

CPCCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT, CPCCBC4016A ADMINISTER A CONSTRUCTION CONTRACT & CPCCBC4032A APPLY CONTRACT LAW TO SALES PROCESSES

The assessment activities for *CPCCBC4003A Select and prepare a construction contract*, *CPCCBC4016A Administer a construction contract* & *CPCCBC4032A Apply contract law to sales processes* cover all aspects of the unit of competency required. To demonstrate competence in this unit, a participant must undertake all tasks and complete them satisfactorily and consistently. For Apprentices and Trainees, this includes employer completion of the Employer Record Book (ERB).

Participants must read all the information given before starting any assessment task. The assessment tasks are intended to be equitable, fair and flexible. If a participant has any questions or requires alternative arrangements to be made such requests should be directed to their Trainer/Assessor, who should note such arrangements in the 'Assessor Comments' on the affected assessment. If a participant feels they are not yet ready to be assessed, they should discuss their options with their Trainer/Assessor.

To satisfactorily complete the assessment, the participant is required to answer all questions correctly and demonstrate their skills to industry standards. If a participant does not answer some questions or perform some tasks, they will be deemed 'Not Satisfactory' for the task and 'Not Yet Competent' for the unit of competency. The Trainer/Assessor is able to provide the participant with additional information on interpreting the assessment outcomes and provide guidance on the participant's options. Should a participant still be deemed 'Not Satisfactory' they will have the opportunity to undertake a supplementary assessment or appeal the result.

By signing the cover page for each assessment item, the participant acknowledges they understand the assessment instructions and requirements and consent to being assessed. The participant also verifies and assures the RTO that the work submitted is their own work.

Participant Name	Tess Veldink
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Task	Assessment Results	
Theory Exam	☐ Satisfactory	☐ Not Yet Satisfactory
Practical Assessment	☐ Satisfactory	☐ Not Yet Satisfactory
Outcome for CPCCBC4003A	☐ Competent	☐ Not Yet Competent
Outcome for CPCCBC4016A	☐ Competent	☐ Not Yet Competent
Outcome for CPCCBC4032A	☐ Competent	☐ Not Yet Competent

Assessor Name	
Assessor Signature	
Unit Competence Determination Date	Click here to enter a date.

**CPCBC4003A SELECT AND PREPARE A
CONSTRUCTION CONTRACT,
CPCBC4016A ADMINISTER A CONSTRUCTION
CONTRACT &
CPCBC4032A APPLY CONTRACT LAW TO SALES
PROCESSES**

THEORY EXAM INSTRUCTIONS

1. This exam will occur under standard assessment conditions.
 1. An oral examination may be allowed under certain circumstances, whereby the Participant's answers will be documented by a party other than the Participant. This must be acknowledged in writing (e.g. FT001 and Assessor Comments)
2. Participants must provide enough detail in their responses to demonstrate their knowledge and skills.
3. Please fill in the details below, providing your name, signature and date of assessment.
 1. Your signature acknowledges that this is your own work.
4. Assessors are to complete marking in pen of a different colour to the Participant.
5. If a Participant initially answers a question incorrectly but modifies their response, they must follow the instructions below:
 1. If a Participant changes their response in writing, they must put their initials next to the written change.
 2. If a Participant changes their response verbally, this must be noted on the exam paper by the assessor.

Participant name Tess Veldink

Participant signature Tess Veldink

Date 25/01/2020

Assessor name _____

Assessor signature _____

Date [Click here to enter a date.](#)

Number of questions	Number of questions answered correctly	Task outcome (Tick)	
		Satisfactory	Not Yet Satisfactory
51		☐	☐

Q1. Order the following elements of an agreement from 1 to 4.

Answer

Element Number	Element
2	Acceptance
4	Consideration
3	Intention of legal consequences
1	Offer

☐

Q2. When would an offer be considered to have lapsed?

Answer

An offer will lapsed when the time for acceptance expires, if the offer is withdrawn before its accepted or after a reasonable time in the circumstances.

☐

Q3. What happens to the offer if new terms are suggested?

Answer

If new terms are suggested its regarded as a counter offer which can be accepted or rejected.

☐

Q4. What does it mean when a contract is supported by 'valuable consideration'?

Answer

One party promises to do something in return for a promise from the other party. Consideration is what each party gives each other this is usually in the form of money; these two things are what makes a contract binding.

☐

Q5. Identify two (2) parties who may be deemed to not have the capacity to enter into a contract.

Answer

1. Residential cost plus contract
2. Renovations

☐

- **Outline your understanding of 'consent' as it applies to contractual agreements. Identify when 'apparent consent' might not actually exist.**

Answer

Apparent consent may be negated because of a mistake, fraud, duress, undue influence or innocent misrepresentation all of which are defences to the enforcement of the contract.

☐

Q6. Identify the building industry regulator in your state and describe its role, particularly with regards to providing advice about contracts.

Answer

The QBCC regulates the Queensland building industry through a number of things.

