

# Queensland New Homes Construction Contract (QC1)

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|                |                                             |
|----------------|---------------------------------------------|
| <b>OWNERS:</b> | Timothy John Early<br>Cheryl Patricia Early |
| <b>JOB:</b>    | 33VERD                                      |
| <b>LOT:</b>    | 33                                          |
| <b>SITE:</b>   | Verdon Close<br>Woodhill<br>QLD 4285        |



**To verify your builder is a HIA member email [enquiry@hia.com.au](mailto:enquiry@hia.com.au)**

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# CONSUMER BUILDING GUIDE

**Your contractor must give you this guide before you sign a contract priced at or over \$20,000**

This guide has been developed by the QBCC in accordance with Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the Act') to assist home owners undertaking domestic building work with a contract price of \$20,000 or more. It's aimed at helping you avoid disputes and common pitfalls.

## COOLING-OFF PERIOD

You may withdraw from the contract within 5 business days after the day you receive copies of both the signed contract (including any plans and specifications) and this guide. However, there are costs for home owners in withdrawing (generally \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). You must advise the contractor in writing that you are withdrawing under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.

## QBCC LICENCE

You should **only deal with a QBCC-licensed contractor**. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home Warranty Scheme. **Before committing, check the contractor's licence and history via the Online Licence Search on the QBCC website or by calling the QBCC.**

## QLD HOME WARRANTY SCHEME

Residential construction work valued at more than \$3,300 is covered by the Queensland Home Warranty Scheme. The Scheme provides protection for home owners against non-completion, defective work and subsidence for up to 6 years from completion, provided a licensed contractor performs the work. The building contractor must collect the premium from the owner and pay it to the QBCC within 10 business days after the date the contract was entered into or before the contracted work is started (whichever is earlier). You should receive an email with a Notice of Cover and links to important information about the cover provided within 2 weeks of signing the contract.

## WARNING – COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS

QBCC strongly recommends home owners obtain formal legal advice before signing either of these types of contracts which increase your legal risk, reduce your Home Warranty Scheme protection and often result in disputes and cost overruns.

## COMMENCEMENT NOTICE

For contracts priced at \$20,000 or more, the contractor must give the owner a signed Commencement Notice within 10 business days of work commencing on site. The Notice must state the date work started on site and the Date for Practical Completion.

## CONTRACT PRICE

For contracts priced at \$20,000 or more, the contract price, if fixed, must be shown prominently on the first page of the contract schedule. If the contract price is not fixed, the method for calculating it, including any allowances, must be stated in the contract schedule. Allowances (items or services for which the price is not fixed when the contract is signed) should be kept to a minimum as the final cost often exceeds the estimate in the contract. The contract must also contain a warning about any provisions that may alter the contract price.

## DEPOSIT LIMITS

The maximum deposit allowed (before work starts on site) is:

- 10% where the total contract price is less than \$20,000
- 5% where the price is \$20,000 or more
- 20% for a contract of any price where the value of the work to be performed off-site is more than 50% of the total contract price.

## PROGRESS PAYMENTS

After the deposit is paid, owners and contractors are free to choose the number and timing of progress payments (if any) for their project, provided the amount claimed is directly related to work progress on site and proportionate to (or less than) the value of the work that relates to the claim.

## BUILDING APPROVALS AND INSPECTIONS

Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction. The contractor must give you copies of any certificates of inspection as soon as practicable after they receive them from the certifier. You can check the certifier's licence via QBCC's Online Licence Search.

## VARIATIONS

Any change to the materials used or work to be performed under the contract is known as a 'variation'. Variations are frequently the cause of cost overruns and building disputes. **All variations must be agreed in writing by the home owner before the variation work commences** and any price increase due to the variation can not be required to be paid until the variation work is started.

## DISPUTE PREVENTION

To reduce the risk of a dispute, carefully check and be sure you understand the contract, including any plans and specifications, before signing. Discuss any questions with your contractor and seek independent legal advice if you still have concerns. Once construction starts, maintain regular communication and, where possible, site inspections with your contractor and pay promptly when required under the contract.

## DISPUTE RESOLUTION

If a dispute with your contractor occurs, firstly advise them in writing giving them a reasonable time to respond. If this doesn't resolve the problem, explore QBCC's free Early Dispute Resolution (EDR) service and your legal options. **QBCC recommends you obtain independent legal advice before terminating the contract. Incorrect termination may have serious legal and financial consequences and reduce your protection under the Qld Home Warranty Scheme.**

## EXTENSIONS OF TIME (EOTs)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined (e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could reasonably have been anticipated). The contractor must give you a written EOT claim which you should carefully consider (not unreasonably reject) and respond to promptly in writing. If you approve the claim, the Date for Practical Completion will be extended by the period claimed. If you do not approve the claim, the extension is deemed 'disputed'.

## LIQUIDATED DAMAGES (LDs)

LDs are contractual payments to compensate a home owner for extra costs/losses they are likely to incur (e.g. extra rental costs) if the contractor fails to complete the work within the time allowed for in the contract (after allowing for legitimate extensions of time). Carefully consider what, if any, LD amount is appropriate for your project and ensure it is recorded in the contract.

## PRACTICAL COMPLETION AND HANDOVER

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract including any plans and specifications, all legal requirements, and either without any defects or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.

**WARNING:** Strict timeframes apply for notifying QBCC about defects. For more information please refer to the Regulatory Guide on the following QBCC website address [qbcc.build/rectify-building-work](http://qbcc.build/rectify-building-work)

## IMPLIED WARRANTIES

Sections 19 - 26 of Schedule 1B of the Act set out statutory warranties deemed to be part of all regulated domestic building contracts, even if not stated in the contract. The *warranty period* is 6 years from completion, termination or cessation of the work for breaches resulting in structural defects; 1 year for all other breaches. Legal proceedings for any breach must be started within the warranty period or a further 6 months if the breach becomes apparent within the last 6 months of the warranty period.

## FOR FURTHER INFORMATION

- Read the booklet, '*Domestic Building Contracts – General Information for owners and contractors*' on the QBCC website.
- Refer to the relevant legislation, Schedule 1B of the QBCC Act.

### Quick checklist (Ensure you are able to tick all relevant boxes below before signing the contract)

- ☐ I have read this Consumer Building Guide
- ☐ I have read and checked all contract documents, including the contract schedule, general conditions and special conditions (if any) and any plans and specifications
- ☐ I have checked the building contractor's licence and licence history on the QBCC Online Licence Search
- ☐ I note and understand my cooling-off rights (including how and when I may withdraw from the contract if I choose to)
- ☐ I have checked the total contract price (including what proportion is comprised of allowances) and I understand the deposit and progress payments set out in the contract schedule
- ☐ I have checked the start and finish dates and practical completion requirements in the contract
- ☐ (If applicable) I have discussed my questions/concerns about the contract with a practising solicitor

### Owner's acknowledgement

Complete and sign the section below to acknowledge that you have received this guide from your building contractor. Once signed, the building contractor will return a copy of this guide to you.

Timothy John Early

Cheryl Patricia Early

NAME(S):

SIGNATURE(S):

DocuSigned by:

Timothy John Early

AE834A3276104C4...

DocuSigned by:

Cheryl Patricia Early

AE834A3276104C4...

18/02/2021

DATE: \_\_/\_\_/\_\_

|                                                                        |           |
|------------------------------------------------------------------------|-----------|
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# Schedule 1. Particulars of contract

Schedules 1 to 4 must be completed and form part of this contract.

## Item

### 1. Date

This **contract** is dated the 18th February 2021

### 2. Contract price (Clauses 1 and 38): The contract price includes GST

|                              |              |
|------------------------------|--------------|
| PRICE EXCLUDING GST:         | \$383,347.83 |
| PLUS GST ON THE ABOVE PRICE: | \$38,334.78  |
| THE CONTRACT PRICE IS:       | \$421,682.61 |

The **contract price** (inclusive of GST is the sum of the following:

|                             |              |                                            |
|-----------------------------|--------------|--------------------------------------------|
| Fixed price component:      | \$409,582.61 |                                            |
| Prime Cost Allowances:      | \$0.00       | (total PC Allowances, refer to Schedule 3) |
| Provisional Sum Allowances: | \$12,100.00  | (total PS Allowances, refer to Schedule 3) |

#### WARNING

The **contract price** is subject to change. The clauses that allow for changes to the **contract price** are clauses 9, 10, 11, 13, 15, 16, 19, 20, 21 and 23.

The **contract price** does not include the costs that the **owner** will have to pay to a third party (being someone other than the **builder**) for:

- (a) conveying services to the **site**; or
- (b) connecting or installing services for use at the **site**; or
- (c) issuing a development approval or similar authorisation,

that are related to the carrying out of the **works**.

(Examples for (a) and (b) are gas, electricity, telephone, water and sewerage)

However, the **contract price** may include amounts for the above services if the **owner** is to make payment for such services directly to the **builder**

### 3. Owner(s)

#### Owner 1

|                               |                           |        |                   |
|-------------------------------|---------------------------|--------|-------------------|
| NAME                          | Timothy John Early        |        |                   |
| ADDRESS                       | 40/21 Springfield Parkway |        |                   |
| SUBURB                        | Springfield               | STATE  | QLD POSTCODE 4300 |
| ABN                           |                           | ACN    |                   |
| IS THE OWNER A RESIDENT OWNER | Yes                       |        |                   |
| WORK                          | 0405 548 506              | HOME   |                   |
| FAX                           |                           | MOBILE |                   |

EMAIL tjearly@gmail.com

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Owner Copy



**Owner 2**

**NAME** Cheryl Patricia Early  
**ADDRESS** 40/21 Springfield Parkway  
**SUBURB** Springfield **STATE** QLD **POSTCODE** 4300  
**ABN** **ACN**  
**IS THE OWNER A RESIDENT OWNER** Yes  
**WORK** **HOME**  
**FAX** **MOBILE**  
  
**EMAIL**

4. **Builder(s)**

**NAME** Stroud Homes Brisbane South  
**ADDRESS** 128 Melrose Place  
**SUBURB** New Beith **STATE** QLD **POSTCODE** 4124  
**ABN** 84 606 215 909 **ACN**  
**WORK** 07 5540 3949 **HOME**  
**FAX** **MOBILE**

**EMAIL** trudi.margach@stroudhomes.com.au  
**BUILDER'S LICENCE NUMBER** 15010388  
**HIA MEMBER NUMBER** 538807 **HIA MEMBERSHIP EXPIRY** 30/09/21  
 Please note that **builder's** details must be as per licence.

