$3,300 or more, the deposit, by law, cannot exceed 10% if the *Contract Price* is under \$20,000, or 5% if the *Contract Price* is \$20,000 or more, except where the value of the *Works* to be performed off-site is more than 50% of the total *Contract Price*, then 20% can be claimed.

Section 66 of the Queensland Building and Construction Commission Act 1991 specifies the above stages which have the following meanings:

"Base Stage" means:

- (a) for a building with a timber floor with base brickwork - the stage when;
 - (i) the concrete footings for the building's floor are poured; and
 - (ii) the building's base brickwork is built to floor level; and
 - (iii) the bearers and joists for the building are installed; or
- (b) for a building with a timber floor without base brickwork - the stage when;
 - (i) the building's stumps, piers or columns are finished; and;
 - (ii) the bearers and joists for the building are installed; or;
- (c) for a building with a suspended concrete slab floor - the stage when;
 - (i) the building's concrete footings are poured; and
 - (ii) the formwork and reinforcing for the suspended slab are installed; or
- (d) for a building with a concrete floor, other than a suspended concrete slab floor - the stage when the building's floor is finished.

"Frame Stage" means the stage when a building's frame is finished.

"Enclosed Stage", for a building, means the stage when:

- (a) the external wall cladding is fixed; and
- (b) the roof covering is fixed, but without;
 - (i) soffit linings necessarily having been fixed; or
 - (ii) for a tile roof - pointing necessarily having been done; or
 - (iii) for a metal roof - scribing and final screwing off necessarily having been done; and
- (c) the structural flooring is laid; and
- (d) the external doors are fixed (even if only temporarily), but, if a lockable door separating the garage from the rest of the building has

- been fixed, without the garage doors necessarily having been fixed; and
(e) the external windows are fixed (even if only temporarily).

"Fixing Stage" means the stage when all internal lining, architraves, cornice, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards of a building are fitted and fixed in position.

METHOD B: If this part has been completed then Method A above does not apply to this contract.

The Queensland Building and Construction Commission Act 1991 generally prohibits the *Contractor* under a domestic contract from demanding or receiving an amount under that contract, other than a deposit, unless the amount is directly related to the progress of the subject *Works*.

Method B is to be used where it is not practical for the progress payment stages relating to the *Works* to be in accordance with the stages specified in Method A. In order to use Method B it must be stated in writing as to why Method A is not being used:

Method A is inappropriate for use because:

A separate progress payment schedule in the following form needs to be fully completed: Name of stage, what this stage means (i.e. a comprehensive description of the *Works* for each stage is to be specified), percentage of total *Contract Price*, \$ value payable for the stage (excl. GST) upon completion of that stage.

SPECIFY NAME OF STAGE AND A DESCRIPTION OF THE WORKS TO WHICH THE STAGE RELATES	PERCENTAGE	AMOUNT
Upon signing the contract – Deposit Amount	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
	%	\$
TOTAL	100%	\$

Notes: Where the *Contract Price* is \$3,300 or more, the deposit, by law, cannot exceed 10% if the *Contract Price* is under \$20,000, or 5% if the *Contract Price* is \$20,000 or more, except where the value of the *Works* to be performed off-site is more than 50% of the total *Contract Price*, then 20% can be claimed.

Each stage must relate to the value of the *Works* being carried out under that stage and the *Contractor* cannot claim any payment for *Works* in advance.

Use of a stage name in the Method B table that is the same as a stage specified in Method A will have the same meaning as in Method A unless clearly stated otherwise in the Method B table.

The *Owner* by initialling here _____ acknowledges that they accept the alternative Method B progress payment schedule above.

H. Finance Details (Refer clause 6)

Is this contract conditional on the *Owner* obtaining loan approval from a financial institution? YES ☒ NO ☐

Loan Amount \$390,000.00

Finance Approval Date: / /

I. Security Monies (Refer clause 7) - This applies to monies which are not subject to loan approval in Box H above

Financial Institution: ABC Banking

Amount to be placed on deposit: \$

J. Liquidated damages (Refer clause 8)

The *Contractor* shall pay to the *Owner* liquidated damages of \$ 15.00/day.

Per calendar day for each day of delay in reaching practical completion (if no amount specified in the space provided, then \$50 per day shall apply).

Note: The sum specified should be a genuine pre-estimate of the loss that both the *Contractor* and the *Owner* agree that the *Owner* is likely to incur in the event that the *Works* are delayed by the *Contractor* and have not reached practical completion within the building period specified in Box F.

K. Foundations Data and Latent Conditions (Refer clause 24)

By ticking the box below the parties agree who is responsible for additional costs due to physical conditions on or around the *Worksite* (including on or below the surface) being different from those that could be reasonably expected by the *Contractor* at the time this contract is entered into.

The *Contractor* is responsible ☒ The *Owner* is responsible ☐ (If no box is ticked the *Contractor* is responsible)

L. Worksite Access (Refer clause 9)

The Party responsible for ensuring *Worksite* access is available during the *Works* is:

The *Contractor* is responsible ☒ The *Owner* is responsible ☐ (If no box is ticked the *Contractor* is responsible)

M. Planning and Building Approvals (if required for the *Works* - Refer clause 10)

By ticking the box below the parties agree who is responsible under this contract for obtaining and paying for all planning, building or other approvals or consents for the *Works* required by any statutory or other authority:

The *Contractor* is responsible ☐ The *Owner* is responsible ☒ (If no box is ticked the *Contractor* is responsible)

N. Specified Owner's Agent (if applicable - Refer clause 21)

The *Owner's* specified agent is:

O. Defects Liability Period (Refer clause 13)

The Defects Liability Period under this contract following practical completion is: ____6____ months / years\

(If nothing is stated, the Defects Liability Period shall be 6 months)

P. Provisional Sum Items (Refer clause 5)

The *Contractor* warrants that any Provisional Sum has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the contract is made, including the nature and location of the *Worksite*.

Detailed description of <i>Materials</i> (the subject of the <i>Provisional Sum</i> estimate)	Estimated Cost	<i>Contractor's</i> margin (if nothing stated 20%)	Total Amount
Alfresco Area - Tiling	\$2,000		
Living Area Tiling	\$15,000		

Q. Prime Cost Items (Refer clause 5)

Detailed description of Item	Estimated Quantity	Estimated Cost	Contractor's margin (if nothing stated 20%)	Total Amount
Solar Hot Water System		\$7,500		
Ducted Air Conditioning		\$15,000		

If the cost of a *Provisional Sum* or *Prime Cost Item* is less than the above estimated cost, the *Contract Price* will be reduced to take the difference into account. If the cost of a *Provisional Sum* or *Prime Cost Item* is more than the above estimated cost, the *Contract Price* will be increased to take the difference into account and an additional amount equal to the percentage of the difference indicated as the *Contractor's* margin shall be added to cover the *Contractor's* profit, and additional services and overheads.

Any variations to the *Contract Price* as a result of the cost of any *Provisional Sum* or *Prime Cost Item* shall be taken into account in the calculation of the progress payment due after completion of the relevant *Provisional Sum* or installation of the relevant *Prime Cost Item*.

R. Owner's supplied Materials/Works

Detail below all materials to be supplied or works to be undertaken by the *Owner* (Note: no warranties are given or implied by the *Contractor* in relation to any materials or works listed in this section. Any materials supplied by the *Owner* must comply with clause 28.1(b) below)

S. Fixtures and Fittings

The following items whilst specified in the plans and specifications which form part of this contract are not included in the *Contract Price*.

The *Owner* must initial here _____ acknowledging that the above items are not included in the *Contract Price*.

T. Second Hand Materials (Refer clause 28.1(b))

List here any second hand *Materials* that are to be incorporated into the *Works*.

U. Insurance Details (Refer clause 19)

The *Contractor* undertakes to hold the following insurance/s and warrants that such insurance/s will be current and are sufficient for the *Works* being carried out under this contract.