1. Licencing contractor
2. Education about legal right to contractors
3. Educate consumers on their rights and obligations
4. Handling disputes fairly
5. Protecting homeowners against lose through the Queensland home warranty scheme
6. Implementing & enforcing legislative reforms and prosecuting people not complying with the law

☐

Q7. Under what laws are domestic building contracts regulated?

Answer

Domestic building contracts are regulated under the Queensland Building and Construction Commissions Act 1991.

☐

Q8. Domestic building contracts must be put in writing once the work exceeds what value?

Answer If the cost of domestic building work exceeds \$3,300.

☐

Q9. A commercial building contract must be put in writing before the building work is started if the reasonable cost of the work is more than what amount? Identify the relevant law that imposes this requirement.

Answer A commercial cost-plus contract – A cost plus contract for use on commercial building projects, where a lump sum price cannot be established however a fair and reasonable estimate is given

☐

Q10. Contractors must give the owner a signed copy of the entire contract (including any plans and specifications) within how many days after entering the contract?

Answer With 5 business days after entering the contract

☐

Q11. What are the benefits of having a written contract in place between parties?

Answer The benefits to having a written contract in place are;

1. Builders get paid and paid on time
2. Home owners receive the finished product they envisioned

If these things aren't done it can lead to disputes due to the documentation not being completed.

☐

Q12. Match the common building contract clauses and definitions below by writing the appropriate letter next to each number in the centre column.

Answer	Clauses		Answers	Definition		
	1	Acceptances	1 - F	A	Provide specific reasons that allow the contract period to be adjusted	☐
	2	Cost adjustments	2 - E	B	A provision for which remedies can be sought if breached	
	3	Extensions of time	3 - A	C	Specifically outlines the tasks to be completed as part of the construction work	
	4	Payments	4 - D	D	Outlines the requirements for deposits	
	5	Scope of work	5 - C	E	Address the risk of rise/fall of expenses	
	6	Term	6 - B	F	Require that the contract be accepted or rejected by a certain date, otherwise the contract will not be binding	

Q13. Which of the following are preliminary contracts that a builder could ask a client to sign prior to signing the main contract? Tick all that apply.

Answer	Choice	Possible Answers	
	☒	Contract estimate	☐
	☒	Contract request	
	☒	Preliminary agreement	

Q14. True or False (Tick your response): Clauses within pre-contract agreements may carry over into the contract, so it is important to discuss these with the client and come to an agreement.

Answer	☒	True	☐
	☐	False	

Q15. Identify and explain the purpose of four (4) standardised building construction contracts – two (2) residential and two (2) commercial.

Answer

Contract name	Description
New home construction	For the construction of an entire home
Level 1 Renovation, extension and repair	From renovations, extensions and routine repairs on existing home for contracts between \$3,301 and \$19,000
Commercial minor work	A lump sum contract for minor commercial work up to the value of \$100,000
Commercial building contracts	A lump sum contract to be used for the construction only of commercial building work with or without a principle agent



Q16. Identify an appropriate standardised contract that would be suitable for a commercial works job up to \$100,000.

Answer

The Commercial minor works contract with Master Builders.



Q17. Identify one (1) standardised residential building contract and explain the maximum value of the work it may be used for.

Answer

Natural disasters repairs contract – for domestic building projects no exceeding \$3,300



Q18. Describe the requirements for each of the topics listed below, with regards to residential contracts priced at \$20,000.

In Queensland, these are outlined in the QBCC Consumer Building Guide, which the consumer must sign before work is undertaken.

Answer

Topics	Definition
Builder's Licence	You should only deal with QBCC licenced contractors. If you engage with an unlicensed contractor your building maybe not be covered under the qld home warranty scheme.
Contract price	The total contract price should be stated on the first page of the contract schedule. The contract must also contain a warning about any provisions that may cause the contract price to change and includes any price allowances.
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.
Practical completion and handover	You are not required to pay the final contact payment until all of the contracted work has been completed in accordance with the contract, legal and defects. If there are a lot of defects the contractor must give you a 'defect document' this document should be complied by out and the contractor during handover.
Implied warranties	A range of warranties are deemed to be part of all regulated domestic building contracts under the Act.



- Which of the following documents can be referred to as collectively making up a contract? Tick all that apply.

Answer

Choice	Possible Answers
☒	Engineer specifications
☒	Plans, drawings and specifications
☒	Prime Cost Items Schedule
☒	Processes for applying for extensions of time
☒	Product catalogues
☒	Project timelines and schedules
☒	Provisional Sums Schedule
☒	Rise and fall calculations
☒	Site conditions report
☒	Soil and sedimentation report

☐

- Q19. What is the difference between the Prime Cost Item Schedule and the Provisional Sum Schedule in a contract? Provide an example of each type to help explain your response.

Answer

A Prime Cost is the amount of money included in a contract sum to purchase a specific item e.g. Fittings. An agreement amount is included in the contract however, these items aren't chosen until a later date. The builders must estimate the costs of items at a reasonable cost. If the item is more than estimated in the contract (e.g. the bathroom tap is \$60 instead of the estimate cost of \$40) a variation will be completed to cover the costs, thus the final contract sum will be increased.