5. **Finance** (Clauses 2 and 7)

Is the **contract price** subject to finance? ~~No~~ **Yes**  
 (If nothing stated, the **contract price** is not subject to finance)

6. **Lending body** (Clauses 2, 5 and 7)**Lending body 1**

**LENDER**  
**ADDRESS**  
**SUBURB** **STATE** **POSTCODE**

6A. **Security Account** (Clause 8)

**Security account** is to be established on or before **commencement**: No

Note: This Item may be relevant where the **owner** is not using a loan or borrowing money to pay the **contract price**.

7. **Owner's guarantors** (Clauses 35)**Guarantor 1**

**NAME**  
**ADDRESS**  
**SUBURB** **STATE** **POSTCODE**

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8. **Default interest rate** (Clause 33)

Rate on overdue payments: % per annum

(If nothing stated, 18% per annum)

9. **The works**(describe generally ie. low set brick veneer house, and state the plans and specifications including version number or date, that set out the detail of the **works** and form part of this **contract**)

1 x residential class 1a dwelling

1 x 6x6m shed

1 x 6 x 3m pool

Specifications signed at contract

Plans signed at contract

10. **Planning and building approvals**The person to obtain and pay for all planning and building approvals, consent or approval required by a **statutory or other authority** (Clause 2).(if nothing stated, the **builder**)11. **The land** (Clause 6)

LOT 33

RP/SP NO SP311905

CERTIFICATE OF TITLE

STREET ADDRESS: Verdon Close

SUBURB Woodhill

STATE

QLD

POSTCODE 4285

12. **Matters affecting the site** (Clause 6) - The **owner** must complete thisThe **site** is affected by the following easements, building covenants and planning restrictions, Please specify the substance of each and give registration details, where registered at the Land Titles Office.13. **Building period** (Clauses 3 and 17)The **works** must reach **practical completion** within 155 **days** after **commencement**, subject to Clause 17.The **building period** stated above is the total of the **time allowances** and the allowance for carrying out the **works**. The **building period** is in calendar days and not **working days**.(a) **Time Allowances**The **building period** includes the following allowances for:Inclement weather and the effects of inclement weather: 7 **days**.14. **Anticipated start date** (Clauses 2 and 16)(If nothing stated, 60 days from the date of this **contract**)

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|-----------|-----------|----------|



15. **Late completion damages** (Clause 32)

\$60.00 per day.

(If nothing stated, then \$50 per day)

Note: The **late completion damages** amount should be a genuine pre-estimate of the costs the parties anticipate an **owner** will incur in the event the **builder** does not reach **practical completion** by the end of the **building period**. Such costs may include additional interest paid on borrowed funds and additional rent paid for alternative accommodation.

16. **Other contract documents** (Clauses 13 and 38)

These documents are documents that form part of this **contract** and are in addition to any special conditions, these general conditions, the specifications and the plans.

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## Schedule 2. Progress payments

PLEASE COMPLETE EITHER PART A OR PART B

### PART A - STANDARD PROGRESS PAYMENT SCHEDULE

NOTE: All progress payments, other than a **deposit** must directly relate to the progress of carrying out the subject work at the building site, and must be proportionate to the value of the subject work that relates to the claim, or less than that value. As such the **builder** should assess that the use of PART A Progress Payment Schedule will meet these requirements.

| Stage                | Percent | Amount |
|----------------------|---------|--------|
| Deposit              |         |        |
| Base                 | 15.00%  |        |
| Frame                | 20.00%  |        |
| Enclosed             | 25.00%  |        |
| Fixing               | 20.00%  |        |
| Practical Completion | Balance |        |

Note: The total must equal the **contract price** stated in **item 2**. Where the **contract price** is \$3,300 or more the **deposit**, by law, cannot exceed:

- 20% of the **contract price**, where the value of the off-site work is more than 50% of the **contract price** (off-site work defined as contracted services performed at a place that is not the place at which the domestic building work is to be finally installed or constructed under the **contract**);
- 10% of the **contract price**, where the **contract price** is less than \$20,000; or
- 5% of the **contract price**, where the **contract price** is \$20,000 or more.

In the above schedule the stages have the following meanings:

**'Base stage'** means

- (a) for a building with a concrete floor, other than a suspended concrete slab floor - the stage when the building's floor is finished; or
- (b) 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
- (c) for a building with 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
- (d) for a building with a suspended concrete slab floor - the stage when:

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- (i) the building's concrete footings are poured; and
- (ii) the formwork and reinforcing for the suspended slab are installed.

**'Frame stage'** means the stage when a building's frame is finished:

- (a) wall frames are fixed;
- (b) roof frames are fixed; and
- (c) all tie downs and bracing are complete.

**'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 (does not need to include the finished floor that may be laid over the structural floor); 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 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, shower trays, wet area tiling, built-in cabinets (excluding shelves) and built-in cupboards (excluding shelves) of a building are fitted and fixed in position.

**'Practical completion'** means the day when the subject work is completed:

- (a) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
- (c) if the building owner claims there are minor defects or minor omissions, the building contractor gives the building owner a defects document for the minor defects or minor omissions.

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## PART B - PROGRESS PAYMENT SCHEDULE

Part B can be used where the parties agree that the Standard Progress Payment Schedule does not apply.

NOTE: All progress payments, other than a **deposit**, must directly relate to the progress of carrying out the subject work at the building site, and must be proportionate to the value of the subject work that relates to the claim, or less than that value.

| Stage                                                      | Percent        | Amount              |
|------------------------------------------------------------|----------------|---------------------|
| <b>Deposit</b><br>Adjusted by \$0.01 to allow for rounding | 5.00%          | \$21,084.14         |
| <b>Slab</b>                                                | 15.00%         | \$63,252.39         |
| <b>Frame</b>                                               | 20.00%         | \$84,336.52         |
| <b>Roof</b>                                                | 10.00%         | \$42,168.26         |
| <b>Pool Start</b><br>Pool excavated, shell laid.           | 5.00%          | \$21,084.13         |
| <b>Enclosed</b>                                            | 20.00%         | \$84,336.52         |
| <b>Fixing</b>                                              | 20.00%         | \$84,336.52         |
| <b>Practical Completion</b><br>Includes Pool Completion    | 5.00%          | \$21,084.13         |
| <b>Total</b>                                               | <b>100.00%</b> | <b>\$421,682.61</b> |

Note: The total must equal the **contract price** stated in item 2. Where the **contract price** is \$3,300 or more the **deposit**, by law, cannot exceed:

- 20% of the **contract price**, where the value of the off-site work is more than 50% of the **contract price** (off-site work defined as contracted services performed at a place that is not the place at which the domestic building work is to be finally installed or constructed under the **contract**);
- 10% of the **contract price**, where the **contract price** is less than \$20,000; or
- 5% of the **contract price**, where the **contract price** is \$20,000 or more.

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# Schedule 3. Prime Cost and Provisional Sum Items and Allowances

(Clause 21)

The parties agree that the following allowances are included in the **contract price**. Each allowance must be a reasonable estimate of the price for the supply of the item and/or the work to be performed but not including an amount for the **builder's margin**. The margin on excess is the additional amount payable to the **builder** on the increase in the actual price of an item over the allowance.

Prime cost items means an item, such as fixtures and fittings that the **owner** is to select after this **contract** is signed and may include tiles, or special kitchen and bathroom items. Provisional sum items are work included in the **works** for which the **builder** cannot give a definite price, and may include excavation, concrete footings and rock removal.

## PRIME COST ITEMS

| DETAILED DESCRIPTION OF THE ITEM | QUANTITY ALLOWED FOR | ESTIMATED \$ PER ITEM | ALLOWANCE \$ | MARGIN ON EXCESS (if nothing stated 20%) |
|----------------------------------|----------------------|-----------------------|--------------|------------------------------------------|
| Total                            |                      |                       |              |                                          |

TOTAL of Prime Cost allowances as specified in **Schedule 1, item 2.**

## PROVISIONAL SUM ITEMS

| DETAILED DESCRIPTION OF THE ITEM | QUANTITY ALLOWED FOR | ESTIMATED \$ PER ITEM | ALLOWANCE \$ | MARGIN ON EXCESS (if nothing stated 20%) |
|----------------------------------|----------------------|-----------------------|--------------|------------------------------------------|
| Rock Excavation Allowanec        | 1                    | \$6,600.00            | \$6,600.00   |                                          |
| Cut Fill                         | 1                    | \$5,500.00            | \$5,500.00   |                                          |
| Total                            |                      |                       | \$12,100.00  |                                          |

TOTAL of Provisional Sum allowances as specified in **Schedule 1, item 2.**

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# Schedule 4. Excluded Items

(Clause 22)

The **owner** acknowledges that the cost of the supply and/or installation of materials, goods or the provision of the labour or services that are listed below are not included in the **contract price**. The **owner** may be supplying these items or having other contractors do the work.

- Water Meter Application - Owners to lodge directly with local council authority.
- Covenant Application - Owners to lodge directly with developers.
- Slope Stability & Bushfire Assessment (if required) and any resultant costs of compliance with reports.

Owner(s) to initial here

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# Special Conditions

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# Signatures

This **contract** is made between the **Owner** and the **Builder**.  
The **schedules** and general conditions form part of this contract, however, the Consumer Building Guide does not form part of this **contract**.  
The **Owner** acknowledges receiving the **schedules**, the general conditions and the Consumer Building Guide prior to signing below.  
The **Owner** has read and understood this **contract**.

## Owner 1

NAME

Timothy John Early

SIGNATURE

DocuSigned by:

Timothy John Early

AE834A3276104C4...

WITNESS NAME

WITNESS SIGNATURE

## Owner 2

NAME

Cheryl Patricia Early

SIGNATURE

DocuSigned by:

Cheryl Patricia Early

AE834A3276104C4...

WITNESS NAME

WITNESS SIGNATURE

## Builder

NAME

Thomas Eldridge

SIGNATURE

DocuSigned by:

Thomas Eldridge

Signed for and on behalf of: Stroud Homes Brisbane South

WITNESS NAME

WITNESS SIGNATURE

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**Note:** The **Builder** must give the the **Owner** a signed copy of this **contract** and **contract documents** (plans and specifications) within 5 **working days** after it is signed by the **Builder**.

**Please note**

1. Where a company is signing: 'by A. Smith, Director' or 'Signed for and on behalf of XYZ Pty Ltd'.
2. Where the **Builder** is a partnership, the licence holder must sign and be named at **item 4**. The other partners are also to be stated in **item 4** (eg B. Bloggs in partnership with A. Bloggs and C. Bloggs).

**Notice to the owner of right to withdraw from this contract under Schedule 1B Section 35 of the Queensland Building & Construction Commission Act 1991 (the Act)**

Under the Act Schedule 1B Section 35 you may end this contract within 5 working days after the day on which you receive a copy of the signed contract from the contractor.