Public Liability Insurance	Policy No. AUSAP412853C (Mecon Insurance)
Contract Works Insurance	Policy No. AUSAP412853C (Mecon Insurance)
Workcover Insurance	Policy No. WCA080794501 (Workcover Queensland)
Home Warranty Insurance	Policy No. (QBCC)
Professional Indemnity Insurance (<i>where applicable</i>)	Policy No. N/A

V. Special Conditions Applicable To This Contract

(Note: The *Contractor* must specify here if the connection, or the installation of any particular services e.g. gas, water etc. (which the *Contractor* is to pay for) are included in the *Contract Price*)

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

NOTES TO THIS CONTRACT

This contract is not suitable for use as a 'mixed contract' by reason of Schedule 1B, Part 4, section 5 (1) (c) of the Queensland Building and Construction Commission Act 1991. A 'mixed contract' is one that combines domestic building work with other work.

For the purposes of Schedule 1B, Part 4, section 5 (1) (b) of the Queensland Building and Construction Commission Act 1991 this contract is not a cost plus contract.

The *Contractor* is required to give the *Owner* a copy of any invoice or receipt relevant to any *Provisional Sum* or *Prime Cost Item* as soon as practicable after the *Contractor* receives the invoice or receipt for such items or at the time of submission of a progress payment claim in accordance with Queensland Building and Construction Commission Act 1991.

1. Definitions and Interpretation

- 1.1 The following words shall have their corresponding meanings unless the context requires otherwise.
- (a) "*Contractor*" means Luke Redpath Building Service Pty Ltd its successors and permitted assigns or any person acting on behalf of and with the authority of Luke Redpath Building Service Pty Ltd.
 - (b) "*Owner*" means the *Owner* or any person acting on behalf of and with the written authority of the *Owner* and includes the *Owner's* successors and permitted assigns.
 - (c) "*Works*" shall mean all *Works* (including the supply of *Materials*) undertaken by the *Contractor* and described in this contract and includes any advice or recommendations. Where the context so permits the terms '*Works*' or '*Materials*' shall be interchangeable for each other.
 - (d) "*Materials*" shall mean *Materials* supplied by the *Contractor* that are required in order complete the *Works*.
 - (e) "*Contract Price*" means the *Contract Price* of the *Works* (as agreed between the *Contractor* and the *Owner*) specified in Box C above (and shall include any adjustments made under the provisions contained in this contract).
 - (f) "*Security Monies*" means the amount of the *Contract Price* that is payable under this contract for the *Works* which is provided by the *Owner* personally and which is not subject to provision by way of a loan from a financial institution.
 - (g) "*Worksite*" means the land (or that part of the land) that the *Contractor* reasonably needs to occupy in order to carry out and practically complete the *Works* required under this contract.
 - (h) "*Resident Owner*" has the same meaning as contained in the Schedule of the QBCC Act 1991 and means an owner who is an individual and intends to reside on the *Worksite* on completion of the domestic building work or within 6 months after the completion of the *Works*; and
 - (i) "*QBCC Act*" means the Queensland Building and Construction Commission Act 1991 (and includes any amendments from time to time).
- 1.2 In this Contract, unless the context requires otherwise:
- (a) **Plurals.** The singular shall include the plural and vice versa and words importing one gender shall include every gender and a reference to a person shall include any other legal entity of whatsoever kind and vice versa.
 - (b) **Statutory amendments.** A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
 - (c) **Joint obligations.** An obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally.
 - (d) **Parts of Contract.** References to this Contract including its clauses, schedules, and annexures.
 - (e) **Headings.** Headings shall be ignored in construing this document.

2. Acceptance/Cooling off Period

- 2.1 Any instructions received by the *Contractor* from the *Owner* (including the acceptance of a Domestic Quotation) for the provision of *Works* and/or the *Owner's* acceptance of *Works* undertaken by the *Contractor* shall constitute acceptance of this contract subject to the *Owner* being able to withdraw from this contract (subject to clause 2.2) within five (5) business days following the later of:
- (a) receipt from the *Contractor* of a signed copy of this contract; or
 - (b) receipt from the *Contractor* of a copy of the appropriate contract information sheet.

- 2.2 To withdraw from this contract the *Owner* must complete a withdrawal notice stating that the *Owner* withdraws from the Contract pursuant to section 35 of the QBCC Act within the timeframe specified in clause 2.1 above, and:
- give it to the *Contractor*; or
 - leave it at the *Contractor's* address in this contract; or
 - serve it on the *Contractor* in accordance with any provision in this contract providing for delivery of notices on the *Contractor* by the *Owner*; and
 - pay to the *Contractor* the sum of one hundred dollars (\$100.00) plus any out-of-pocket expenses reasonably incurred by the *Contractor* before the date of withdrawal from this contract. If the *Owner* has paid to the *Contractor* an amount which is greater than this amount as at the date of the withdrawal from this contract, the *Contractor* must refund to the *Owner* any excess monies.
- 2.3 The *Owner* may not withdraw from this contract where:
- there has been a previous contract on similar terms for the same *Worksite/property* or
 - the *Owner* has received independent legal advice about the contract; or
 - the *Owner* informs the *Contractor* that they have received independent legal advice about the contract when or after the contract is made.
- 2.4 Subject to clauses 2.1 and 2.2 upon acceptance of this contract by the *Owner*, this contract is binding and can only be rescinded in accordance with this contract or with the written consent of the *Contractor*, and shall prevail to the extent of any inconsistency with any other document, or reference to any prior representations, conditions or agreement (whether written or oral) between the *Owner*, and the *Contractor*.
- 3. Contract Price and Payment**
- 3.1 The *Owner* shall pay the *Contractor* the deposit stated in Box G upon signing this contract, and agrees to pay the *Contract Price* for the *Works* in accordance with this contract.
- 3.2 The *Owner* must within ten (10) working days of signing this contract provide evidence to the *Contractor's* satisfaction of the *Owner's* ability to pay the *Contract Price*. The *Contractor* may at any time that this contract remains in force request such information to be supplied by the *Owner* so that the *Contractor* may confirm the *Owner's* ability to pay the balance of the *Contract Price* or any variation to this contract.
- 3.3 The *Owner* agrees to immediately notify the *Contractor* in the event that their ability to pay the *Contract Price* is reduced or ceases at any time that this contract remains in force.
- 3.4 The *Contractor* is entitled to claim payment of the *Contract Price* progressively in accordance with the stages specified in Box G. Each progress payment claim shall:
- be in writing and specify the total amount claimed;
 - state any adjustment to the *Contract Price* which is allowed under this contract (whether authorised variations, related to *Prime Cost Item/s* or *Provisional Sum/s*, or otherwise, which have become due and payable by the *Owner*);
 - confirm that all *Works* to which the payment stage relates have been completed.
- 3.5 The *Owner* must pay for all progress payment claims within seven (7) working days of receipt of the progress payment claim from the *Contractor*.
- 3.6 Where the *Owner's* lender is to pay a progress payment claim on the *Owner's* behalf then the *Owner* shall ensure that each such payment is made in accordance with clause 3.5.
- 3.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the *Owner* and the *Contractor*.
- 3.8 In the event that the cost to the *Contractor* of performing the *Works* increases after this contract has commenced due to any increase, or the introduction by a statutory or other authority, of a tax, duty, charge, levy, or legislation then the amount of the increase is to be treated as a variation and clause 4 shall apply.
- 3.9 The *Contract Price* shall be increased by the amount of any GST and any other taxes and duties which may be applicable, except to the extent that such taxes or duties are already expressly included in the *Contract Price*.
- 4. Variations**
- 4.1 In the event that the *Owner* requests a variation the *Contractor* will give the *Owner* a written variation document detailing the *Works*, the amended *Contract Price*, the estimated time to undertake the variation, and the likely delay to the *Works* (if any), and shall require written acceptance by the *Owner* of the variation before commencing any *Works* detailed in the variation.
- 4.2 The *Contractor* may (without having to specify any reason why) refuse to undertake any variation requested by the *Owner*.
- 4.3 In the event that the *Contractor* requests a variation (which the *Contractor* may only do if the variation is necessary due to circumstances that the *Contractor* could not have reasonably foreseen at the time this contract was entered into), then the *Contractor* will, in writing:
- state the reason for the variation; and
 - provide a full description of the variation; and
 - state any effect the variation will have on the contract, including but not limited to, the *Contract Price*, practical completion date and whether further permits or authorisations are required
- 4.4 Any adjustment to the *Contract Price* due to variation/s shall be allowed for at the time of the next progress payment claim by the *Contractor*.
- 4.5 Other than for the events outlined in clause 4.7 the *Contractor* shall obtain written acceptance by the *Owner* of any variation submitted by the *Contractor* before commencing work on the variation. The *Owner* must not refuse to accept any variation that is necessary in order for the *Works* to meet compliance with legal requirements.
- 4.6 The *Contractor* must allow a reasonable reduction to the building period if a variation reduces the amount of *Works* required in order to achieve practical completion.
- 4.7 The *Contractor* may carry out any necessary *Works* in the event of:
- unforeseeable problems with the *Worksite* which are only revealed when undertaking the *Works*, which the *Contractor* considers must be rectified for the safe completion of the *Works*; or

- (b) any *Works* that the *Contractor* considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the *Owner* before commencing the variation; or
- (c) the *Contractor* being instructed to undertake any extra *Works* by any person authorised by the Building Act 1975.
- 4.8 If the price for a variation is not agreed upon then the *Owner* will be charged at the *Contractor's* actual cost plus the *Contractor's* margin (i.e. an amount to cover the *Contractor's* overheads, administrative costs, and profit) being twenty (20%) percent.