A provisional sum is the amount of money included in the contract sum to cover work and/ or materials and isn't detailed when entering the contract. Because of this builder will include a PS for site work costs. The builder is legally required to ensure the site works have been quoted. However, unforeseen events mean that the PS might be exceeded with means more money is added to the final contract sum. An example of this is when construction is about to start the site looks clean and well looked after however once started the works the tradesmen notice tree roots that needs to be cleared and the whole needs to be filled.

☐

Q20. Cost adjustment provisions under a contract address risk by providing mechanisms for adjusting contract payment to reflect changes in costs. What can cost adjustment apply to?

Answer ☐ Cost adjustments apply to long term costs and some specific costs eg. labour, materials, currency exchange rates for overseas purchased goods, duties, taxes and shipping.

Q21. True or False (Tick your response): Variations can be requested by both the client and the builder.

Answer ☐

☒	True
☐	False

- **How should you deal with a client variation request that consequently requires a time extension? How are time extensions addressed within the contract?**

Answer ☐

When a client requires a time extension, they are to issue a variation in writing and a 'extension of time' form – which is essentially asking the client to grant you an extension of the contract period to allow for delays caused by the variations.

Reasoning for an extension are set out in the general conditions of the building contract and include a number of reasons such as weather and delays caused by owner or changes to scope of works. Becoming familiar with the general conditions are a good idea so you know what time extensions you are entitled to over the contract period.

Q22. Name the Fair Trade legislation that applies in your state and identify which persons/bodies it applies to.

Answer The building Industry Fairness (Security of Payment) Act 2017. Its an act that implies terms in construction contracts, to provide for adjudication of payment disputes under construction contracts and for other purposes.

☐

Q23. Under the National Consumer Credit Code, before entering into a credit contract, what must the credit provider do?

Answer

1. Make reasonable inquiries about why you want to borrow the money
2. Make reasonable inquiries about your financial situation
3. Take reasonable steps to verify your financial situation
4. Assess whether you can meet the financial obligations of the credit contract
5. Determine that the credit contract is 'not unsuitable' for you

☐

Q24. What does the 'cooling off' period refer to when undertaking domestic building work with a total contract price of \$20,000 or more?

Answer Cooling off right gives the consumer the right to cancel the contract if they aren't satisfied with it. QBCC Act provides gives the consumer the option to withdraw from the contract within 5 days of receipt of the signed contract.

☐

Q25. What are the maximum deposits recommended for a residential building project?

Answer If building work is \$20,000 and more the maximum deposit is 5% of the total value. If the contract price is more than \$3,300 and less than \$20,000 the deposit must not exceed 10% ☐

Q26. Throughout the building schedule, progress payments are made when each new stage is ready to commence.

Identify the recommended stages and percentages for these progress payments on a typical new residential housing building project.

Answer At the end of each construction phase you are required to submit an invoice or progress claim. Here are the recommended stages and percentages ☐

1. Deposit – 5%
2. Base Stage – 15%
3. Frame Stage – 20%
4. Enclose Stage – 25%
5. Fixing Stage – 20%
6. Practical Completion – 15%

- **You have been engaged by a client to construct their residential dwelling for \$550,000. Your client is pressuring you to accept a \$70,000 deposit to get priority on their construction. Should you accept the deposit? Explain your response.**

Answer The builder shouldn't accept the \$70,000 deposit because of the progress payment made at each construction stage. Progress payment must match the work carried out and be supported with receipts and documents. A deposit should only be 5% of the contract sum with increased amounts being submitted at each different stage. A \$70,000 deposit is 12.7% of the dwelling and wouldn't a line with the future payments. ☐

- **Explain the following types of contractual breach and identify the consequences for the contractual arrangement due to each type of breach.**

Answer ☐

Breach	Explanation
Breach of condition under contract	If a condition is breached the aggrieved party can elect to discharge the contract and sue for damages
Breach of warranty under contract	If a warranty is breached the aggrieved party cannot elect to terminate or discharge the contract – They may only seek damages

Q27. What does repudiation of a contract mean?

Answer ☐

Repudiation occurs when a party to a contract is unwilling to perform their contractual obligations.

Q28. True or False (Tick your response): In the event of repudiation, the injured party has two options:
 6. Continue with the contract
 7. Accept the repudiation and move to terminate the contract

Answer ☐

☒	True
☐	False

Q29. Why should you exercise caution, even if you are sure that the other party has repudiated the contract?

Answer ☐

You should exercise caution when another party has repudiated the contract because it doesn't automatically lead to a termination of agreement. The injured party can elect to either continue with the contract or accept the repudiation and move to terminate the contract

Q30. What does 'abandonment of contract' mean?

Answer

There are 2 different meanings.

1. is where the parties both have conducted themselves in such a way that the original contract is no longer valid. Both parties may mutually agree on this or it can become part of a claim.
2. is where a contractor fails to perform the work on a project by either not starting the project in a reasonable amount of time, not completing the works or failing to resume work in reasonable amount of time.