If 5 working days have elapsed from the day the contract was entered into and you have not received from the contractor a copy of the signed contract, you may withdraw from the contract.

Under the Act Schedule 1B Section 36, you may not withdraw from the contract if:

- (a) you and the contractor previously entered into a regulated contract; and
- (b) the terms of the previous contract and current contract are substantially the same; and
- (c) the contracted services for the previous contract and current contract:
  - (i) are substantially the same; and
  - (ii) relate to the same detached dwelling, home or land.

Also, you may not withdraw from the contract under the Act Schedule 1B Section 35 if:

- (a) before entering into the contract, you received formal legal advice about the contract; or
- (b) when or after the contract is entered into you tell the contractor that you received formal legal advice about the contract before entering into the contract.

To withdraw from this contract under Schedule 1B Section 35, you must, within the time allowed under the section for the withdrawal:

- (a) give a withdrawal notice to the contractor; or
- (b) leave a withdrawal notice at the address shown as the contractor's address in the contract; or
- (c) serve a withdrawal notice on the contractor in accordance with any provision in the contract providing for service of notices on the contractor by you.

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# Deed of guarantee and indemnity

## Interpretation

BUILDER IS  
OWNER IS

### Guarantors

ADDRESS LINE 1  
ADDRESS LINE 2  
SUBURB

STATE

POSTCODE

**Contract** is that between the **Builder** and the **Owner** dated:

## Background

The **Owner** executed the **Contract** at the **Guarantor's** request.

The **Guarantor** is aware of the **Owner's** obligations under the **Contract**.

## Operative

### 1. Guarantee

The **Guarantor** guarantees to the **Builder**, the fulfilment of the **Owner's** obligations under the **Contract** including but not limited to the due payment of all moneys arising out of the subject matter of the **Contract**.

### 2. Indemnity

The **Guarantor** indemnifies the **Builder** against any claim, loss or damage arising out of the subject matter of the **contract** caused by or resulting from any non-fulfilment of the **Owner's** obligations under the **Contract**.

### 3. Principal Debtor

The **Guarantor** is deemed to be principal debtor jointly and severally liable with the **Owner** to discharge the **Owner's** obligations under the **Contract**.

### 4. No Merger

The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

### 5. No Release

The **Guarantor** is not discharged by:

- any variation to the **Contract** including a variation to the building works;
- any delay or claim by the **Builder** to enforce a right against the **Owner**; and
- any forbearance given to the **Owner** to perform the **Owner's** obligations under the **Contract**.

### 6. Severability

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

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7. **When More Than One Guarantor**

If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

8. **Waiver of Rights**

The **Guarantor** waives all rights as surety inconsistent with any of the terms of this Deed or to the detriment or disadvantage of the **Builder**.

**Guarantor's Statement**

I/we understand the nature, terms and extent of the guarantee and indemnity provided by me/us and further acknowledge that I/we have obtained legal advice prior to executing this Deed.

**Signed as a Deed**

SIGNATURE .....

WITNESS'S NAME AND ADDRESS

.....  
.....  
.....

SIGNATURE .....

DATE .....

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# General Conditions

## Clause 1. Performance

- Builder's obligation* 1.1 The **builder** must:
- (a) complete the **works** in accordance with this **contract**; and
  - (b) comply with all laws and lawful requirements of any **statutory or other authority** with respect to the carrying out of the **works**.
- Owner's obligation* 1.2 The **owner** must pay the **contract price**, adjusted by any additions or deductions made under this **contract**, in the manner and at the times stated in this **contract**.

## Clause 2. Commencement

- Date for commencement* 2.1 **Commencement** is to take place on or before the **anticipated start date** stated in **item 14** or within 20 **working days** from the day that:
- (a) the **owner** gives the **builder** evidence of the **owner's** title to the **land** under Clause 6;
  - (b) the **owner** gives the **builder** evidence of the **owner's** capacity to pay the **contract price** under Clause 7.1;
  - (c) the **owner** establishes the **security account** under Clause 8;
  - (d) the **owner** gives the **builder** possession of the **site** under Clause 10;
  - (e) where the name of the **lending body** is stated in **item 6**, the **owner** gives the **builder** a notice from the **lending body** that construction of the **works** may commence, and
  - (f) the **builder** receives all permissions, consents and approvals required from the relevant **statutory or other authority** under Clause 2.3,
- whichever is the later.
- When essential matters (a) to (e) not satisfied* 2.2 If any of the requirements set out in Clause 2.1(a) to (e) (inclusive) are not satisfied by the **anticipated start date**, the **builder** may, by notice in **writing** to the **owner**;
- (a) end this **contract**, in which case, Clause 28.7 applies; or
  - (b) extend the time for the **owner** to satisfy the requirements of Clause 2.1 and, at the option of the **builder**, increase the **contract price** under Clause 16.
- Planning and building approvals* 2.3 The party named in **item 10** of **Schedule 1** is responsible for obtaining any planning approval, building permits and/or statutory consent that is required for the **contract works**. The party obtaining such approvals must take all reasonable steps to do so by the **anticipated start date**.
- 2.4 If the **builder** is the party named at **item 10** of **Schedule 1**, the **owner** must sign all documents and do all acts as requested by the **builder** to obtain all permissions, consents and approvals required from the relevant **statutory or other authority**.

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- 2.5 If the necessary planning approval and/or building permits are not obtained by the **anticipated start date**, then if:
- (a) neither party is at fault, either party may bring this **contract** to an end by giving notice **in writing** to the other;
  - (b) the **builder** is at fault, the **owner** may:
    - (i) bring this **contract** to an end by giving the **builder** notice **in writing**; or
    - (ii) extend the time for the **builder** to obtain the necessary planning approval and/or building permits, without any increase to the **contract price**, but by no more than **30 days**;
  - (c) the **owner** is at fault, the **builder** may:
    - (i) bring this **contract** to an end by giving the **owner** notice **in writing**, in which case, Clause 28.7 applies; or
    - (ii) extend the time for the **builder** to obtain the necessary planning approval and/or building permits in accordance with Clause 2.2(b).
- 2.6 If this **contract** is ended under Clause 2.5(a), the **builder** is entitled to a reasonable price for the work done to date. This price:
- (a) may include an amount for the preparation of any plans and specifications, any engineer's design and soil test reports and survey information - unless these have been allowed for in a separate contract or agreement; and
  - (b) the costs of materials ordered from suppliers that are non-returnable; but must not include an amount for work on the building **site** for which planning or building approval was not obtained.
- Commencement of building period 2.7 The **building period** starts on the actual day of **commencement**.
- Builder to ensure commencement 2.8 The **builder** must ensure **commencement** occurs as soon as is reasonably possible.
- Builder to provide commencement notice 2.9 Within 10 **working days** of **commencement** the **builder** is to provide the **owner** with a notice, signed by the **builder**, stating:
- (a) the actual day of **commencement** on the **site**; and
  - (b) the date for **practical completion**.

### Clause 3. Completion and progress

- Builder to complete the works 3.1 The **builder** must complete the **works** on or before the end of the **building period** stated in **item 13** as extended under Clause 17.
- Increase in contract price 3.2 If, after **commencement**, progress of the **works** is delayed by a cause for which the **owner** is responsible the **contract price** may, at the option of the **builder**, be increased under Clause 16.

### Clause 4. Progress payments

- Owner to pay progressively 4.1 The **owner** must pay the **contract price** adjusted by any additions or deductions made under this **contract** progressively at each **stage**.
- Owner to pay deposit 4.2 The **owner** must pay the **deposit** stated in **Schedule 2** when the **owner** signs this **contract**.
- Builder to claim 4.3 The **builder** must give the **owner** a written claim for a progress payment for the completion of each **stage**.
- Contents of progress claim 4.4 A progress claim is to state:
- (a) the amount claimed for the **stage**;

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- (b) the amount of any addition or deduction for **variations**;
- (c) the amount of any addition or deduction due to a prime cost item or provisional sum item;
- (d) the amount of any other addition to or deduction from the **contract price** made under this **contract**; and
- (e) the sum of the above amounts.

- |                                                  |     |                                                                                                                                                                                                                                                                  |
|--------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Due date for payments</i>                     | 4.5 | The <b>owner</b> must pay a progress claim to the <b>builder</b> within 5 <b>working days</b> of receiving the progress claim.                                                                                                                                   |
| <i>No certificates required</i>                  | 4.6 | The <b>builder</b> is not required to give any certificate of approval from any relevant <b>statutory or other authority</b> to the <b>owner</b> as a precondition to the payment of a progress claim and the <b>final claim</b> .                               |
| <i>Owner liable if lending body does not pay</i> | 4.7 | The <b>owner</b> must ensure the <b>lending body</b> , if any, pays a progress claim by the due date. If payment is not made by the due date, the <b>builder</b> is entitled to claim <b>default interest</b> under Clause 33.                                   |
| <i>Payment on account</i>                        | 4.8 | Other than in relation to the <b>final claim</b> , payment of a progress claim is on account only and any such payment is not to be taken as evidence against or an admission that the <b>works</b> have been performed in accordance with the <b>contract</b> . |
| <i>Right of set-off</i>                          | 4.9 | Subject to the rights provided in Clause 32.2, the <b>owner</b> is not entitled to set-off against, or in reduction of any amount due to the <b>builder</b> under this <b>contract</b> , any claim that the <b>owner</b> may have against the <b>builder</b> .   |

## Clause 5. Direction to the lending body

- |                                                  |     |                                                                                                                                                                                                                                             |
|--------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Lending body may directly pay the builder</i> | 5.1 | The <b>lending body</b> may pay all money advanced to the <b>owner</b> for payment of all or part of the <b>contract price</b> , adjusted by any additions or deductions made under this <b>contract</b> , directly to the <b>builder</b> . |
| <i>Direction to the lending body</i>             | 5.2 | The <b>owner</b> must give a direction to the <b>lending body</b> to pay all such money advanced by the <b>lending body</b> directly to the <b>builder</b> .                                                                                |

## Clause 6. Evidence of title

- |                                                                     |     |                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Owner to give evidence of title</i>                              | 6.1 | As soon as practicable after the date of this <b>contract</b> , the <b>owner</b> must give the <b>builder</b> evidence, to the <b>builder's</b> satisfaction, of the <b>owner's</b> title to the <b>land</b> .                                                |
| <i>Owner warrants title and description</i>                         | 6.2 | The <b>owner</b> warrants: <ul style="list-style-type: none"> <li>(a) that the <b>owner</b> is entitled to build on the <b>land</b>; and</li> <li>(b) the accuracy of the description of the <b>land</b> as set out in <b>Schedule 1, item 11</b>.</li> </ul> |
| <i>Owner warrants disclosure of restrictions affecting the site</i> | 6.3 | The <b>owner</b> warrants that all easements, covenants, caveats and zoning restrictions that may affect the <b>works</b> being carried out and constructed on the <b>site</b> are disclosed in <b>Schedule 1, item 12</b> .                                  |