5. Provisional Sums and Prime Cost Items

- 5.1 For the purposes of this clause 5, the following words shall have their corresponding meanings:
- (a) "*Prime Cost Item*" shall mean an item that either has not been selected, or the price of which is not known, at the time this contract is entered into, and for which the cost of supply, delivery and installation the *Contractor* must make a reasonable allowance for in this contract.
- (b) "*Provisional Sum*" shall mean an estimate of the cost of carrying out particular *Works* under this contract for which the *Contractor*, after making all reasonable inquiries, cannot give a definite price at the time this contract is entered into.
- 5.2 If the *Contractor* advises the *Owner* that a *Prime Cost Item* which the *Owner* has selected is not available then the *Owner* must advise the *Contractor* in writing within five (5) working days of such notice of an alternative choice of item, failing which the *Contractor* shall be entitled on the *Owner's* behalf to select an item of similar specification and quality as the unavailable item originally selected (providing detail of the same to the *Owner*). In the event that the *Owner* should object to the *Contractor's* selection for any reason then the *Owner* must immediately notify the *Contractor* of the same and the *Contractor* shall be entitled to suspend the *Works* under clause 17 until either the original item becomes available or an alternative is selected by the *Owner*. Failure by the *Owner* to notify the *Contractor* that an alternative item is not acceptable will be taken as acceptance by the *Owner* of the alternative item.
- 5.3 If the actual cost of a *Prime Cost Item* or the actual cost of the *Works* for a *Provisional Sum* is less than the sum allowed for that item, then the difference shall be deducted from the *Contract Price* and shall be shown by the *Contractor* as part of the next progress payment claim.
- 5.4 If the actual cost of a *Prime Cost Item* or the actual cost of the *Works* for a *Provisional Sum* is greater than the sum allowed for that item, then the difference (plus the *Contractor's* margin stated in Box P or Q (each as is applicable to this contract) shall be added to the *Contract Price* and shall be claimed by the *Contractor* as part of the next progress payment claim.
- 5.5 In accordance with the *Queensland Building Services Authority Act 1991* the *Contractor* is required to give the *Owner* a copy of any invoice or receipt relevant to any *Provisional Sum* or *Prime Cost Item* as soon as practicable after the *Contractor* receives the invoice or receipt for such items or at the time of submission of a progress payment claim.

6. Finance

- 6.1 If this contract is conditional upon the *Owner* obtaining a loan from an Australian financial institution then they shall provide the *Contractor* with written confirmation of the loan approval by the date specified in Box H above. Such written confirmation is to include confirmation from the financial institution that the *Contractor* may commence the *Works*.
- 6.2 The *Owner* shall authorise the *Owner's* lender to, and the *Owner's* lender may then, pay all monies advanced to the *Owner* for payment of the *Contract Price* of the *Works* (or any part thereof) and approved by the *Owner* direct to the *Contractor*.
- 6.3 In the event that any such loan application is declined then the *Owner* shall have the right to withdraw from this contract subject to the *Owner* providing the *Contractor* with written evidence within five (5) working days of the date specified in Box H above that the loan was declined. Upon receipt of such evidence the *Contractor* shall refund the *Owner* any deposit paid in accordance with clauses 32.8 and 32.9.

7. Security Monies

- 7.1 The *Owner* shall, prior to the commencement of the *Works*, deposit any *Security Monies* into an interest bearing account at a financial institution mutually agreed between the *Owner* and the *Contractor*. The account must be a joint account in the names of both the *Owner* and the *Contractor* and withdrawals shall require the signature of both of those parties.
- 7.2 It is agreed that *Security Monies* shall be used to pay progress payments to the *Contractor* before any loan monies are used to pay progress payments.
- 7.3 In the event that the *Owner* fails to pay any *Security Monies* due to the *Contractor* or the *Contractor* terminates this contract under clause 32 then the *Contractor* shall be entitled to *Security Monies* equivalent to any amount due and owing to the *Contractor* after having applied clauses 32.8 and 32.9.
- 7.4 After payment of the final progress payment to the *Contractor* any *Security Monies* remaining in the account (including any interest) shall belong to the *Owner* (including any interest earned thereon).

8. Liquidated Damages

- 8.1 In the event that practical completion has not been achieved by the end of the building period specified in Box F (subject to any extension of the building period allowed under this contract) then the *Owner* shall be entitled to liquidated damages equivalent to the amount specified in Box J for each day after the building period that the *Works* remain uncompleted, continuing until either practical completion has been achieved or the *Owner* has taken possession of the *Worksite* whichever is the earliest.
- 8.2 Liquidated damages applied under this contract may only be deducted from the final progress payment specified in Box G, and in the event there is a shortfall then such shortfall shall become a debt due and payable by the *Contractor* to the *Owner*.

9. The Worksite and Worksite Access

- 9.1 The *Owner* warrants that any structures to which the *Materials* are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the *Materials* once installed.
- 9.2 The *Owner* must within ten (10) working days of signing this contract provide the *Contractor* with evidence to the *Contractor's* satisfaction of the *Owner's* title to the *Worksite*.
- 9.3 The *Owner* must within ten (10) working days of signing this contract provide the *Contractor* with evidence to the *Contractor's* satisfaction of where all boundaries at the *Worksite* lie and where the *Works* are to be situated. If in the *Contractor's* opinion such

details are unclear then the *Contractor* may by written notification request the *Owner* to provide (at the *Owner's* cost) a survey of the *Worksite* (to the extent deemed necessary) to satisfy the *Contractor's* requirements. The survey is to be provided by the *Owner* within five (5) working days of the receipt of such notification failing which the *Owner* duly authorises the *Contractor* to arrange the survey themselves and the cost of the survey shall be deemed a variation, and the provisions of clause 4 shall apply.

- 9.4 As soon as is practical after the signing of this contract the *Owner* is to provide the *Contractor* with free and uninterrupted access to the *Worksite* and any existing buildings as is necessary for the *Contractor* to undertake the *Works*.
- 9.5 The person nominated in Box L is responsible for all costs involved in ensuring that access (under all usual weather conditions as may reasonably be expected) to the *Worksite* for all machinery and vehicles (as is reasonably required for the *Works*) is available whilst the *Works* are being undertaken by the *Contractor*. If the person nominated is the *Owner* and the *Contractor* is for any reason required to undertake any additional work to achieve the required access then this shall be deemed a variation, in addition to the *Contract Price* and clause 4 shall apply.
- 9.6 The *Contractor* shall not be liable for any damage to pathways, driveways, concreted, paved or grassed areas unless due to the negligence of the *Contractor*.
- 9.7 The *Owner*, or a third party authorised by the *Owner*, shall by supplying a written request to the *Contractor* have the right to reasonable access to the *Worksite*, and to view the *Works* provided always that:
- (a) the *Owner*/third party must not interfere with or hinder the *Contractor's* access to the *Worksite* or the progress of the *Works*;
 - (b) the *Owner*/third party must not access the *Worksite* without the *Contractor's* approval;
 - (c) the *Owner*/third party must not make inquiry of, or issue any directive or instruction to, the *Contractor's* employees or subcontractors and must communicate solely with the *Contractor*. Furthermore the *Owner* acknowledges and agrees that they shall not be entitled to rely on any statement or representation made by any of the *Contractor's* employees or subcontractors unless confirmed in writing by the *Contractor*;
 - (d) access shall only be allowed during standard working hours and under the *Contractor's* supervision;
 - (e) the *Owner*/third party agrees to comply with the following obligations under the Workplace Health and Safety Act 1995;
 - (i) to comply with all instructions given by the *Contractor* regarding workplace health and safety requirements at the *Worksite* pursuant to the Workplace Health & Safety Act 1995;
 - (ii) not to interfere with any workplace health and safety equipment, manuals, or signage at the *Worksite*;
 - (iii) not to place at risk the health and safety of any person (or themselves) at the *Worksite*;
 - (iv) not to wilfully injure themselves or any other person.
- 9.8 In the event that the *Owner*, or a third party authorised by the *Owner* shall fail to comply with clause 9.7 then the *Contractor* may exclude or remove that person from the *Worksite*, and further the *Owner* agrees to indemnify the *Contractor* against:
- (a) any liability, loss, claim, or legal action in respect of injury to any person, or loss of, or damage to, any property at the *Worksite* (howsoever arising) as a direct result of the *Owner*/third party's non-compliance; and
 - (b) all additional costs or losses incurred by the *Contractor* (howsoever arising) as a direct result of the *Owner*/third party's non-compliance. The *Contractor* must claim all such costs (which shall be in addition to the *Contract Price*) by giving written notice to the *Owner* within five (5) working days of becoming aware that such additional or losses have been incurred.