☐

Q31. A contract can be terminated for 'cause' or for 'convenience'. Explain these two terms.

Answer

Termination for cause occurs when one party stops work because of a deficiency in performance by the other party. As the contract is terminated because of another party the law typically provides the terminated party with little recourse in the event of a termination for cause

Termination for convenience occurs when the owner stops work for a reason other than a deficiency in performance. As the termination for convenience is not the result of poor performance the law may provide the aggrieved contractor with a significant right against the breaking owner.

☐

Q32. Yes or No (Tick your response): Referring to Section 25 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, would a contract be unfair if it contains a term that permits the builder, but not the client, to terminate the contract?

Answer

☒	Yes
☐	No

☐

Q33. If time is not of the essence for contract completion and one party fails to perform on time, the other party may terminate the contract after serving notice – specifying a time for performance on the first party. What are the requirements of a valid notice to complete?

Answer The injured party may terminate only after serving the original party with notice which must specify;

1. What must occur to perform the contract
2. A reasonable time in which the contract must be completed
3. A statement of the consequences of not performing in accordance with the notice

☐

Q34. True or False (Tick your response): Where the notice given (as per Q33.) is deemed invalid, the innocent party must either serve another notice or prove repudiation by the defaulting party, in order to terminate the contract.

Answer

☒	True
☐	False

☐

Q35. When is the client owner required to pay the final contract payment? How might this be affected by defects and omissions?

Answer The client is required to pay the final contract payment at the end of the defects liability period and has the effect of releasing all remaining money due to the contractor as well as retention.

This may affect the defects and omissions as they must be raised within the 6-month period of the practical completion. The contractors must rectify any defects within 28 calendar days during usual business hours.

☐

Q36. Explain the concept 'conditions for completion at the cost of the contractor'.

Answer

1. The contractor must make good defects or omissions in the work under the contract which become apparent within 6 months of PC
2. If there are any defects or omissions the owner must in the contractors a written notice to fix the defects or omissions within the 6 month period and must give the contractors correct access to the site for that purpose
3. The contract then must attend the defect or omissions within 28 business days of the notice during business hours.

☐

Q37. Describe what must be stated in a 'warranty against defects' about the person who gives the warranty [as per Section 90 of the *Competition and Consumer Regulations 2010* (Cth)].

Answer

Persons name, business address, phone number and email address

☐

Q38. Name one (1) person you should consult if you are considering ousting a contractor from a building site.

Answer

Lawyer to understand rights and obligations

☐

Q39. What document should you refer to if you are considering ousting a contractor from a building site?

Answer

Dismissal procedure delineated in the contract

☐

Q40. How should you handle a customer complaint?

Answer

There are a number of ways



1. Talk and listen to your customer
2. Make records
3. Ask for documentation
4. Understand your legal obligations
5. Follow up with your customer
6. Know your state or territory consumers complaint handling office

Q41. How do you reduce the risk of dispute?

Answer

Here are a few tips to help avoid complaints



1. record all complaints
2. Act promptly
3. Do what you say you're going to do
4. Do not make unrealistic promises

Q42. What is the process for dispute resolution?

Answer

There are options and procedures for resolving your dispute. You should always refer to your contract first which outlines all contractual details in order to – Determining responsibility for defects and directing the contractor to rectify defects or complete the works



- During your build the client has emailed you at 7:00pm to say they have been to the premises and noticed the installed bath in the bathroom is the wrong style.

You check the contract and the white goods and chattels list selected by the client. You cross check this with the specifications and your materials order and the receivable order sheets. You establish that the bath, as per these details, is correct and there has been no mistake on your part.

Draft a detailed response email to your client alerting them to the pertinent parts of the contract and specification, cross-referencing the details in regard to this item and its installation.

Answer

Hi Gabrielle,

Thanks for your email.

I'll have a look at this first thing tomorrow morning when I get into the office.

Let me know if you have any issues

Thanks,

Hi Gabrielle,

I've had a look at the detailed chattels/fixtures list and it does state that the 'White Como Freestanding Bath 1800mm is to be supplied and the installation date was the 1st February.

I've also double checked the bath specification with the purchase order I sent to the supplier and the signed delivery docket for proof of delivery. Both correspondence shows that the White Como Freestanding bath 1800mm was ordered and delivered.

From the daily works books on site I can see that the bath in unit 101 was also installed on the correct day as per the timeframe and schedule identified in the contract.

From my end the bath in unit 101 is the correct style. Please let me know if you would like this changed. I can organise a variation for changes in unit 101 and the other remaining units left.

Please let me know what you would like to do.

Thanks,

Q43. Where would you find any possible penalties associated with a build?

Answer You would find any possible penalties associated with a build in the building contract



**Q44. Explain the process for obtaining the final inspection certificate.
Explain how such documentation is to be stored/lodged.**

Answer The process to obtain the final inspection certificate;



Approval for works must be obtained from a building certifier.

1. Pre-hand over inspection – on site inspection with the client before the nominated date of handover. This gives a final opportunity to address any issues prior to hand over.