## Clause 7. Finance and evidence of capacity to pay

- |                                                 |     |                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Owner to give evidence of ability to pay</i> | 7.1 | As soon as practicable after the date of this <b>contract</b> , the <b>owner</b> must give the <b>builder</b> evidence, to the <b>builder's</b> satisfaction, of the <b>owner's</b> capacity to pay the <b>contract price</b> by way of the progress payments and at the <b>stages</b> specified in <b>Schedule 2</b> . |
| <i>Subject to finance</i>                       | 7.2 | Where the parties have nominated at <b>item 5</b> for this <b>contract</b> to be subject to finance then:                                                                                                                                                                                                               |

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- (a) this **contract** is conditional upon the **owner** within 15 **working days** from the date of this **contract** obtaining written approval from the **lending body** stated in **item 6** for a **loan** in an amount sufficient to enable the **owner** to pay the **contract price**;
- (b) the **owner** must apply to the **lending body** and use best endeavours to sign all documents and do all acts necessary to obtain **loan** approval;
- (c) the **owner** must within the time specified in Clause 7.2(a) give to the **builder** a notice stating whether the **lending body** has either approved or refused to approve the **loan**;
- (d) unless the **owner** notifies the **builder** that the **lending body** has refused to approve the **loan**, this **contract** will cease being conditional upon such approval; and
- (e) if the **owner** gives the **builder** a notice that the **lending body** has refused to approve the **loan**, then this **contract** will be at an end in which case all monies paid by the **owner** under this **contract** will be refunded except for the **builder's** reasonable expenses.

*Owner to give evidence of ability to pay on request*

- 7.3 From time to time where reasonably requested by the **builder**, the **owner** must give the **builder** evidence, to the **builder's** satisfaction, of the **owner's** capacity to pay to the **builder** the balance of the **contract price**, adjusted by any additions or deductions made under this **contract**.

## Clause 8. Security account

*Owner to establish security account*

- 8.1 The **owner** must:
- (a) if **item 6A** so requires, on or before **commencement**; or otherwise
- (b) from time to time when so requested by the **builder**,

establish a **security account**, and/or deposit into a **security account** an amount of money equal to the **security account money** or any additional amount to reach the total required for the **security account money**.

*Withdrawals*

- 8.2 Withdrawals from the **security account** require the signature of both the **owner** and the **builder**.

*Interest*

- 8.3 The **owner** is entitled to all interest earned on the investment of the **security account money**.

*Use of security account money*

- 8.4 The **security account money** must be applied to pay the **contract price**, adjusted by any additions or deductions made under this **contract** and other amounts due to the **builder** under this **contract**.

*Lending body's discretion*

- 8.5 Where the **owner** is to pay the **contract price**, adjusted by any additions or deductions made under this **contract**, using **security account money** and other money from the **lending body**, the priority of payments will be at the **lending body's** discretion.

*Entitlement to security account money*

- 8.6 If:
- (a) the **owner** does not pay an amount to the **builder** by the due date for payment; or
- (b) this **contract** is ended,
- the **builder** is entitled to the money in the **security account** to the extent of any money due and owing to the **builder**. The **owner** is only entitled to the balance in the **security account**, after payment of the **contract price**, adjusted by any additions or deductions made under this **contract**, and other amounts due to the **builder** under this **contract**.

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## Clause 9. Site information and survey

- |                                     |     |                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Owner to identify the site</i>   | 9.1 | Unless stated elsewhere in this <b>contract</b> , the <b>owner</b> must, prior to <b>commencement</b> , identify the <b>land</b> , the <b>site</b> and the siting of the <b>works</b> .                                                                                                                          |
| <i>Owner to survey</i>              | 9.2 | If, in the <b>builder's</b> opinion, the boundaries of the <b>land</b> or the <b>site</b> or the siting of the <b>works</b> are unclear, the <b>builder</b> must give the <b>owner</b> notice <b>in writing</b> asking the <b>owner</b> to provide a survey of the <b>land</b> or the <b>site</b> , as required. |
| <i>If the owner does not survey</i> | 9.3 | If the <b>owner</b> does not provide a survey within 5 <b>working days</b> of the <b>builder</b> giving such notice, the <b>owner</b> is deemed to have requested a <b>variation</b> for the <b>builder</b> to obtain the survey, and Clause 20 applies.                                                         |

## Clause 10. Site possession and access

- |                                            |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Owner to give exclusive possession</i>  | 10.1 | The <b>owner</b> must, as soon as practicable after the date of this <b>contract</b> , give the <b>builder</b> exclusive possession of the <b>site</b> to carry out the <b>works</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <i>All weather access</i>                  | 10.2 | The <b>owner</b> must provide <b>all weather access</b> . If the <b>owner</b> does not provide <b>all weather access</b> and the <b>builder</b> is required to carry out extra work, the <b>builder</b> may request a <b>variation</b> in accordance with Clause 20 to carry out such extra work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <i>Owner not to impede</i>                 | 10.3 | <p>The <b>owner</b>, a person authorised by the <b>owner</b> and officers of the <b>lending body</b>:</p> <ul style="list-style-type: none"> <li>(a) must not interfere with: <ul style="list-style-type: none"> <li>(i) the <b>builder's</b> access or possession of the <b>site</b>; or</li> <li>(ii) the progress of the <b>works</b>;</li> </ul> </li> <li>(b) must not: <ul style="list-style-type: none"> <li>(i) make an inquiry of;</li> <li>(ii) issue directions to; or</li> <li>(iii) give instructions to,</li> </ul> the <b>builder's</b> workers or subcontractors. Communication must only be with the <b>builder</b>; and</li> <li>(c) may only have access to the <b>works</b> under the <b>builder's</b> supervision, at reasonable times and after giving reasonable prior notice <b>in writing</b>, for the purposes of inspecting the progress of the <b>works</b>.</li> </ul> |
| <i>Owner to pay costs of interference</i>  | 10.4 | Notwithstanding any other provision of this <b>contract</b> , the <b>owner</b> is to pay the <b>builder</b> , on demand, any additional costs the <b>builder</b> incurs because the <b>owner</b> or the <b>owner's</b> representative interferes with the carrying out of the <b>works</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Builder to claim interference costs</i> | 10.5 | To claim payment from the <b>owner</b> , the <b>builder</b> must give the <b>owner</b> notice <b>in writing</b> of such costs within 5 <b>working days</b> after the interference comes to the <b>builder's</b> knowledge.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <i>Owner liable for damage</i>             | 10.6 | The <b>owner</b> will be solely responsible for any loss or damage sustained by the <b>owner</b> if the <b>owner</b> accesses the <b>site</b> without the <b>builder's</b> prior approval <b>in writing</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <i>Owner indemnifies the builder</i>       | 10.7 | The <b>owner</b> indemnifies the <b>builder</b> against any liability, loss, claim or proceeding in respect of any injury to any person or any loss or damage to any property on the <b>site</b> to the extent that such injury, loss or damage is connected with the <b>owner's</b> breach of this Clause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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## Clause 11. Compliance with requirements of local and other authorities

|                                                        |      |                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Requirements of statutory and other authorities</i> | 11.1 | The <b>builder</b> must, on behalf of the <b>owner</b> , comply with any lawful requirement of any <b>statutory or other authority</b> but only to the extent that such requirement relates to carrying out and completing the <b>works</b> .                                                                                                             |
| <i>Variation to comply with a requirement</i>          | 11.2 | The <b>builder</b> must: <ul style="list-style-type: none"> <li>(a) notify the <b>owner</b> of any extra work required to comply with Clause 11.1; and</li> <li>(b) request a <b>variation</b> under Clause 20 to carry out that extra work.</li> </ul>                                                                                                   |
| <i>Owner to do acts</i>                                | 11.3 | The <b>owner</b> must sign all documents and do all acts as requested by the <b>builder</b> to obtain all permissions, consents and approvals required from the relevant <b>statutory or other authority</b> .                                                                                                                                            |
| <i>Owner's works and final certificate</i>             | 11.4 | If the <b>owner</b> is to carry out other works and the failure to complete those works on or before <b>practical completion</b> prevents the <b>builder</b> from obtaining a final certificate from the relevant <b>statutory or other authority</b> , the <b>owner</b> releases the <b>builder</b> from any obligation to obtain the final certificate. |
| <i>Certificate of inspection</i>                       | 11.5 | If the <b>builder</b> receives a certificate of inspection from a third party then the <b>builder</b> must provide a copy of this document to the <b>owner</b> as soon as practicable after receiving this document.                                                                                                                                      |

## Clause 12. Use of plans

|                                     |      |                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Where the owner is to supply</i> | 12.1 | If the <b>owner</b> is to supply the plans to the <b>builder</b> then, without cost to the <b>builder</b> , the <b>owner</b> must give the <b>builder</b> 5 copies of the plans to enable the <b>builder</b> to carry out the <b>works</b> .                                                                                                                                                                  |
| <i>Indemnity</i>                    | 12.2 | Each party indemnifies the other party for all costs and expenses incurred relating to any claim for breach of copyright if the <b>builder</b> carries out the <b>works</b> according to plans which are: <ul style="list-style-type: none"> <li>(a) supplied by that party;</li> <li>(b) prepared under instruction of that party; or</li> <li>(c) prepared from sketches provided by that party.</li> </ul> |
| <i>Grant of licence</i>             | 12.3 | Where the <b>builder</b> draws the plans, the <b>owner</b> agrees that the <b>builder</b> retains copyright in those plans but the <b>builder</b> grants to the <b>owner</b> a licence to cause the construction of the <b>works</b> by the <b>builder</b> in accordance with those plans.                                                                                                                    |
| <i>Licence fee</i>                  | 12.4 | The parties agree that the reasonable fee for the licence granted to the <b>owner</b> is 5% of the <b>contract price</b> . It is acknowledged that the <b>contract price</b> includes this licence fee.                                                                                                                                                                                                       |
| <i>Unauthorised use of plans</i>    | 12.5 | If the <b>owner</b> uses the <b>builder's</b> plans without the <b>builder's</b> written consent, other than under the above licence, the <b>owner</b> must pay to the <b>builder</b> on demand the licence fee referred to in Clause 12.4.                                                                                                                                                                   |

## Clause 13. Discrepancy or error in documentation

|                                          |      |                                                                                                                                                                                                  |
|------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Owner warrants contract documents</i> | 13.1 | The <b>owner</b> warrants the accuracy of the <b>contract documents</b> supplied by the <b>owner</b> and the suitability of the design, materials and methods of working each specified therein. |
|------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|





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- Notice of errors* 13.2 If either party becomes aware of any error, ambiguity or inconsistency in or between the **contract documents**, that party must, within 5 **working days** of becoming aware, give the other party written notice detailing the problem.
- Owner to instruct* 13.3 The **owner** must within 5 **working days** of becoming aware of such a problem, give to the **builder** such written instructions as are necessary to enable the **builder** to proceed with the **works**.
- Owner fails to instruct* 13.4 If the **owner** does not give written instructions as required by Clause 13.3, the **owner** is deemed to have instructed that the **builder** carry out the **works** using the order of precedence.
- Cost of any extra work* 13.5 If:
- (a) compliance with the **owner's** instructions involves more or less cost than a reasonable **builder** would have anticipated on the signing of this **contract**; and
  - (b) the problem is not solely caused by documents provided by the **builder**,
- the **owner** is deemed to have also asked for a **variation** for the **builder** to comply with those instructions and Clause 20 applies.
- Order of precedence* 13.6 The order of precedence is:
- (a) any special conditions;
  - (b) these general conditions;
  - (c) the specifications;
  - (d) the plans, then
  - (e) other documents in the order listed in **item 16**.