10. Planning and Building Approvals

- 10.1 The party specified in Box M above is responsible for, and shall promptly obtain (taking all reasonable and necessary steps and at their own cost), all building approvals and consents (whether statutory or otherwise) that are necessary to enable the *Contractor* to commence *Works* at the *Worksite*.
- 10.2 If the *Contractor* is the person specified in Box M then the *Owner* agrees to give the *Contractor* all possible assistance, and to sign all necessary document/s, to enable the *Contractor* to obtain the necessary consents and approvals in a timely manner.
- 10.3 All consents and approvals are to be obtained by the specified commencement date where possible, but must be obtained no later than within thirty (30) working days of the signing of this contract, failing which the parties to this contract shall (without liability to the other, except as is specified in clause 10.4) be entitled to suspend or terminate this contract by giving written notice to the other party.
- 10.4 Where the *Contractor* opts to suspend this contract under clause 10.3 then clause 17 shall apply.
- 10.5 Where the *Contractor* opts to terminate this contract under clause 10.3 then clause 32, (in particular 32.8 and 32.9) shall apply.

11. Provision of Works

- 11.1 Subject to clause 11.2, it is the *Contractor's* responsibility to ensure that the *Works* commence as soon as it is reasonably possible. Therefore the *Works* shall commence on or before the date specified as the commencement date in Box F above otherwise the *Works* shall commence within ten (10) working days of the latest date that the *Owner* has complied with clauses 6.1, 7.1, 9.1, 9.3, 10.3, (each as applicable to this contract).
- 11.2 The *Works* commencement date will be put back and/or the building period extended by whatever time is reasonable in the event that the *Contractor* claims an extension of time (by giving the *Owner* written notice) where practical completion will be delayed by any event beyond the *Contractor's* reasonable control (or which was not foreseeable at the time this contract was entered into), including, but not limited to:
- (a) a variation being requested by either the *Owner* or *Contractor*;
 - (b) a calculable delay in excess of the period allowed for and specified in Box F (but only to the extent of the actual delay in excess of the period already allowed);
 - (c) a force majeure event as per clause 36.13 (but only for the period that the force majeure event affects the *Works*);
 - (d) any dispute with adjoining residents (including tenants), neighbours, or owners;
 - (e) any act, omission, or default of the *Owner* (including the failure of the *Owner* to agree to, or sign a variation, or to comply with clauses 6.1, 7.1, or 9.1);
 - (f) any delay in the supply or manufacture of *Materials* required for the *Works*;
 - (g) delays in receiving consent/s and/or approvals beyond the period specified in clause 10.3;
 - (h) delay by the *Owner* in making a selection;
 - (i) a survey is required as per clause 9.3.

- 11.3 Nothing in this contract shall have the effect of limiting or preventing the *Contractor* from claiming more than one extension of time for a delay specified in clause 11.2.
- 11.4 If the *Owner* disputes any extension of time, the *Owner* must provide the *Contractor* with written notification specifying the reason for the dispute of the time extension requested, and such notification is to be provided to the *Contractor* within five (5) working days of the *Owner* receiving the *Contractor's* time extension request. Lack of advice from the *Owner* to the contrary shall mean that the *Owner* has accepted the *Contractor's* time extension request.
- 11.5 The *Contractor* shall within five (5) working days of commencement of the *Works* confirm to the *Owner* in writing the actual date that the *Works* commenced and the expected date for practical completion.

12. Practical Completion

- 12.1 The *Works* shall be deemed to be practically completed (subject to the following clauses) when:
- (a) the home or detached dwelling is reasonably suitable for habitation; and
 - (b) the *Works* carried out under this contract have been completed without any major omissions or defects in accordance with the plans and specifications set out in this contract; and
 - (c) all statutory requirements have been met; or
 - (d) the *Owner* takes possession of the *Worksite*
- 12.2 The *Contractor* shall upon reaching practical completion provide the *Owner* with:
- (a) written notice that the *Works* have been practically completed, and the date of the same;
 - (b) the *Contractor's* final payment claim;
 - (c) notice that a final inspection of the *Works* is required and a date and a time when this is to take place;
 - (d) any certificates or approvals that the *Contractor* was required to obtain on the *Owner's* behalf under this contract.
- 12.3 The *Owner* shall, if unable to attend the final inspection when scheduled by the *Contractor*, immediately contact the *Contractor* and arrange a mutually acceptable time for the inspection to occur. The inspection must be scheduled to take place within the *Contractor's* normal working hours and within five (5) working days of the original date specified by the *Contractor*.
- 12.4 In the event that the *Owner* fails to attend a final inspection as is arranged then it shall be deemed that the *Owner* has accepted the *Works* as being practically completed and shall pay the *Contractor's* final payment claim in accordance with the terms of this contract.
- 12.5 If at the final inspection the *Owner* agrees that no defects exist then the *Owner* shall sign a notice to that effect and shall pay the *Contractor's* final payment claim in accordance with the terms of this contract.
- 12.6 If at the final inspection the *Owner* claims that defects exist and/or that there are any omission/s to the *Works* then the *Contractor* shall give the *Owner* a defects document that:
- (a) lists the minor defects and minor omissions that both the *Contractor* and *Owner* agree exist; and
 - (b) states by when the *Contractor* is to correct the listed defects and omissions; and
 - (c) lists the minor defects and omissions the *Owner* claims exist, but that are not agreed by the *Contractor* to exist; and
 - (d) is signed by the *Contractor*.
- 12.7 The *Contractor* shall, within the time period stated in the defects document, rectify any defect or correct any omission, notwithstanding which if there is any delay in the supply of required *Materials* then the *Owner* shall allow the *Contractor* a reasonable period in which to supply the same. The *Contractor* shall remain entitled to make a final payment claim so long as the *Contractor* has made all reasonable efforts to have the *Owner* sign the defects document to acknowledge its contents.
- 12.8 Payment of a final progress payment claim shall mean that the *Owner* discharges the *Contractor* of any further obligations under this contract (excluding clauses 13, 28.1 and 28.2) except as may be required by the QBCC Act or any other law. Upon receipt of the final progress payment the *Contractor* must quit the *Worksite* at the *Contractor's* own expense (including removing any of the *Contractor's* rubbish or surplus *Materials*) and shall hand any keys to buildings on the *Worksite* to the *Owner*.

13. Defects Liability Period

- 13.1 The *Contractor* agrees to rectify (at the *Contractor's* own cost) any defect in the *Works* that are due to the faulty workmanship of the *Contractor*, defective *Materials* having been supplied by the *Contractor*, or *Works* not being performed by the *Contractor* in accordance with this contract, that becomes evident and which the *Contractor* is notified of within the period specified in Box O above.
- 13.2 The *Contractor* is to rectify any such defects or omissions notified to the *Contractor* in accordance with clause 13.1 within twenty (20) working days of receipt of such notice, and the *Owner* must give the *Contractor* reasonable access to the *Worksite* for that purpose.