2. Final Payment – organise final payment of the project completion not handover

3. Handover this includes certificates of inspection, product warranties, and reports from the contractors

4. The final inspection certificate is obtained once the contracted works have been completed, inspected and passed

This kind of documentation needs to be completed within your internal business processes and should align with Industry standards, Quality communication procedure, Quality manuals and the National Construction Code. The Brisbane City Council must hold records of building approval and certification information.

The legislation also requires the building certifier to lodge the following documents with the council – engagement notice and application details, Decision notice and completion detail such as certificates.

- **Select and prepare an appropriate standardised contract for the client in the scenario below.**

Mr. and Mrs. Cousins intend to engage your company Resilient Homes Pty Ltd (License 141526) in order to build a new low-rise residential dwelling as their future retirement property. Mid-term of this build the clients intend putting their current home on the real estate market for sale.

Additional details:

The land has been secured and paid for by the Clients.

Proposed contract amount is \$580,000.00 plus \$85,000 for a kidney shaped 9m x 6m in-ground swimming pool, landscaping, gardens and lawns.

Mr. and Mrs. Cousins have finance approval from the Commonwealth Bank for \$390,000.00 and the balance in cash. You have received written assurance from the Clients finance company and bank that their finances for the build are fully secured.

Mr. and Mrs. Cousins want to pay you \$75,000.00 upon signing of the contract to get their build at the top of your priority list.

The residential dwelling will be a low set single skin masonry structure with hip and valley roof using glazed clay tiles, contrast metal fascia and gutters and colour/rendered finish on a 1000m² level block upon which there are three large standing hardwood trees which will need to be fully removed.

The Clients want the largest tree wood chipped and the chipped bark retained on site for the future gardens and landscaping.

Mr. and Mrs. Cousins operate an aluminium window supply company and have advised they will supply all the windows and shower glass for the build.

The dwelling has four bedrooms with built-ins. The master bedroom has ensuite with toilet, spa bath and double shower and walk-in robe and dressing area. There is an office, gourmet kitchen with stone bench tops and butler's pantry, media room, separate open plan dining adjacent to the kitchen plus slate tiled outdoor entertaining area adjacent to the pool, two living areas (formal and informal), two bedrooms share a bathroom with bath, shower, double vanity and toilet and the guest bedroom is ensuited with shower only, toilet and single vanity, there is a powder room (toilet and vanity only), three car garage (one double and one single) and a store/workshop room at the rear of the double bay garage. A slab is to be put down in the back corner of the allotment for a 5m x 3m garden shed.

The council approved building plans have been provided by Mr. and Mrs. Cousins these do not include the garden shed slab.

0. The construction period excluding inclement weather and possible delays is 23 weeks

1. Provisional sums are required for the wet areas, alfresco area and living area tiling. (Only the bedrooms are carpeted).

2. Prime costs are required for the solar hot water system and ducted air conditioning

3. Provide fictitious details for all other sections of the contract.

4. 18 solar panels are to be installed on the roof

Answer



QBCC NEW HOME CONSTRUCTION CONTRACT

This Contract is recommended for the construction of a single home or duplex.

- For the renovation, extension, improvement and routine repair of a home, it is recommended that you use the **QBCC Level 1 Renovation, Extension and Repair Contract** (where the contract price is \$3,301 - \$19,999), or the **QBCC Level 2 Renovation, Extension and Repair Contract** (where the contract price is \$20,000 or more).
- For repairs of any value arising from natural disasters, the **QBCC Natural Disaster Repairs Contract** is recommended.

THIS PACK CONTAINS:

- **Consumer Building Guide [Must be given to Owner before they sign the Contract]**
- **General Conditions of QBCC New Home Construction Contract**
(2 copies: 1 for Contractor and 1 for Owner – includes *Timeframes for Key Obligations*)
- **Schedules and Forms**
 - **Schedule for QBCC New Home Construction Contract**
 - **Prime Cost Items Schedule**
 - **Provisional Sums Schedule**
 - **Form 1 – Commencement Notice**
 - **Form 2 – Extension of Time Claim and Owner's Response to Claim**
 - **Form 3 – Progress Claim**
 - **Form 4 – Notice of Dispute of Progress Claim**
 - **Form 5 – Variation Document**
 - **Form 6 – Defects Document**
 - **Form 7 – Certificate of Practical Completion**

DO NOT ACCEPT THIS PACK IF CONTENTS ARE INCOMPLETE

WARNING FOR CONTRACTOR

Under Queensland law you must give the Owner a signed copy of the entire contract including any plans and specifications, within 5 business days after you enter the contract

You are also required to give the enclosed Consumer Building Guide to the Owner before they sign the contract. (Failure to do so may result in the Owner withdrawing from the contract or Compliance action by the QBCC)

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 1997* ('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

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.

NAME(S): _____

SIGNATURE(S): _____ DATE: ____/____/____

GENERAL CONDITIONS

of

QBCC New Home Construction Contract

*These General Conditions should be read in conjunction with the other
contract documents, especially the Contract Schedule and
the Consumer Building Guide.*

IMPORTANT NOTE FOR CONTRACTOR AND HOMEOWNER

In addition to the General Conditions, **this booklet now includes a new one-page document**
titled **'Timeframes for Key Obligations Under this Contract'** which summarises when
you need to meet important requirements under the contract and the legislation.