## Clause 14. Insurance and risk

- Builder to have public liability and works insurance cover* 14.1 The **builder** must:
- (a) prior to **commencement**, take out insurance to cover the public liability risk referred to in Clause 14.4 for an amount of not less than \$10 million for any one claim and maintain such cover until the **date of practical completion**; and
  - (b) prior to **commencement**, take out insurance cover against loss or damage to the **works** in an amount equal to the **contract price** and maintain such cover until the **date of practical completion**; and
  - (c) if requested by the **owner**, give to the **owner** evidence of such insurance cover.
- Extent of works insurance cover* 14.2 Such insurance must:
- (a) if the **owner** requests, note the name of the **owner** or the **lending body** (or both the **owner** and the **lending body**) as being in the class of the insured under the works insurance policy; and
  - (b) be against all liability, loss, action, claim or proceeding whatsoever including without limitation in respect of fire, explosion, earthquake, lightning, flood, storm and tempest or civil commotion.
- Risk of the works* 14.3 The **builder** is not responsible for loss or damage to the building **works** from the **date of practical completion**.
- Public liability risk* 14.4 The **builder** is liable for and indemnifies the **owner** against any liability, loss, claim or proceeding in respect of:
- (a) any personal injury; or
  - (b) damage to any property real or personal,

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which may be occasioned by or arise out of the carrying out of the **works** to the extent that it is due to the negligent or wilful act, omission or default of the **builder** or the **builder's** contractors or employees (the "public liability risk").

- |                                                |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>WorkCover</i>                               | 14.5 | The <b>builder</b> must comply with all obligations imposed on the <b>builder</b> under the WorkCover legislation.                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Builder not liable for certain property</i> | 14.6 | The <b>builder</b> is not liable for any liability, loss, claim or proceeding in respect of any property placed on the <b>site</b> without the <b>builder's</b> written approval.                                                                                                                                                                                                                                                                                                                                         |
| <i>Insurance payments</i>                      | 14.7 | On the settlement of any claim under the works insurance policy the <b>builder</b> is to: <ul style="list-style-type: none"> <li>(a) immediately be paid any part of the settlement moneys relating to loss suffered by the <b>builder</b> relating to any work that is the subject of the claim but for which the <b>owner</b> has not paid the <b>builder</b>; and</li> <li>(b) carry out reinstatement of the building works and be paid the balance for the settlement moneys for the reinstatement works.</li> </ul> |

## Clause 15. Unforeseen circumstances

- |                                                           |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Builder to give notice of unforeseen circumstances</i> | 15.1 | If the <b>builder</b> becomes aware of <b>unforeseen circumstances</b> , the <b>builder</b> must promptly notify the <b>owner in writing</b> and cease the carrying out of the <b>works</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <i>Effect of unforeseen circumstances</i>                 | 15.2 | Subject to Clause 15.5, if the <b>unforeseen circumstances</b> differ from those either: <ul style="list-style-type: none"> <li>(a) disclosed to the <b>builder</b> prior to this <b>contract</b> being signed; or</li> <li>(b) shown in the <b>contract documents</b>,</li> </ul> and: <ul style="list-style-type: none"> <li>(c) if the effect of that difference requires more or less work than that which a reasonable <b>builder</b> would have anticipated on the signing of this <b>contract</b>; and</li> <li>(d) that work is not provided for elsewhere in this <b>contract</b>,</li> </ul> then the <b>builder</b> is to ask for a <b>variation</b> to carry out that work under Clause 20. |
| <i>Builder may end contract</i>                           | 15.3 | If the <b>owner</b> does not approve within 5 <b>working days</b> on and from the date the <b>builder</b> gives the <b>owner</b> a <b>variation document</b> , the <b>builder</b> may, at any time thereafter, do either or both of the following: <ul style="list-style-type: none"> <li>(a) suspend the carrying out of the <b>works</b> under Clause 19;</li> <li>(b) end this <b>contract</b> under Clause 28.</li> </ul>                                                                                                                                                                                                                                                                           |
| <i>Builder's entitlement to extra costs</i>               | 15.4 | If the <b>owner</b> approves the <b>variation in writing</b> , the <b>builder</b> is only entitled to payment of an additional amount for such work where the <b>builder</b> had the <b>foundations data</b> when the <b>builder</b> entered into this <b>contract</b> , and if the need for the additional amount cannot be established from that data.                                                                                                                                                                                                                                                                                                                                                |
| <i>Builder to carry out the work</i>                      | 15.5 | Notwithstanding the above, the <b>builder</b> must, if Clause 15.2 does not apply, carry out that work at the <b>builder's</b> cost.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## Clause 16. Delay damages

- |                                        |      |                                                                                                                                                                                                                                                                                             |
|----------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Delays to commencement of works</i> | 16.1 | Where <b>commencement</b> is delayed for longer than 4 weeks on and after the <b>anticipated start date</b> due to a cause of delay for which the <b>builder</b> is not responsible, the <b>owner</b> must pay to the <b>builder</b> , as a debt due and payable, the higher of the amount: |
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- Delays to carrying out the works after commencement

16.2

(a) of the reasonable costs to be incurred by the **builder** because of the delay; or

(b) representing 0.125% of the **contract price** for each week or part of a week of the delay after the first 4 weeks of the delay.

Where, after **commencement**, the carrying out of the **works** are delayed, by a cause for which the **owner** is responsible, the **owner** must pay to the **builder**, as a debt due and payable, the higher of the amount

(a) of the costs incurred by the **builder** because of the delay; or

(b) representing 0.125% of the **contract price** for each **day** of the delay.
- Clause 17. Delays and extensions of time
- Builder entitled to extend time

17.1

The **builder** is entitled to a reasonable extension of time to the **building period** if **commencement** or the carrying out of the **works** is delayed by a claimable delay.

When the builder is entitled to extend time

17.2

A claimable delay means a cause beyond the **builder's** sole control that was not reasonably foreseeable at the time the **builder** entered into this **contract** including but not limited to:

(a) a **variation** requested by the **owner** or a request by the **owner** for a **variation**;

(b) a **variation** requested by the **builder** if the need for the **variation** could not have been reasonably foreseen at the date of this **contract**;

(c) a **time allowance** in excess of the allowance for that cause of delay stated in **item 13**;

(d) an act of God, fire, explosion, earthquake or civil commotion;

(e) an industrial dispute;

(f) a dispute with adjoining or neighbouring residents or owners;

(g) anything done or not done by the **owner**;

(h) delays in getting any approvals;

(i) a delay in the supply of materials selected by the **owner**;

(j) the need for a survey of or other report in relation to the **site**; or

(k) the industry shutdown being a 3 week period commencing on or about 22 December in each year, if construction during the Christmas period could not have been reasonably foreseen at the date of this **contract**; or

(l) the **owner** refusing to agree to a **variation** requested by the **builder** under Clause 10.2.

The builder is to notify

17.3

The **builder** is to give the **owner** written notice of the extension of time detailing both:

(a) the cause of the delay; and

(b) the extension of time,

within 10 **working days** of when the **builder** became aware of both the cause and the extent of the delay, or within 10 **working days** when the **builder** ought to have become aware of the cause and extent of the delay.

Builder can lodge more than one extension of time

17.4

Nothing in Clause 17.3 shall limit or prevent the **builder** from claiming more than one extension of time if a particular claimable delay has more than one effect on the carrying out of the **works**.
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- |                                                             |      |                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <i>Owner must not unreasonably refuse, and must approve</i> | 17.5 | The <b>owner</b> must reply to the <b>builder's</b> claim for an extension of time <b>in writing</b> within 5 <b>working days</b> of receiving the <b>builder's</b> written claim. The <b>owner</b> must not unreasonably refuse to approve an extension of time.                                                                                                                                                |
| <i>Builder to provide copy of approved claim</i>            | 17.6 | The <b>builder</b> must give the <b>owner</b> a copy of the claim for an extension of time, signed by the <b>builder</b> within 5 <b>working days</b> of the <b>owner</b> approving the claim.                                                                                                                                                                                                                   |
| <i>If owner disputes</i>                                    | 17.7 | If the <b>owner</b> disputes the <b>builder's</b> claim for an extension of time, the <b>owner</b> must provide the <b>builder</b> a notice <b>in writing</b> within 5 <b>working days</b> of receiving the <b>builder's</b> written claim: <ul style="list-style-type: none"> <li>(a) disputing the extension of time; and</li> <li>(b) detailing the reasons why the extension of time is disputed.</li> </ul> |
| <i>Allowance for omissions</i>                              | 17.8 | The <b>builder</b> may allow a reasonable reduction to the <b>building period</b> if, by <b>variation</b> , work is omitted from the <b>works</b> .                                                                                                                                                                                                                                                              |

## Clause 18. Compliance with Work Health & Safety Act

- |                             |      |                                                                                                                                                                                                        |
|-----------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Principal contractor</i> | 18.1 | The <b>builder</b> is the "principal contractor" for the purposes of the Work Health and Safety Act 2011, and Work Health and Safety Regulation 2011.                                                  |
| <i>Right to exclude</i>     | 18.2 | The <b>builder</b> may exclude or remove from the <b>site</b> any person who fails to comply with the requirements of the Work Health and Safety Act 2011, and Work Health and Safety Regulation 2011. |