14. Possession of the Worksite

- 14.1 The *Owner* shall not be entitled to take possession of the *Worksite* (or any part thereof), or to receive any keys to buildings on the *Worksite* until the *Contractor* has been paid the *Contract Price* in full (subject to any price adjustments made in accordance with this contract), unless the *Contractor* has otherwise agreed in writing.
- 14.2 If the *Owner* takes possession of the *Worksite* at any time other than in accordance with clause 14.1 then the *Works* shall be deemed to be practically completed and clauses 12.2 to 12.8 and 32.8 and 32.9 shall immediately apply. For the sake of clarity if this clause becomes applicable then the *Contractor* shall be relieved of all liability or obligation in regards to all *Works* that are uncompleted or were yet to be performed under this contract.

15. Materials, Documents and Works Supplied by the Owner

- 15.1 The *Owner*:
- (a) warrants that any documentation supplied for the *Works* and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;
 - (b) agrees that it is reasonable for the *Contractor* to rely on the documentation;
 - (c) agrees to supply the *Contractor* with as many copies of the documentation as the *Contractor* may reasonably need to perform the *Works* or to obtain any necessary approvals required for the *Works*.
- 15.2 The *Owner* agrees that all materials and works supplied by the *Owner* or the *Owner's* third party subcontractors will:

- (a) be performed or supplied in accordance with all legislative requirements (including, but not limited to, the *QBCC Act* and Work Health and Safety legislation);
 - (b) be suitable for their inclusion into the *Works*;
 - (c) be completed to the *Contractor's* requirements.
- 15.3 The *Contractor* may, where the *Contractor* believes that any materials or works supplied by the *Owner* or any third party employed by the *Owner* are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the *Owner's* responsibility.
- 15.4 Notwithstanding clause 15.3 the *Contractor* shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the *Owner* or any third party employee of the *Owner*.
- 15.5 In the event that the *Owner* undertakes or employs any third party to undertake any works at the *Worksite* whilst the *Contractor* is undertaking *Works* then the *Owner* must ensure that the *Owner* and/or any third party so employed:
- (a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the *Contractor*;
 - (b) does not interfere with the progress of *Works* by the *Contractor*;
 - (c) holds all relevant insurances as the *Contractor* is required to hold or as are otherwise required under this contract;
 - (d) co-operates with all requests or directives of the *Contractor* in relation to the timeliness and co-ordination of works to be performed;
 - (e) co-operates as may be reasonably expected with all other persons on the *Worksite*;
 - (f) discusses any *Worksite* issues directly with the *Contractor* and not with any of the *Contractor's* employees.
- 15.6 In the event that the *Owner* or the *Owner's* third party employees do not comply with clauses 15.3 or 15.5 then the *Contractor* may require the non-compliant party to either leave and/or stay off the *Worksite* as the *Contractor* may so direct.
- 15.7 If the *Owner* breaches this clause then the *Contractor* may (at the *Contractor's* sole discretion) either:
- (a) carry on the *Works* without incorporation of any *Owner* supplied materials or works;
 - (b) suspend the carrying out of the *Works* as per clause 17;
 - (c) terminate this contract in accordance with clause 32.

16. Owner's Responsibilities

- 16.1 It shall be the *Owner's* responsibility to:
- (a) provide the *Contractor* with adequate access to available water, electricity, toilet and washing facilities; and
 - (b) extinguish all naked flames prior to coating including but not limited to pilot lights heaters etc.; and
 - (c) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the *Owner*. All care taken but no responsibility accepted by the *Contractor* in this regard; and
 - (d) provide adequate dust sheets to protect the *Owner's* furniture and décor. The *Contractor* will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the *Owner*, until the coatings are dry; and
 - (e) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding *Works* commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by the *Contractor* will be invoiced to the *Owner* should this requirement not be met.

17. Suspension of the Works

- 17.1 In the event that the *Owner* fails or refuses to comply with an obligation specified in this contract then the *Contractor* shall be entitled (without prejudice to any other rights of the *Contractor* under this contract) to suspend the *Works*. Where the *Contractor* intends to suspend the *Works* under the provision of this clause, the *Contractor* must immediately notify the *Owner* of the same in writing detailing the reasons for the suspension. The building period shall then be deemed to be suspended by a period equivalent to the period that commences from the date the notice was given to the *Owner* by the *Contractor* continuing until the *Contractor* recommences *Works*.
- 17.2 The *Owner* must remedy all breaches listed in the *Contractor's* suspension notice within ten (10) working days of receipt of such notice.
- 17.3 The *Contractor* shall within ten (10) working days of confirmation that the breaches listed in the suspension notice have been remedied by the *Owner*, recommence the *Works*.
- 17.4 In the event that the *Contractor* incurs any additional cost as a result of suspending and/or recommencing the *Works* then all such additional costs will be deemed as being in addition to the *Contract Price* and treated as a variation in accordance with clause 4.
- 17.5 For the sake of clarity nothing in this clause 17 shall prevent the *Contractor's* right to terminate this contract in accordance with the provisions of clause 32.

18. Contract Documents - Discrepancies and Ambiguities

- 18.1 If either party to this contract finds any discrepancy or ambiguity in this contract or any other documentation forming part of this contract then that party must immediately notify the other party of the same in writing. Upon receipt of such notice it is agreed that both parties shall confer with each other in an attempt to resolve the discrepancy or ambiguity and where necessary the order of precedence specified in clause 36.15 shall apply.
- 18.2 If the parties cannot reach resolution over the discrepancy or ambiguity then either:
- (a) the matter is to be resolved in accordance with clause 34; or
 - (b) the *Owner* must give to the *Contractor* sufficient written instruction to enable the *Contractor* to proceed with the *Works*.
- 18.3 If, as a consequence of resolution under this clause 18, the *Contract Price* needs to vary and the problem that was resolved was not caused solely by documents provided by the *Contractor* then any price adjustment shall be deemed a variation and the *Contractor* shall provide to the *Owner* a variation document in compliance with clause 4 above.

19. Insurance

- 19.1 The *Contractor* shall:

- (a) in respect of its employees meet all current requirements of the *Workers' Compensation & Rehabilitation Act 2003*;
 - (b) meet all current requirements of the *Queensland Building Services Authority Act 1991*;
 - (c) maintain during the course of the *Works* a Contract Works Insurance policy in the name of the *Contractor*, the *Owner* and the *Owner's* lender (if required) for the full insurable value of the *Works*, such policy to remain in place until practical completion takes place or the *Owner* takes earlier possession of the *Worksite*.
 - (d) maintain during the *Works*, Public Liability Insurance cover of not less than five million dollars (\$5M) for any one occurrence and which covers liabilities to third parties in respect of personal injury, death and loss or damage to property which may arise out of or in connection with the carrying out of the *Works*.
 - (e) provide such Home Warranty Insurance as is required under the *QBCC Act*.
 - (f) provide evidence of all or any of the above policies to the *Owner* upon request.
 - (g) not have any liability in terms of any loss, claim, damage, or legal action howsoever arising in respect of any materials or other property placed on the *Worksite* without the *Contractor's* knowledge and/or written approval.
- 19.2 The insurance referred to in clause 19.1 shall be held with a reputable Australian insurer, in the discretion of the *Contractor*.
- 19.3 If the *Works* involve the repair, alteration, or any addition to an existing building then the *Owner* shall effect and maintain during the course of the *Works* insurance cover for the full replacement value of any buildings which will be affected by the *Works* (including the contents thereof) against loss, damage and all other usual risks, and shall provide evidence of the currency of the insurance to the *Contractor* upon request. Such cover is to be provided by the *Owner* until practical completion or the *Owner* takes total possession of the *Worksite* whichever first occurs.