## Clause 19. Suspension of works

- |                                   |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Builder's right to suspend</i> | 19.1 | <p>The <b>builder</b> may by written notice to the <b>owner</b> suspend the carrying out of the <b>works</b> if:</p> <ul style="list-style-type: none"> <li>(a) the <b>owner</b> does not pay a progress claim as required by Clause 4;</li> <li>(b) the <b>owner</b> does not give the <b>builder</b> evidence, satisfactory to the <b>builder</b>, of the <b>owner's</b> capacity to pay the balance of the <b>contract price</b> when requested by the <b>builder</b> under Clause 7.3;</li> <li>(c) the <b>owner</b> enters the <b>site</b> in breach of Clause 10;</li> <li>(d) the <b>owner</b> does not give an instruction within 5 <b>working days</b> of becoming aware of a problem under Clause 13;</li> <li>(e) the <b>builder</b> gives notice <b>in writing</b> of <b>unforeseen circumstances</b> under Clause 15 and the <b>owner</b> fails to agree to a <b>variation in writing</b> within 5 <b>working days</b> of receiving the <b>builder's</b> request;</li> <li>(f) the <b>owner</b> objects to the <b>builder's</b> selection of a substitute prime cost item in accordance with Clause 21;</li> <li>(g) the <b>owner</b> or the <b>owner's</b> contractors when supplying materials or goods or carrying out any work breach the requirements of Clause 24;</li> <li>(h) the <b>owner</b> takes control of, possession of or uses the <b>works</b> or any part of the <b>works</b> without the <b>builder's</b> written consent, prior to payment of the <b>final claim</b>;</li> <li>(i) any dispute or difference between the <b>owner</b> and the <b>builder</b> has been referred to the Queensland Building and Construction Commission, and/or the Queensland Civil and Administrative Tribunal under Clause 37;</li> <li>(j) the <b>owner</b> unreasonably refuses to approve the <b>builder's</b> extension of time claim <b>in writing</b> under Clause 17; or</li> <li>(k) the <b>owner</b> is otherwise in substantial breach of this <b>contract</b>.</li> </ul> |
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|-------------------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Builder to recommence</i>                    | 19.2 | The <b>builder</b> must recommence the carrying out of the <b>works</b> within a reasonable time after the <b>owner</b> gives the <b>builder</b> notice <b>in writing</b> that the reason for the suspension no longer exists.                                                        |
| <i>Cost of suspension and recommencement</i>    | 19.3 | The <b>owner</b> must, on demand, pay to the <b>builder</b> , in addition to any other amounts the <b>builder</b> may have a right to claim, the <b>builder's</b> costs of suspending and recommencing the <b>works</b> including the <b>builder's</b> margin applied to those costs. |
| <i>No waiver</i>                                | 19.4 | The <b>builder's</b> exercise of the right of suspension does not prevent the <b>builder</b> from exercising any right to end this <b>contract</b> under Clause 28 in regard to the same occurrence.                                                                                  |
| <i>Days not forming part of building period</i> | 19.5 | Any <b>days</b> which are subject to a suspension of <b>works</b> under Clause 19.1, do not form part of the <b>building period</b> .                                                                                                                                                 |

## Clause 20. Variations

|                                                            |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Contents of a variation document</i>                    | 20.1 | A <b>variation document</b> must be <b>in writing</b> , in readily legible English, and in all cases, state; <ul style="list-style-type: none"> <li>(a) the work required to carry out the <b>variation</b>;</li> <li>(b) the date of the request of the <b>variation</b>;</li> <li>(c) the price of the <b>variation</b>;</li> <li>(d) for an increase in the <b>contract price</b>, when that price becomes payable, or for a decrease in the <b>contract price</b>, when the decrease is to be accounted for;</li> <li>(e) the change to the <b>contract price</b> because of the <b>variation</b>; and</li> <li>(f) if there will be a delay because of the <b>variation</b>, a reasonable estimate of that delay.</li> </ul> |
| <i>Builder to give copy of variation document</i>          | 20.2 | The <b>builder</b> must give the <b>owner</b> a copy of the <b>variation document</b> before the first of the following happens: <ul style="list-style-type: none"> <li>(a) 5 <b>working days</b> elapse from the day the <b>builder</b> and the <b>owner</b> agree to the <b>variation</b>; or</li> <li>(b) any work the subject of the <b>variation</b> starts.</li> </ul>                                                                                                                                                                                                                                                                                                                                                      |
| <i>Variation to be agreed in writing</i>                   | 20.3 | The <b>owner</b> must agree to the <b>variation in writing</b> prior to the <b>builder</b> commencing the <b>variation</b> works.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <i>Where the owner does not agree to variation</i>         | 20.4 | If a <b>variation</b> is agreed, and the <b>owner</b> has not within 5 <b>working days</b> of the <b>builder</b> giving the <b>owner</b> a <b>variation document</b> , approved that <b>variation in writing</b> , the <b>builder</b> may withdraw the request or acceptance, as applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <i>Where work is required urgently</i>                     | 20.5 | Notwithstanding the above, the <b>builder</b> is not required to create a <b>variation document</b> before carrying out the varied work if that work is required to be carried out urgently and it is not reasonably practicable in the particular circumstances to do so.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>If the price is not agreed</i>                          | 20.6 | If the price of a <b>variation</b> is not agreed, the price is: <ul style="list-style-type: none"> <li>(a) for additional work, the reasonable price for that work including an amount for the <b>builder's</b> margin; and</li> <li>(b) for omitted work, the reasonable price for that work.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <i>Payment of variation</i>                                | 20.7 | The price of a <b>variation</b> is due and payable at the next progress payment after it is carried out unless a different time is agreed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <i>Owner must not refuse where work is required by law</i> | 20.8 | The <b>owner</b> must not refuse a request by the <b>builder</b> for a <b>variation</b> where the <b>variation</b> is required for the <b>works</b> to comply with the law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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- Natural materials* 20.9 The **owner** acknowledges that the colour and grain of timber, granite and other natural materials can vary. The **builder** is to use reasonable endeavours to match the colour or grain of any sample selected by the **owner** but is under no liability if there is a difference and such a difference is not a **variation**.

## Clause 21. Prime cost and provisional sum items

- Owner to give notice of selection* 21.1 The **owner** must give the **builder** written notice of the **owner's** selection of a prime cost item in sufficient time to ensure that there is no delay to the carrying out of the **works**.
- Alternative selection* 21.2 If a prime cost item selected by the **owner** is unavailable, the **owner** must give the **builder** written notice of an alternative selection within 5 **working days** of the **builder** advising of the unavailability.
- Builder to give notice of substitute* 21.3 If the **owner** does not give an alternative selection, the **builder** may give the **owner** written notice of the **builder's** intention to select an alternative item that is similar in quality to the unavailable item including details of the proposed alternative item.
- Owner to agree or reject substitute* 21.4 If within 5 **working days** of receiving the **builder's** notice the **owner** does not give the **builder** written objection to the alternative item, the **owner** is deemed to have agreed to that alternative item. If the **owner** does object, the **builder** may suspend the **works** under Clause 19 until the item selected by the **owner** is available.
- Prime cost items* 21.5 Each prime cost item must be described and have an allowance stated next to it in **Schedule 3** or a schedule forming part of this **contract**. The allowance is the estimated price of supplying and delivering the item to the **owner** and does not include an amount for the **builder's margin**.
- Provisional sum items* 21.6 Each provisional sum item must be described and have an allowance stated next to it in **Schedule 3** or a schedule forming part of this **contract**. The allowance is the estimated price of providing the labour and materials to the **owner** and does not include an amount for the **builder's margin**.
- Cost adjustment* 21.7 In relation to each prime cost item and provisional sum item if the actual price of supplying the item or providing the work is:
- (a) less than the allowance, the difference is deducted from the **contract price**; or
  - (b) more than the allowance, the total of the difference plus the relevant margin on excess stated in **Schedule 3** or a schedule forming part of this **contract** applied to the difference is added to the **contract price**.
- When adjustment is payable* 21.8 Any adjustment to the contract price for a prime cost item or a provisional sum item is due and payable with the progress payment in which the amount for that item is included.
- Builder to give evidence of cost* 21.9 The **builder** must give the **owner** evidence of the cost of the prime cost item or provisional sum item when claiming payment for that item.
- Footings, slab etc.* 21.10 Where the provisional sum relates to excavation, footings or the slab, the **builder** is only entitled to claim an amount in excess of the allowance where the **builder** had the **foundations data** when the **builder** entered into this **contract**, the need for the additional amount can not be established from that data.

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## Clause 22. Excluded items

- Items that are not part of the works* 22.1 The **owner** and the **builder** agree that the materials, goods, labour and services shown in the **contract documents** and which are set out in **Schedule 4** are excluded from the **works** and the cost of those items are not included in the **contract price**.

## Clause 23. Other costs

- Owner to pay cost increase* 23.1 The **owner** must, on demand, pay as an addition to the **contract price** the amount of any cost increase due to a **statutory or other authority** introducing or increasing any tax, charge, levy or regulation after the date of this **contract**.

## Clause 24. Materials etc. supplied by owner

- Owner's obligation* 24.1 Materials, goods and work to be provided by the **owner** must be:
- (a) suitable for including into the **works**;
  - (b) supplied or completed in the time required by the **builder**;
  - (c) new unless otherwise specified; and
  - (d) completed to the **builder's** satisfaction.
- Builder not responsible* 24.2 Notwithstanding Clauses 24.3 and 24.4, the **builder** is not responsible for the performance and suitability of materials, services, labour and goods provided by the **owner**.
- Defective items or materials* 24.3 The **builder** may reject any item or material supplied by the **owner**, if the **builder** believes that item or material to be defective, and require the replacement or correction of that item or material.
- Defective work* 24.4 The **builder** may reject any work carried out by or on behalf of the **owner** or by the **owner's** contractor and require that the **owner** or the **owner's** contractor replace, correct or remove the defective work.
- Owner's risk* 24.5 Notwithstanding Clause 14.4, all materials and goods supplied and work carried out by the **owner** or the **owner's** contractors on the **site** are at the risk of the **owner**.
- Conditions for the owner's works* 24.6 If the **owner** carries out or causes to be carried out other work on the **site** while the **works** are being carried out then the **owner** must, and must ensure that the **owner's** contractors:
- (a) do not interfere with the progress of the **works**;
  - (b) hold and maintain the same insurance coverage as the **builder** is required to hold and maintain under this **contract** in relation to their works;
  - (c) hold an appropriate licence to carry out the work;
  - (d) observe all relevant occupational health and safety laws and the requirements of the **builder** in regard to occupational health and safety;
  - (e) obey all directions issued by the **builder** regarding the co-ordination and timing of their works on the **site**;
  - (f) co-operate with all of the other workers and contractors on the **site**.
- Evidence of licences etc.* 24.7 The **owner** must, on request, give the **builder** evidence of all licences and insurances referred to under Clause 24.6.