20. Risk

- 20.1 For the sake of clarity, the *Contractor* shall not be liable for loss or damage to the *Works* once they have reached practical completion or if the *Owner* takes possession of the *Worksite*, and all risk shall pass to the *Owner* as soon as either completion or possession occurs.
- 20.2 Notwithstanding clause 19, all works or materials supplied by the *Owner* or the *Owner's* subcontractors at or to the *Worksite* shall be at the sole risk of the *Owner*.
- 20.3 Notwithstanding the provisions of clause 19, where the *Contractor* requires that *Materials*, plant or any equipment required for the *Works* be stored at the *Worksite*, the *Owner* shall supply the *Contractor* a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the *Owner's* responsibility.
- 20.4 The *Owner* acknowledges that *Materials* (including but not limited to paint, timber, or any other *Materials*) supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. The *Contractor* will make every effort to match batches/samples of the *Materials* supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur.
- 20.5 The *Contractor* shall not be liable whatsoever for:
- (a) any loss or damage to the *Works* (including, but not limited to, painted surfaces) that is caused by any other tradesmen; or
 - (b) *Materials* or existing products that have already been affixed including existing paintwork where the *Contractor's* paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.
- 20.6 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the *Contractor* will make every effort to match sales samples to the finished *Works* the *Contractor* accepts no liability whatsoever where such samples differ to the finished *Works* supplied.
- 20.7 Timber is a hygroscopic material subject to expansion and contraction, therefore the *Contractor* will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.
- 20.8 The *Owner* acknowledges that *Works* supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.

21. Owner's Agent

- 21.1 Where the *Owner* specifies an agent in Box N of this contract then the agent shall be deemed to be acting on behalf of and with the full authority of the *Owner* and shall be responsible for all acts, errors, omissions, directions, instructions or requested variations as if they were the actions of the actual *Owner*. Where requested by the *Contractor* the *Owner's* agent shall confirm any directions, instructions or requested variations in writing which documentation shall be signed by the *Owner's* agent.
- 21.2 The *Owner* may with the written consent of the *Contractor* change the *Owner's* agent at any time.

22. Underground Locations & Hidden Services

- 22.1 Prior to the *Contractor* commencing any work the *Owner* must advise the *Contractor* of the precise location of all underground/hidden mains/services on the *Worksite* and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains/services the *Owner* must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on *Worksite*.
- 22.2 Whilst the *Contractor* will take all care to avoid damage to any services the *Owner* agrees to indemnify the *Contractor* in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified in accordance with clause 22.1.

23. Surplus Materials

- 23.1 Unless otherwise stated elsewhere in this contract:
- (a) only suitable new *Materials* will be used;
 - (b) demolished materials remain the *Owner's* property; and

- (c) *Materials* which the *Contractor* brings to the *Worksite* which are surplus remain the property of the *Contractor* unless such *Materials* have been paid for by the *Owner*.

24. Foundations Data and Latent Conditions

- 24.1 This clause applies if the *Works*:
- (a) require the construction or alteration of footings, or a concrete slab, for a building; or
 - (b) may adversely affect the footings of a building or a concrete slab forming part of a building.
- 24.2 Before entering into the contract, the *Contractor* must obtain the foundations data that is appropriate for the *Worksite*, having regard to the following:
- (a) the Building Code of Australia;
 - (b) the need for a drainage plan;
 - (c) the need for engineer's drawings and computations;
 - (d) the need for information on the fall of the land at the *Worksite*.
- 24.3 Nothing in clause 24.2 requires the *Contractor* to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the *Contractor* to rely on the data.
- 24.4 The *Contractor* must give a copy of any foundations data obtained by the *Contractor* in compliance with this clause 24 to the *Owner* on payment by the *Owner* of the costs incurred by the *Contractor* in obtaining the data.
- 24.5 Clause 24.4 shall not be applicable if:
- (a) the data is given to the *Contractor* by the *Owner*; or
 - (b) the *Contractor* reasonably believes the *Owner* already has a copy of the data.
- 24.6 The *Contractor* cannot seek from the *Owner* an amount not already provided for in the contract if:
- (a) the *Contractor* entered into the contract before obtaining the foundations data under clause 24.2; and
 - (b) the need for the additional amount could reasonably have been established, and the amount calculated, had the *Contractor* complied with clause 24.2.
- 24.7 For clause 24.6, an amount is not taken to be provided for in this contract only because the contract contains a provision allowing for an increase to be made in the *Contract Price*.
- 24.8 Nothing in this clause 24 prevents the *Contractor* from claiming an amount not provided for in the contract if:
- (a) the *Contractor* has complied with clause 24.2; and
 - (b) the need for the additional amount cannot be established from the foundations data obtained by the *Contractor*.
- 24.9 The *Contractor* shall immediately on discovery of any latent condition at the *Worksite*, advise the *Owner* of the nature of the condition and detail all the additional costs or *Works* required to rectify the condition (including any likely delays). Where the *Owner* is responsible under this contract for additional costs due to latent conditions such notification shall be in the form of a variation which shall comply with clause 4 herein.
- 24.10 Where the *Contractor* is responsible for additional costs due to latent conditions, the *Contractor* shall not be liable for those costs if the *Works* required to rectify the condition have already been allowed for in this contract as a *Provisional Sum*.

25. Title

- 25.1 It is the intention of the *Contractor* and agreed by the *Owner* that ownership of *Materials* shall not pass until:
- (a) the *Owner* has paid all amounts owing for the particular *Materials*; and
 - (b) the *Owner* has met all other obligations due by the *Owner* to the *Contractor* in respect of all contracts between the *Contractor* and the *Owner*.
- 25.2 Receipt by the *Contractor* of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the *Contractor's* ownership or rights in respect of *Materials*, and this contract, shall continue.
- 25.3 It is further agreed that:
- (a) where practicable the *Materials* shall be kept separate and identifiable until the *Contractor* shall have received payment and all other obligations of the *Owner* are met; and
 - (b) until such time as ownership of the *Materials* shall pass from the *Contractor* to the *Owner* the *Contractor* may give notice in writing to the *Owner* to return the *Materials* or any of them to the *Contractor*. Upon such notice the rights of the *Owner* to obtain ownership or any other interest in the *Materials* shall cease; and
 - (c) the *Contractor* shall have the right of stopping the *Materials* in transit whether or not delivery has been made; and
 - (d) if the *Owner* fails to return the *Materials* to the *Contractor* then the *Contractor* or the *Contractor's* agent may (as the invitee of the *Owner*) enter upon and into land and premises owned, occupied or used by the *Owner*, or any premises where the *Materials* are situated and take possession of the *Materials*.

26. Personal Property Securities Act 2009 ("PPSA")

- 26.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
 - (b) financing change statement has the meaning given to it by the PPSA;
 - (c) security agreement means the security agreement under the PPSA created between the *Owner* and the *Contractor* by these terms and conditions; and
 - (d) security interest has the meaning given to it by the PPSA.
- 26.2 Upon assenting to these terms and conditions in writing the *Owner* acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
 - (b) create a security interest in:
 - (i) all *Materials* previously supplied (if any), and that will be supplied in the future, by the *Contractor* to the *Owner*;
 - (ii) any monetary obligations owed by the *Owner* to the *Contractor* for the provision of the *Works*.
- 26.3 The *Owner* undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the *Contractor* may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 26.3(a)(i) or 26.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the *Contractor* for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the *Contractor*;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the *Materials* and/or *Works* in favour of a third party without the prior written consent of the *Contractor*; and
 - (e) immediately advise the *Contractor* of any material change in its business practices of selling the *Materials* which would result in a change in the nature of proceeds derived from such sales.
- 26.4 The *Contractor* and the *Owner* agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 26.5 The *Owner* hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 26.6 The *Owner* waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 26.7 Unless otherwise agreed to in writing by the *Contractor*, the *Owner* waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 26.8 The *Owner* shall unconditionally ratify any actions taken by the *Contractor* under clauses 26.3 to 26.5.
- 26.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

27. Security and Charge

- 27.1 In consideration of the *Contractor* agreeing to provide the *Works*, the *Owner* charges all of its rights, title and interest (whether joint or several) in any land (excluding any land specified in section 43 of the *QBCC Act*), realty or other assets capable of being charged, owned by the *Owner* either now or in the future, to secure the performance by the *Owner* of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 27.2 The *Owner* indemnifies the *Contractor* from and against all the *Contractor's* costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the *Contractor's* rights under this clause.
- 27.3 The *Owner* irrevocably appoints the *Contractor*, and each director of the *Contractor*, as the *Owner's* true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 27 including, but not limited to, signing any document on the *Owner's* behalf.