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- Builder may exclude people* 24.8 If the **owner** or the **owner's** contractors do not observe all of the requirements in Clauses 24.6 and 24.7 the **builder** may exclude or direct the **owner** or the **owner's** contractors to leave the **site**.
- Builder's rights on the owner's breach* 24.9 If the **owner** breaches this Clause the **builder** may:
- (a) carry out the **works** without incorporating such materials, services or goods; or
  - (b) do either or both of the following:
    - (i) suspend the carrying out of the **works** under Clause 19;
    - (ii) end this **contract** under Clause 28.

## Clause 25. Practical completion

- Builder to give estimate* 25.1 The **builder** must, at the **owner's** request from time to time, give a non-binding estimate of when **practical completion** will be reached.
- Builder to give notice and claim* 25.2 When the **builder** believes the **works** have been completed the **builder** must give the **owner**:
- (a) a defects document listing minor defects and minor omissions:
    - (i) that are agreed to exist and the time for when those items will be completed or rectified;
    - (ii) that the **owner** claims to exist but the **builder** does not agree with; and
    - (iii) that is signed by the **builder**; and
  - (b) a **notice of practical completion** stating the **builder's** opinion of the **date of practical completion**; and
  - (c) the **final claim**.
- Final claim* 25.3 Subject to Clause 25.4, the **owner** must, within 5 **working days** of receiving the **final claim**, pay the amount of the **final claim** to the **builder**.
- Owner's notice* 25.4 If the **owner** believes that **practical completion** has not been reached the **owner** must, within 5 **working days** of receiving the **notice of practical completion**, give the **builder** a written notice stating:
- (a) the **owner's** requirements for the **works** to reach **practical completion**; and
  - (b) the provisions of this **contract** that relate to each requirement.
- Builder's response* 25.5 The **builder** must, on receiving the **owner's** notice, complete those requirements that, in the **builder's** opinion, are necessary to reach **practical completion**.
- Further notice by builder* 25.6 On completion of those requirements the **builder** must give a further **notice of practical completion** stating the new **date of practical completion**, and the **owner** must, within 5 **working days** of receipt pay the amount of the **final claim** to the **builder**.
- Payment is evidence* 25.7 The **owner's** payment of the **final claim** is conclusive evidence of the **builder's** satisfaction, and discharge, of the **builder's** obligations in connection with the subject matter of this **contract** except for:
- (a) fraud, dishonesty or fraudulent concealment relating to the **works**;
  - (b) the **builder's** liability under Clause 27.1; and
  - (c) the **builder's** liability under a statutory warranty set out in Clause 36.
- Date of practical completion* 25.8 The date stated in the last **notice of practical completion** is deemed to be the **date of practical completion** unless within 5 **working days** of

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receiving the last **notice of practical completion** the **owner** gives the **builder** written notice:

- (a) disputing the date; and
- (b) detailing the reasons why the date is disputed.

## Clause 26. Owner taking possession

*Illegal early possession*

- 26.1 The **owner** is not entitled to:
- (a) take control of, possession of or use the **works** or any part of the **works**; or
  - (b) receive the keys for the **works**,
- until the **builder** has been paid the **contract price**, adjusted by any additions or deductions made under this **contract**.

*Agreed early possession*

- 26.2 The **builder** may by written notice to the **owner** permit the **owner** to:
- (a) take control of;
  - (b) take possession of; or
  - (c) use,

the whole or any part of the **works** prior to **practical completion** but such possession does not reduce the **owner's** liability to pay the outstanding balance of the **contract price**, adjusted by any additions or deductions made under this **contract**.

*Consequences of taking possession*

- 26.3 If the **owner** breaches Clause 26.1 then, unless such control, possession or use is with the written consent of the **builder** under Clause 26.2 or after the **owner** has lawfully ended this **contract** under Clauses 28 or 29, the **owner** commits a substantial breach of this contract entitling the **builder** to elect to either:
- (a) treat the **owner's** actions as a repudiation of this **contract** and to accept that repudiation;
  - (b) give the **owner** a notice to remedy breach of **contract** under Clause 28; or
  - (c) accept the **owner's** actions as a **variation** to omit that part of the **works** not carried out and completed as at the date the **owner** breaches Clause 26.1

*Reservation of rights*

- 26.4 If the **owner** breaches (including repudiates) this **contract**, nothing in this Clause prejudices the right of the **builder** to recover damages or exercise any other right or remedy.

*Rights to suspend*

- 26.5 If the **builder** elects to give a notice to remedy breach under Clause 26.3(b), the **builder** is still entitled to suspend the carrying out of the **works** under Clause 19.

*Accepting variation*

- 26.6 If the **builder** accepts the **variation** under Clause 26.3(c), the **builder** is to give the **owner**:
- (a) a **variation document** signed by the **builder** complying with Clause 20.1 to that effect; and
  - (b) a **notice of practical completion** and a **final claim** under Clause 25.

*Release*

- 26.7 The **builder** is deemed to be discharged and released from all liabilities, costs, losses or damages which the **owner** may suffer or incur which are in any way related to the **works** omitted under Clause 26.3(c).

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*Indemnity*

26.8 The **owner** indemnifies the **builder** against all liabilities, costs, charges, losses, damages, expenses or fees (including legal fees on a full indemnity basis) that the **builder** may suffer or incur arising out of or in any way related to:

(a) the **owner's** breach of Clause 26.1; or

(b) any direction to rectify or complete any part of the **works** omitted under Clause 26.3(c) issued by the Queensland Building and Construction Commission.

*Risk*

26.9 The **works** are at the risk of the **owner** on and from the **owner** taking possession of the **works** or any part of the **works** or from the **date of practical completion**, whichever occurs first.

*Continuing rights*

26.10 The rights of the **builder** and obligations of the **owner** under this Clause 26 continue to be in effect after the ending of this **contract**.

## Clause 27. Defects liability period

*Builder to fix defects*

27.1 The liability period for any non-structural defects (except for minor settlement or minor shrinkage) is 12 calendar months from the **date of practical completion**.

*Owner to give access*

27.2 The **owner** must give the **builder** access to the **site** during the **builder's** normal business hours to rectify any defects or other faults.

## Clause 28. Termination by default

*When the builder is in substantial breach*

28.1 The **owner** is entitled to give a notice to remedy breach under Clause 28.3 if the **builder** is in substantial breach of this **contract**. The **builder** is in substantial breach of this **contract** if the **builder**:

(a) suspends the carrying out of the **works**, other than under Clause 19;

(b) has the **builder's** licence cancelled; or

(c) is otherwise in substantial breach of this **contract**.

*When the owner is in substantial breach*

28.2 The **builder** is entitled to give a notice to remedy breach under Clause 28.3 if the **owner** is in substantial breach of this **contract**. The **owner** is in substantial breach of this **contract** if the **owner**:

(a) does not pay progress payments as required by Clause 4;

(b) does not pay the **deposit** as required by Clause 4.2;

(c) does not give evidence of the **owner's** capacity to pay the **contract price** from time to time as required by Clause 7.3;

(d) where a **lending body** is stated in **item 6**, does not comply with:

(i) the requirements of Clauses 7.2 or 7.3;

(ii) any of the requirements of the **lending body**; or

(iii) the requirements of Clause 5.2;

(e) does not establish or maintain the **security account** as required by Clause 8;

(f) enters the **site** in breach of Clause 10;

(g) interferes with or obstructs the **builder** or the **builder's** workers, suppliers or subcontractors in carrying out the **works** in breach of Clause 10.3;

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- (h) does not give an instruction within 5 **working days** of becoming aware of a problem under Clause 13;
- (i) does not, or does not ensure that the **owner's** contractors, comply with the requirements of Clause 24;
- (j) takes control of, possession of or uses the **works** or any part of the **works** without the prior written agreement of the **builder** prior to the payment in full of the **contract price**, adjusted by any additions or deductions made under this **contract**, in breach of Clause 26;
- (k) fails to agree to a **variation** in writing within 5 **working days** of receiving the **builder's** request in accordance with Clause 15; or
- (l) is otherwise in substantial breach of this **contract**.

*Notice to remedy  
breach*

28.3 If a party is in substantial breach of this **contract**, then the other party may give to that party a notice to remedy breach **in writing**:

- (a) specifying the substantial breach;
- (b) requiring that the substantial breach be rectified within 10 **working days** after the notice is given under this **contract**; and
- (c) stating that, if the substantial breach is not rectified, the other party intends to end this **contract**.

*Notice to end the  
contract*

28.4 If the party in substantial breach does not rectify or commence to substantially rectify the substantial breach stated in the notice to remedy breach within 10 **working days** of receiving that notice, the other party may end this **contract** by giving a separate notice to that effect.

*No right to end where  
matter is referred to  
QBCC and/or QCAT*

28.5 A party is not entitled to end this **contract** under this Clause if, within 5 **working days** of receiving the notice to remedy breach, the party in substantial breach refers the matter to the Queensland Building and Construction Commission, and/or the Queensland Civil and Administrative Tribunal under Clause 37.

*When notice is  
ineffective*

28.6 Neither party is entitled to give a notice to remedy breach while that party is in substantial breach of this **contract**. A notice given by a party in substantial breach is ineffective.

*Builder's rights*

28.7 On this **contract** being ended by the **builder** under Clauses 2, 15, 24, 28 or 29 the **builder** may, without prejudice to any other rights or remedies that the **builder** may have under this **contract** or at law, recover from the **owner** a debt due and owing the greater of the following amounts:

- (a) 5% of the **contract price**; or
- (b) damages including:
  - (i) the cost of all work carried out by the **builder** under this **contract**;
  - (ii) the cost to the **builder** of any materials purchased by the **builder** and delivered to the **site** or ordered by the **builder** from suppliers and which orders can not be cancelled;
  - (iii) the cost to the **builder** of quitting the **site**;
  - (iv) the **builder's margin** on the total of the amounts payable under subparagraphs (i), (ii) and (iii);
  - (v) **default interest** on any unpaid moneys under Clause 33; and
  - (vi) all other costs and losses incurred by the **builder** as a consequence of this **contract** being ended.

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*Other rights  
unaffected*

- 28.8 If a party breaches (including repudiates) this **contract**, nothing in this Clause prejudices the right of the other party to recover damages or exercise any other right or remedy.

## Clause 29. Termination for insolvency

*Ending contract for  
insolvency*

- 29.1 If a party:

- (a) informs the other party **in writing** or its creditors generally that the party is insolvent; or
- (b) becomes or is bankrupt or seeks to take advantage of the laws relating to bankruptcy; or
- (c) has a Court order made for the winding up of the party or a resolution for its winding up is made, and

as a consequence, that party is unable to perform its obligations under this **contract**, the other party may immediately end this **contract** by giving written notice to that party to that effect.