28. Warranty

- 28.1 To the extent required by the *QBCC Act*, the *Contractor* warrants that:
- (a) the *Works* shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract schedule;
 - (b) all *Materials* supplied will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those *Materials* will be new;
 - (c) the *Works* will be carried out in accordance with all relevant laws and legal requirements (including, but not limited to, the Building Act 1975, Sustainable Planning Act 2009, the Electrical Safety Act 2002, and the Plumbing and Drainage Act 2002);
 - (d) the *Works* will be carried out in an appropriate and skilful way, with reasonable skill and care;
 - (e) the *Works* will be carried out in accordance with the plans and the specifications to this contract;
 - (f) if the *Works* consists of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the *Works* are finished;
 - (g) if the contract states the particular purpose for which the *Works* are required, or the result which the *Owner* wishes the *Works* to achieve (so as to show that the *Owner* relies on the *Contractor's* skill and judgment) then the *Works* and any *Materials* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result; and
 - (h) the *Provisional Sum* has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract is entered into (including information about the nature and location of the *Worksite*).
- 28.2 Clause 28.1(b) does not apply if the *Contractor* is subject to the direction of the *Owner's* architect for the supply of *Materials*, or the *Owner* is responsible for nominating the *Materials* and either:
- (a) there are no reasonable grounds for not using the *Materials*; or
 - (b) there are reasonable grounds for not using the *Materials* and the *Contractor* advises the *Owner* of such in writing and the *Owner* still insists on the *Materials* been being used.
- 28.3 The following conditions are applicable to the warranties given above:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the *Owner* to properly maintain the *Works*; or
 - (ii) failure on the part of the *Owner* to follow any instructions or guidelines provided by the *Contractor*; or
 - (iii) the continued use of the *Works* after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (iv) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the *Contractor* shall thereafter in no circumstances be liable under the terms of the warranty if the *Contractor's* workmanship is repaired, altered or rectified without the *Contractor's* consent.

- (c) in respect of all claims the *Contractor* shall not be liable to compensate the *Owner* for any delay in either replacing or repairing the workmanship or in properly assessing the *Owner's* claim.
- 28.4 For *Materials* not manufactured by the *Contractor*, the warranty shall be the current warranty provided by the manufacturer of the *Materials*. The *Contractor* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 29. Competition and Consumer Act 2010 (Cth), Queensland Building and Construction Commission Act 1991 (QBCC Act), Building Act 1975, Sustainable Planning Act 2009 and Fair Trading Acts**
- 29.1 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010, Queensland Building and Construction Commission Act 1991, Building Act 1975, Sustainable Planning Act 2009 or the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 30. Intellectual Property**
- 30.1 Where the *Contractor* has designed, drawn or written plans or a schedule of *Works* for the *Owner*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Contractor*, and shall only be used by the *Owner* at the *Contractor's* discretion.
- 30.2 The *Owner* warrants that all designs or instructions to the *Contractor* will not cause the *Contractor* to infringe any patent, registered design or trademark in the execution of the *Owner's* order.
- 30.3 The *Owner* hereby authorises the *Contractor* to utilise images of the *Works* designed or drawn by the *Contractor* in advertising, marketing, or competition material by the *Contractor*.
- 31. Default and Consequences of Default**
- 31.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 31.2 If the *Owner* owes the *Contractor* any money the *Owner* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the *Contractor's* contract default fee, and bank dishonour fees).
- 31.3 Further to any other rights or remedies the *Contractor* may have under this contract, if the *Owner* has made payment to the *Contractor*, and the transaction is subsequently reversed or cancelled, the *Owner* shall be liable for the amount of the reversed or cancelled transaction, in addition to any further costs incurred by the *Contractor* under this clause 31, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the *Owner's* obligations under this contract.
- 31.4 Without prejudice to any other remedies the *Contractor* may have, if at any time the *Owner* is in breach of any obligation (including those relating to payment) under these terms and conditions the *Contractor* may suspend or terminate the provision of *Works* to the *Owner*. The *Contractor* will not be liable to the *Owner* for any loss or damage the *Owner* suffers because the *Contractor* has exercised its rights under this clause.
- 31.5 Without prejudice to the *Contractor's* other remedies at law, the *Contractor* shall be entitled to cancel all or any part of the *Works* which remains unperformed and all amounts owing to the *Contractor* shall, whether or not due for payment, become immediately payable in the event that:
- (a) the *Owner* becomes unable to pay their debts or bankrupt; or
 - (b) enters into an arrangement with, or makes an assignment for the benefit of their creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of any asset of the *Owner*.
- 32. Termination**
- 32.1 Neither party to this contract may terminate the contract if that party is themselves in substantial breach of this contract (i.e. that party fails or refuses to perform a substantial obligation under this contract).
- 32.2 The *Owner* may serve notice of their intent to terminate this contract if the *Contractor*:
- (a) fails to perform the *Works* in a competent or diligent manner;
 - (b) suspends the *Works* for any reason other than is allowed under this contract;
 - (c) refuses to replace any defective *Materials* or remedy any defective *Works* so as to negatively impact on the *Works*;
 - (d) has the *Contractor's* licence cancelled or suspended;
 - (e) fails to effect or maintain any insurance that is required under this contract;
 - (f) fails or refuses to complete the *Works* or abandons this contract;
 - (g) is otherwise in substantial breach of this contract.
- 32.3 If the *Owner* serves notice on the *Contractor* under clause 32.2 then such notice must:
- (a) include full details of the alleged breach or breaches; and
 - (b) state that it is the *Owner's* intention to terminate the contract unless the *Contractor* has remedied all such breaches within ten (10) working days of receipt by the *Contractor* of such notice.
- 32.4 To end the contract under clause 32.2, the *Owner* must give the *Contractor* a signed notice stating that the *Owner* is terminating the contract in accordance with the QBCC Act, and giving details of the grounds under which the contract is being terminated.
- 32.5 The *Contractor* may serve notice of their intent to terminate this contract if the *Owner*:
- (a) fails to comply with the *Owner's* obligations under clauses 3, 4, 6, 7, 9, 10, 14, 15, 17, 18, or 19 (each as applicable to this contract);
 - (b) is otherwise in substantial breach of this contract.
- 32.6 If the *Contractor* serves notice on the *Owner* under clause 32.5, then such notice must:
- (a) include full details of the alleged breach or breaches; and
 - (b) state that it is the *Contractor's* intention to terminate the contract unless the *Owner* has remedied all such breaches within ten (10) working days of receipt by the *Owner* of such notice.