*Builder's rights on  
ending of contract*

- 29.2 The **builder** is entitled to be paid all amounts calculated in accordance with Clause 28.7 if this **contract** is ended under this Clause 29.

## Clause 30. Assignment and subcontracting

*No assignment  
without consent*

- 30.1 Neither party may assign this **contract** or any payment or any other right, benefit or interest under this **contract** without the prior written consent of the other party.

*Builder may  
subcontract*

- 30.2 The **builder** may subcontract any part of the **works** but such subcontracting does not relieve the **builder** from the **builder's** obligations under this **contract**.

## Clause 31. Notices

*When given and  
received*

- 31.1 Unless otherwise stated in this **contract**, a notice is deemed to be given and received if the notice is:
- (a) delivered by hand to the other party;
  - (b) posted by ordinary pre-paid mail to the other party's last known address, 5 **working days** following the day it was posted;
  - (c) sent by facsimile transmission to the party's last known facsimile number, on receiving confirmation of transmission;
  - (d) e-mailed to the party's current e-mail address; or
  - (e) provided by any other electronic means that is capable of evidencing the sending, receiving and (if applicable) approval of **contract documents**.

## Clause 32. Late completion damages

*When the owner is  
entitled*

- 32.1 If the **works** do not reach **practical completion** by the end of the **building period** the **owner** is entitled to liquidated damages in the sum specified in **item 15** for each **day** after the end of the **building period** to and including the earlier of:
- (a) the **date of practical completion**;
  - (b) the date this **contract** is ended; or

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(c) the date that the **owner** takes control of, possession of, or use of the **site** or any part of the **site**.

*Right of set-off* 32.2 The **owner** may set-off or deduct its claim for liquidated damages under Clause 32.1 from the **final claim** payment to the **builder**.

## Clause 33. Default interest

*Default interest* 33.1 The **builder** may charge the **owner** interest at the rate stated in **item 8** of **Schedule 1** from the day on which an amount falls due to be paid to the **builder** up to and including the day that amount is paid.

## Clause 34. Debt collection costs

*Owner to pay additional costs* 34.1 The **owner** must pay to the **builder** any debt collection costs, including any legal fees on a solicitor and own client basis, associated with recovering or the attempted recovery of an amount under this **contract**.

## Clause 35. Charge on materials and the site

*Charge over the site* 35.1 The **owner** grants a lien to the **builder** on all materials located on the **site** for the due payment to the **builder** of all moneys that are or may become payable to the **builder** arising out of the subject matter of this **contract**.

*Charge over the land* 35.2 Except where the **owner** is a **resident owner**, the **owner** charges the **land** with, and grants an equitable mortgage in favour of the **builder** for, the due payment to the **builder** of all moneys that are or may become payable to the **builder** arising out of the subject matter of this **contract**.

*Owner to sign a mortgage* 35.3 If so requested by the **builder**, the **owner** must deliver an executed mortgage in registrable form to secure the charge over the **land**.

*Owner to pay fees and duties* 35.4 The **owner** is to pay to the **builder** on demand all stamp duty and registration fees that are payable or paid on:

- (a) this **contract**;
- (b) any caveat or mortgage under this Clause that is lodged for registration; and
- (c) any withdrawal of such caveat or release of such mortgage.

*Guarantee* 35.5 The **owner** must, at the **builder's** request, provide to the **builder** a deed of guarantee and indemnity in the form in the Annexure duly executed by every **guarantor** named in **item 7** and enforceable against each such **guarantor**.

## Clause 36. Statutory warranties

*Builder's warranties* 36.1 To the extent required by the Queensland Building and Construction Commission Act 1991 (Qld), the **builder** warrants that:

- (a) all materials supplied by the **builder** 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;
- (b) the **works** will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975 (Qld);
- (c) the **works** will be carried out in an appropriate and skilful way and with reasonable skill and care;

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- (d) the **works** will be carried out in accordance with the plans and the specification to this **contract**;
- (e) the **works** will be carried out with reasonable diligence;
- (f) if the **works** consist of the erection or 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; and
- (g) each provisional sum item allowance, if calculated by the **builder**, has been calculated with reasonable skill and care, having regard to all the information reasonably available when this **contract** is entered into (including information about the nature and location of the **site**).

Meaning of relevant criteria

- 36.2 The relevant criteria for materials for the purpose of Clause 36.1(a) means:
- (a) generally accepted practices or standards applied in the building industry for the materials; or
  - (b) specifications, instructions or recommendations of manufacturers or suppliers of materials.

## Clause 37. Disputes

Reference to the QBCC and/or QCAT

- 37.1 If any dispute or difference between the **owner** and the **builder** arises in connection with the subject matter of this **contract** then either party may give to the other party written notice of such dispute or difference, and such dispute or difference may be referred for determination to the Queensland Building and Construction Commission and/or Queensland Civil and Administrative Tribunal as per Section 77 of the Queensland Building and Construction Commission Act 1991.

## Clause 38. Interpretation

Meanings

- 38.1 In this **contract**, except where the context otherwise requires:
- '**all weather access**' means reasonable access to the **site** as reasonably required by the **builder** for the **builder** to carry out the **works**, including in conditions resulting from **restricted access**;
  - '**anticipated start date**' means the date stated in **item** 14, subject to Clause 2.1;
  - '**builder**' means the party named in **item** 4 and includes the **builder's** successors, permitted assigns and, where appropriate, includes anyone acting with the **builder's** express authority;
  - '**builder's margin**' means the percentage of an amount to cover the **builder's** administration costs, overheads and profit being 20%;
  - '**building period**' means the number of **days** stated in **item** 13 as extended by Clause 17;
  - '**commencement**' means:
    - (a) when the **builder** commences physical construction on **site** of the footing, slab or drainage system; or
    - (b) where the **works** do not include construction of a footing, slab or drainage system, when work to change an on-site fixed structure has physically commenced;
  - '**contract**' means the agreement between the parties set out in the **contract documents**;

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'**contract documents**' means these general conditions, any special conditions, the specification, the plans and other documents specified in **item 16**;

'**contract price**' means the amount stated in **item 2**;

'**date of practical completion**' has the meaning in Clause 25;

'**days**' means calendar days;

'**defects liability period**' has the meaning in Clause 27.1;

'**deposit**' means the amount stated for the deposit in **Schedule 2**;

'**final claim**' means the claim by the **builder** for payment of the balance of the unpaid **contract price**, as adjusted by any additions or deductions made under this **contract**, plus all other moneys owing under this **contract**;

'**foundations data**' means the information about the **site** that a **builder** exercising reasonable care and skill would need to prepare:

- (a) an appropriate footings design and, if appropriate, an appropriate concrete slab design; and
- (b) an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab,

including that information required to be obtained under the Queensland Building and Construction Commission Act 1991;

'**guarantor**' means those persons or entities named as guarantor in **item 7**;

'**in writing**' means in handwritten or typewritten form, or in a combination of handwritten and typewritten forms;

'**item**' means the relevant **item** number in **Schedule 1**;

'**land**' means the **land** described in **item 11**;

'**lending body**'; where stated in **item 6** means any bank, financial institution or government authority that provides funds to the **owner** to enable the **owner** to pay the **contract price**, adjusted by any additions or deductions made under this **contract**, to the **builder**;

'**loan**' means an agreement between the **owner** and the **lending body** for the **owner** to borrow funds sufficient to pay the **contract price**;

'**non-working days**' means weekends, public holidays, rostered days off or other days not generally available for carrying out the **works**;

'**notice of practical completion**' has the meaning in Clause 25;

'**owner**' means the party named in **item 3** and includes the **owner's** successors and permitted assigns;

'**practical completion**' has the same meaning as in **Schedule 2**;

'**resident owner**' means an individual who intends to reside in the completed **works**;

(a) on **practical completion**; or

(b) within 6 months after **practical completion**;

'**restricted access**' means where due to conditions resulting from inclement weather:

- (a) access to the **site** is restricted so as to impede the carriage of machinery and/or materials to and from the **site** or the **works** being carried out in a safe manner; and

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(b) the carrying out of the **works** are, or will be, delayed;

'**schedule**' means the relevant schedule forming part of this **contract**;

'**security account**' means an account with a financial institution, bank, building society or solicitor trust account nominated by the **owner** and approved by the **builder** and described in Clause 8;

'**security account money**' means an amount equal to the **contract price**, adjusted by any additions or deductions made under this **contract**, less the total of any money being advanced by the **lending body** and any payments received by the **builder**;

'**site**' means the whole of or that part of the **land** reasonably required by the **builder** for the carrying out and completion of the **works**;

'**stage**' means the relevant stage as described in **schedule 2**;

'**statutory or other authority**' means a person authorised under the Building Act or the Local Government, State or Federal Government or any government agency that has power to affect the **works**;

'**time allowances**' means a delay to the carrying out of the **works** caused by inclement weather that is reasonably likely to delay the carrying out of the **works** and for which a description and an allowance are set out in **item 13**;

'**unforeseen circumstances**' means an actual surface or sub-surface condition of the **site** which will not support or is likely to affect the **works** or cause an increase in the **contract price**;

'**variation**' means;

(a) an omission, addition or change to the **works**; or

(b) a change in the manner of carrying out the **works**;

'**variation document**' has the meaning in Clause 20.1;

'**works**' means the **works** to be carried out, completed and handed over to the **owner** in accordance with this **contract** as shown in the **contract documents** including **variations**;

'**working days**' means **days** other than **non-working days**, and like words have a corresponding meaning.

*Defined terms indicated*

38.2 Whenever a defined term appears in this **contract** it is in bold text.

*Construction*

38.3 In this **contract**:

(a) words denoting the singular number only include the plural number and vice versa;

(b) a reference to any gender includes every other gender;

(c) words denoting individuals only includes corporations and vice versa;

(d) where a period of time is specified by a number of **days** and the last day of the period falls on a **non-working day** such period is extended to end on the next **working day**; and

(e) the general notes, clause headings and side notes do not form part of this **contract** and cannot be used in its interpretation.

*Governing law*

38.4 This **contract** is to be construed under the law of the State of Queensland.

*Where more than one owner*

38.5 If there is more than one **owner**:

(a) the obligations in this **contract** apply to each **owner** individually and to all **owners** as a group;

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(b) a quote, notice, claim or any other communication to the **owner** has only to be given to one of the **owners**; and

(c) only one **owner** has to sign a quote, notice, instruction or other communication to bind all **owners**.

*No waiver*

38.6 Except as provided at law or in equity or elsewhere in this **contract**, none of the provisions of this **contract** may be varied, waived, discharged or released, except with the prior written consent of the parties.

*Severance*

38.7 Any provision in this **contract** which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this **contract**.

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