- 32.7 If either party to this contract is given notice by the other party to this contract that they are in substantial breach of this contract and does not rectify or attempt to substantially rectify any breach stated in the notice within ten (10) working days of receiving such notice then the party giving the notice may by giving a separate notice to the other party terminate this contract.
- 32.8 If the contract is ended under this clause 32, the *Contractor* is entitled to a reasonable amount for any *Works already* carried out, plus any other costs incurred by the *Contractor* as a result of, or prior to, the termination of the contract, including, but not limited to:
- (a) the cost of any *Materials* already purchased for the *Works*, or ordered from the *Contractor's* suppliers which cannot be returned to the *Contractor's* suppliers, or for which the order cannot be cancelled;
 - (b) any restocking fees charged by the *Contractor's* suppliers;
 - (c) any additional costs incurred by the *Contractor* through having to quit the *Worksite* early;
 - (d) the *Contractor's* margin (i.e. twenty percent (20%)) on any monies that become due and payable as a result of the application of this clause 32.8, excluding sub-clauses (b) and (e);
 - (e) any default interest, fees or charges that the *Contractor* is entitled to charge, or incurs, under clause 31.
- 32.9 Notwithstanding clause 32.8, where the *Contractor* has already taken a deposit from the *Owner* and the deposit amount is in excess of the monies to which the *Contractor* is entitled under clause 32.8, then the *Contractor* agrees to refund all monies in excess of the amount due to the *Contractor* to the *Owner* within five (5) working days of the termination of this contract.
- 32.10 Either the *Owner* or the *Contractor* may terminate this contract upon written notice if the other party:
- (a) becomes insolvent or is unable to pay their debts;
 - (b) commits an act of bankruptcy or is made bankrupt;
 - (c) assigns assets for the benefit of creditors generally;
 - (d) makes a composition or other arrangement with creditors; or
 - (e) enters into liquidation or receivership.
- 33. Privacy Act 1988**
- 33.1 The *Owner* agrees for the *Contractor* to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the *Owner* in relation to credit provided by the *Contractor*.
- 33.2 The *Owner* agrees that the *Contractor* may exchange information about the *Owner* with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the *Owner*; and/or
 - (a) to notify other credit providers of a default by the *Owner*; and/or
 - (b) to exchange information with other credit providers as to the status of this credit account, where the *Owner* is in default with other credit providers; and/or
 - (c) to assess the creditworthiness of the *Owner* including the *Owner's* repayment history in the preceding two (2) years.
- 33.3 The *Owner* consents to the *Contractor* being given a consumer credit report to collect overdue payment on commercial credit.
- 33.4 The *Owner* agrees that personal credit information provided may be used and retained by the *Contractor* for the following purposes (and for other agreed purposes or required by):
- (a) the provision of *Works*; and/or
 - (b) analysing, verifying and/or checking the *Owner's* credit, payment and/or status in relation to the provision of *Works*; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Owner*; and/or
 - (d) enabling the collection of amounts outstanding in relation to the *Works*.
- 33.5 The *Contractor* may give information about the *Owner* to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the *Owner* including credit history.
- 33.6 The information given to the CRB may include:
- (a) personal information as outlined in 33.1 above;
 - (b) name of the credit provider and that the *Contractor* is a current credit provider to the *Owner*;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the *Owner's* application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the *Owner* no longer has any overdue accounts and the *Contractor* has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the *Contractor*, the *Owner* has committed a serious credit infringement;
 - (h) advice that the amount of the *Owner's* overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 33.7 The *Owner* shall have the right to request (by e-mail) from the *Contractor*:
- (a) a copy of the information about the *Owner* retained by the *Contractor* and the right to request that the *Contractor* correct any incorrect information; and
 - (b) that the *Contractor* does not disclose any personal information about the *Owner* for the purpose of direct marketing.
- 33.8 The *Contractor* will destroy personal information upon the *Owner's* request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 33.9 The *Owner* can make a privacy complaint by contacting the *Contractor* via e-mail. The *Contractor* will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the *Owner* is not satisfied with the resolution provided, the *Owner* can make a complaint to the Information Commissioner at www.oaic.gov.au.

34. Dispute Resolution

- 34.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within ten (10) working days after service of a notice of dispute, the

parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to the Queensland Civil and Administrative Tribunal (QCAT).

- 34.2 Where there is any dispute between the parties, whether relating to overdue payment or otherwise then the *Owner* agrees not to contract any third party to replace the *Contractor* as their provider of the *Works* to be provided under this contract until the dispute resolution process in clause 34.1 has been completed, and then only if QCAT has found against the *Contractor* in its determination, and the *Contractor* is unable or unwilling to resolve, rectify or correct the issues that have led QCAT to find against the *Contractor*.

35. Service of Notices

- 35.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's current email address.
- 35.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would have been delivered.

36. General

- 36.1 For the purposes of this contract a "working day" shall mean any day which is not a Saturday, Sunday, public holiday, special holiday, or a bank holiday in the state in which this contract is applied. If the giving of any notice, the making of any payment, or the doing of any act required or permitted under this contract, the timing of which falls on a day which is not a working day, then the timing for such actions shall be extended and will be allowed to take place on the next working day, but no later.
- 36.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 36.3 If any provisions of this contract are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 36.4 This contract shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 36.5 Subject to clause 8, the *Contractor* shall be under no liability whatever to the *Owner* for any indirect loss and/or expense (including loss of profit) suffered by the *Owner* arising out of a breach by the *Contractor* of this contract.
- 36.6 Subject to clause 28, in the event of any breach of this contract by the *Contractor* the remedies of the *Owner* shall be limited to damages (including (where applicable) liquidated damages under clause 8) which under no circumstances shall exceed the *Contract Price*.
- 36.7 The *Owner* shall not be entitled to set off against or deduct from the *Contract Price* any sums owed or claimed to be owed to the *Owner* by the *Contractor*, nor to hold any retention/s for defect or omissions.
- 36.8 Where more than one *Owner* has entered into this contract, the *Owners* shall be jointly and severally liable for all payments of the *Contract Price*.
- 36.9 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.
- 36.10 The *Contractor's* may licence and/or assign all or any part of its rights and/or obligations under this contract without the *Owner's* consent.
- 36.11 The *Owner* cannot licence or assign without the written approval of the *Contractor*.
- 36.12 The *Contractor* may elect to subcontract out any part of the *Works* but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the *Owner* agrees and understands that they have no authority to give any instruction to any of the *Contractor's* sub-contractors without the authority of the *Contractor*.
- 36.13 The *Owner* agrees that the *Contractor* may review this contract by notifying the *Owner* in writing. If, following any such review, there is to be any change to this contract, then that change will take effect from the date on which the *Owner* accepts such changes, or otherwise at such time as the *Owner* makes a further request for the *Contractor* to provide *Works* to the *Owner*.
- 36.14 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, storm, industrial dispute, civil unrest, or other event beyond the reasonable control of either party.
- 36.15 The special conditions in Box V above (if any), the terms of this contract, the specifications, the plans, and any other documents have precedence in that order if there is any inconsistency or ambiguity between them. Figured dimensions shall have precedence over scaled dimensions.

I/we certify that the above information is true and correct and that I/we have received read and understand this REGULATED DOMESTIC BUILDING CONTRACT. I authorise the use of my personal information as detailed in the Privacy Act clause above. I/we have been supplied with a copy of the Consumer Building Guide and have read and understand its contents.

Owner/s

Signed: _____ Date: _____

Name: *(please print)*: _____

Signed: _____ Date: _____

Name: *(please print)*: _____

Contractor

Signed: _____ Date: _____

Name: *(please print)*: _____



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CHECKLIST		YES OR NO (delete one)	
If you answer 'no' to any of questions 1-17 then you are not ready to sign the contract:			
1.	Has the <i>Contractor</i> provided you with the Consumer Building Guide?	YES	NO
2.	Do you understand the procedure for variations of plans or specifications?	YES	NO
3.	Are any 'Provisional Sum' or 'Prime Cost Item' clearly stated and understood?	YES	NO
4.	Do you understand the circumstances in which you can end the contract and your cooling-off rights?	YES	NO
5.	Have you either had this contract long enough to read and understand it or received advice from your solicitor before signing this contract?	YES	NO
6.	Have you been provided with evidence that the <i>Contractor</i> named in this contract is appropriately licensed and that the licence is current?	YES	NO
7.	Is the <i>Contract Price</i> and progress payments clearly stated?	YES	NO
8.	Do you understand how the <i>Contract Price</i> is calculated and may be varied?	YES	NO
9.	Has the <i>Contractor</i> assessed the suitability of the <i>Worksite</i> for the proposed <i>Works</i> and if tests are necessary have they been carried out before signing the contract?	YES	NO
10.	If a deposit is payable, is it within the limits set under the Queensland Building and Construction Commission Act 1991? (10% if the <i>Contract Price</i> is less than \$20,000; or 5% if the <i>Contract Price</i> is \$20,000 or more and 20% for a contract of any <i>Contract Price</i> where the value of the <i>Works</i> to be performed off-site is more than 50% of the total <i>Contract Price</i>)	YES	NO
11.	Are the <i>Works</i> shown and described clearly in the contract, plans or specifications?	YES	NO
12.	Are your special requirements or finishes included in the plans or specifications?	YES	NO
13.	Are the commencement and completion dates, and practical completion requirements, clearly stated?	YES	NO
14.	Do you understand the procedure for extensions of time?	YES	NO
15.	In the event that this contract is conditional upon your receiving written approval for finance, have you obtained such approval?	YES	NO
16.	Have you received a copy of the insurance policies or a certificate of currency for any applicable insurance(s)? (If no, then this contract is conditional upon you receiving such policies or certificates of currency).	YES	NO
17.	LEGAL ADVICE: (if applicable) I have, BEFORE SIGNING , discussed my questions/concerns about the contract with a practising lawyer.	YES	NO
NOTE: This checklist does not form part of this contract.			
Read, Signed and Dated by the <i>Owner</i> (1):		Dated: / /	
Read, Signed and Dated by the <i>Owner</i> (2):		Dated: / /	