You should regularly check the timeframes in this document.

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TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

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TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

(NOTE: The list below is not exhaustive; 'GC' numbers below indicate the relevant clause number in the General Conditions)

HOMEOWNER	BUILDING CONTRACTOR
WHEN CONTRACT SIGNED	WHEN CONTRACT SIGNED
DEPOSIT: On signing, pay deposit stated in the Contract Schedule (GC 19.1) COOLING-OFF PERIOD: Expires 5 business days after Owner receives signed copy of both the full contract (including any plans and specifications) and the QBCC Consumer Building Guide (Sections 35-38 of Schedule 1B of QBCC Act)	CONSUMER BUILDING GUIDE: Ensure Owner given Guide before they sign contract (s18 Schedule 1B of QBCC Act) COPY OF CONTRACT (incl. plans & specs): Give to Owner within 5 business days of signing (GC 2) HOME WARRANTY INSURANCE: Collect premium from Owner and pay to QBCC within 10 business days of entering the contract and before starting work (GC 12)
BEFORE WORK COMMENCES ON SITE	BEFORE WORK COMMENCES ON SITE
FINANCE: By Finance Date (or if no date stated, within 10 business days from contract date) - give Contractor written evidence of capacity to pay Contract Price (GC 5.1) ACCESS: Ensure Contractor has clear access to Site (GC 13) INSURANCE: Arrange Public Liability insurance for the Site until work starts; check Contractor has Public Liability & Contract Works insurance, and paid Home Warranty premium to QBCC, before work starts.	FINANCIAL CAPACITY: Within 5 business days after Finance Date - Contractor may terminate contract if not satisfied with Owner's capacity to pay Contract Price (GC 5.2) INSURANCE: Ensure all insurances (incl. QBCC Home Warranty Scheme) are in place before work starts (GC 12) LODGE PLANS: Within 10 business days of Owner providing satisfactory evidence of financial capacity, Contractor must lodge plans (unless Owner responsible for lodgement, or later lodgement is agreed) (GC 9.1)
AFTER WORK COMMENCES ON SITE	AFTER WORK COMMENCES ON SITE
PROGRESS CLAIMS: Within 5 business days of receipt of progress claim - check the timing and amount of claim agrees with Item 8 of the Contract Schedule and pay valid claim (GC 19.1) VARIATIONS: Respond ASAP to all Variation Documents presented by Contractor (GC 21) EXTENSIONS OF TIME (EOT): Within 10 business days of receiving EOT claim from Contractor - assess, complete and return signed EOT Claim Form 2 (GC 23.4) AS PRACTICAL COMPLETION APPROACHES: (a) Liaise with lender to ensure final contract payment will be available when required at Practical Completion (GC 28.5) (b) Arrange Home and Contents insurance effective from Date of Practical Completion	COMMENCE WORK: On/before Start Date (GC 17.1) COMMENCEMENT NOTICE: Within 10 business days after starting on Site - give notice to Owner (GC 17.2) VARIATIONS: Give 'Variation Document' (Form 5) to Owner and get agreement in writing before starting variation work and before asking for payment (s40(5) of Schedule 1B of QBCC Act) - give Owner a signed copy within 5 business days of agreement on variation (GC 21.5) EOT: Within 10 business days of becoming aware of (or when you reasonably ought to have become aware of) the cause and extent of the delay - give claim to Owner on Form 2. Give Owner a copy of the fully signed form within 5 business days of their approval (GC 23) AS PRACTICAL COMPLETION APPROACHES: Give Owner 5 business days prior written notice of PC (GC 28.1)
AT PRACTICAL COMPLETION (PC)	AT PRACTICAL COMPLETION (PC)
CHECK CONTRACT (incl. plans & specs) AND INSPECT WORK with Contractor to ensure PC Stage has been reached (Note: Definition of PC allows for minor defects and minor omissions) (GC 28.2) DEFECTS DOCUMENT: Compile with Contractor at final inspection, sign and retain a copy (GC 28.2) PC PAYMENT: Pay Contractor immediately all PC requirements in Form 7 are satisfied (GC 28.5)	Before presenting claim for PC Stage (GC 28): (a) Inspect contracted work, compile Defects Document with Owner, sign and copy to Owner (b) Give copies of any remaining Certificates of Inspection (incl. 'Final' where applicable) to Owner (c) Complete PC Certificate (Form 7) and hand over property to Owner Present claim for PC Stage to Owner (GC 28.5)

GENERAL CONDITIONS

1. Definitions

1.1 In this Contract, unless the context otherwise requires, words and expressions used have the meaning defined or explained below:

- (a) **"Assessing Certifier"** means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the Works.
- (b) **"Base Stage"** means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
- (c) **"Building Product"** means any material or other thing associated with, or that could be associated with, a building.
- (d) **"Business Day"** means a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday, or bank holiday in Queensland.
- (e) **"Completion Period"** means the Completion Period stated in Schedule Item 6.
- (f) **"Contract Price"** means the total price of the Works stated in Schedule Item 1, including the Fixed Price Component and any allowances for Prime Cost Items and Provisional Sums, inclusive of GST, as adjusted under this Contract.
- (g) **"Contractor's Authorised Representative"** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Owner) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
- (h) **"Date for Practical Completion"** means the date stated in or calculated by reference to Schedule Item 7 or any extended date pursuant to this Contract.
- (i) **"Date of Commencement of Works on Site"** means the date the Works commenced on Site as stated in the Commencement Notice issued by the Contractor.
- (j) **"Date of Practical Completion"** means the date certified in the QBCC Form 7 - *Certificate of Practical Completion* in accordance with Condition 28.
- (k) **"Enclosed Stage"** means that stage of the Works when: external wall cladding is fixed; the roof is fixed but without soffit linings necessarily having been fixed or for a tile roof, pointing necessarily having been done or for a metal roof, scribing and final screwing off necessarily having been done; and the structural flooring is laid; and the external doors are fixed (even if only temporarily), but if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed, and the external windows are fixed (even if only temporarily).
- (l) **"Finance Date"** means the date stated in Schedule Item 12 or, in the event no date is stated, the date 10 business days from the date of this Contract.
- (m) **"Fixed Price Component"** means the sum stated in Schedule Item 1 (a) of the Contract Price being the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the Works, other than the allowances (if any) for Prime Cost Items or Provisional Sums.
- (n) **"Fixing Stage"** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves and built-in cabinets and built-in cupboards are fitted and fixed in position.
- (o) **"Foundations Data"** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
- (p) **"Frame Stage"** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
- (q) **"GST"** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
- (r) **"GST Legislation"** means A *New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
- (s) **"Intended Use"**, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- (t) **"Non-conforming Building Product"** - a building product is a non-conforming building product for an intended use if—
 - (i) the association of the product with a building for the use—
 - is not, or will not be, safe; or
 - does not, or will not, comply with the relevant regulatory provisions; or
 - (ii) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.

- (u) **"Owner's Authorised Representative"** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Contractor) as the person empowered by the Owner to communicate with the Contractor, including giving instructions as to variations.
 - (v) **"Practical Completion"** means the date upon which the Works are completed in accordance with the requirements of this Contract, including Condition 3 and Condition 28, apart from minor omissions or minor defects.
 - (w) **"Practical Completion Stage"** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
 - (x) **"Prime Cost Item"** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Conditions 4 and 19.
 - (y) **"Provisional Sum"** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Conditions 4 and 19.
 - (z) **"Relevant Criteria"** for materials means:
 - (i) generally accepted practices or standards applied in the building industry for the materials; or
 - (ii) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
 - (aa) **"Site"** means the Site described in Schedule Item 4 of this Contract.
 - (bb) **"Starting Date"** means whichever of the following dates occurs the latest:
 - (i) the Starting Date stated in Schedule Item 5; or
 - (ii) the day which is 10 business days after the issue of the plans duly approved by the Assessing Certifier; or
 - (iii) the day which is 10 business days after the Owner has satisfied its obligations under Condition 5.1.
 - (cc) **"Substantial breach by the Contractor"** has the meaning given in Condition 26.4.
 - (dd) **"Substantial breach by the Owner"** has the meaning given in Condition 26.3.
 - (ee) **"work under this Contract"** means all that work necessary to build the Works in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
 - (i) work to make the Site accessible to the Contractor;
 - (ii) provision of any special equipment;
 - (iii) work to clear the Site for building;
 - (iv) set out of the Works and survey if necessary;
 - (v) necessary structural retaining walls;
 - (vi) sewerage, draining and electrical connections;
 - (vii) provision of temporary water and power during construction; and
 - (viii) provision of clean up and disposal of waste material from the Site.
 - (ff) **"Works"** means the work described in Schedule Item 3 to be built in accordance with this Contract, including variations authorised under the Contract, and which by the Contract is to be handed over to the Owner.
- ## 2. Withdrawal during 'cooling-off' period
- 2.1 Subject to Condition 2.5, the Owner may withdraw from the Contract within the times noted below:
- (a) within 5 **business days** after the day on which the Owner receives from the Contractor a copy of both the signed Contract, including any plans and specifications, and the QBCC Consumer Building Guide; or
 - (b) if the Contract is given to the Owner separately from the Consumer Building Guide, then within 5 **business days** after the day on which the Owner receives the second document.
- 2.2 Further, if the Contractor fails to give both the above documents to the Owner within 5 **business days** of the parties entering the Contract then, in addition, the Owner may withdraw at any time up until 5 **business days** after the day on which the Owner receives those documents in accordance with Condition 2.1 (a) or (b) above.
- 2.3 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 35 of Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the QBCC Act').
- 2.4 If the Owner withdraws from the Contract pursuant to this Condition, the Owner must pay to the Contractor an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract, plus an additional \$100 if the Contractor has provided the Owner with the documents required in accordance with Condition 2.1. If the Owner has already paid more than this amount at the time they withdraw, the Contractor must promptly refund the excess.
- 2.5 The Owner may not withdraw from the Contract under section 35 of Schedule 1B of the QBCC Act if:
- (a) the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
 - (b) the Owner received formal legal advice about

the Contract before entering into the Contract;
or

- (c) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

3. Warranties under Schedule 1B of QBCC Act

3.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:

- (a) the **work under this Contract** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
- (b) all materials supplied will be of good quality and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless this Contract expressly provides otherwise;
- (c) the **work under this Contract** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
- (d) the **work under this Contract** will be carried out in accordance with the plans and specifications and any other Contract documents described in Schedule Item 15;
- (e) if the **work under this Contract** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage reasonably suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **Works** are finished; and
- (f) any estimate of **Provisional Sums** or **Prime Cost Items** included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).

3.2 Without limiting any other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:

- (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an **intended use**; and
- (b) the Owner is given all information about the **building product** required by section 74AG(4) of the QBCC Act.

3.3 The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.

3.4 The Owner must pay the Contractor the **Contract Price** for the **Works** in accordance with this Contract.

4. Price

4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:

- (a) **Fixed Price Component**;
- (b) **Prime Cost Items Component** (if any); and
- (c) **Provisional Sum Component** (if any).

4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to the commencement of the **Works** give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**.

In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.

4.3 If allowances for **Prime Cost Items** and **Provisional Sums** are included in the **Contract Price**, the total amount for each type of allowance must be shown adjacent to the words '**Prime Cost Items**' and '**Provisional Sums**' in Schedule Item 1 and the Contractor must give the Owner a separate schedule which states, for each **Prime Cost Item** or **Provisional Sum**, the following details:

- (a) a detailed description of the **Prime Cost Item** or the contracted services to which the **Provisional Sum** relates;
- (b) a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**, including any margin the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's margin'); and
- (c) the total price payable, inclusive of **GST**, for each **Prime Cost Item** or **Provisional Sum**.

4.4 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date.

4.5 For **Prime Cost Items** which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor

in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain and supply the relevant item.

- 4.6 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.
- 4.7 The Contractor warrants that each estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*:
- (a) has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the **Site**); and
 - (b) represents the reasonable cost of supplying and delivering each **Prime Cost Item**, or providing the contracted service covered by the **Provisional Sum**, including the Contractor's margin.
- 4.8 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.9 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.10 Prior to or when presenting a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, or providing the contracted services covered by a **Provisional Sum**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost to the Contractor of supplying the item or providing the contracted services under the Contract. The Contractor cannot seek payment for the **Prime Cost Item**, or the contracted service covered by the **Provisional Sum**, until the progress claim following the incorporation of the item in the **Works** or following the completion of the said contracted service.
- 4.11 As soon as practicable after the Contractor becomes aware that the actual cost of any **Prime Cost Item** or **Provisional Sum** will be more than 20% above the Contractor's estimate for that item in the *Prime Cost Items Schedule* or the contracted service in the *Provisional Sums Schedule*, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:
- (a) describes the **Prime Cost Item** or **Provisional Sum**;

- (b) states the cost to the Contractor of the **Prime Cost Item** or **Provisional Sum**, together with the Contractor's margin, and the amount by which this total amount exceeds the total allowance for that item in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*; and
- (c) identifies the Progress Payment stage under this Contract at which payment for the **Prime Cost Item** or **Provisional Sum** will be required.

GOODS AND SERVICES TAX

- 4.12 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 21) have been or will be calculated on a GST inclusive basis.

5 Evidence of capacity to pay the Contract Price

- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied as to the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than 5 **business days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must, subject to Condition 5.5, immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 5.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- (a) fees paid by the Contractor to another person for the **Foundations Data**;
 - (b) fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - (c) fees paid to an **Assessing Certifier** for development and/or building approval; and
 - (d) fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 5.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.
- 5.7 After commencement of **work under this Contract**, the Owner must, upon reasonable written request from the Contractor, provide the Contractor with current

evidence satisfactory to the Contractor of the Owner's continued capacity to pay the **Contract Price**.

6 Security account money

- 6.1 If Schedule Item 9 is completed, the Owner must, within 5 **business days** of the date of this Contract, deposit in an interest bearing account in a bank or other appropriate financial institution nominated by the Owner, the amount stipulated in Schedule Item 9 as Security Account Money.
- 6.2 The account must be in the joint names of the Owner and the Contractor and the authority of each of the Owner and the Contractor must be required to effect any withdrawal. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.
- 6.3 The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.
- 6.4 If the Owner fails to pay any money due and owing to the Contractor within 5 **business days**, or if the Contractor terminates the Contract pursuant to Condition 26 or Condition 27, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.
- 6.5 Upon payment of the last Progress Payment due to the Contractor as provided by Condition 19, the Owner is entitled to any remaining Security Account Money (including interest).
- 6.6 Any dispute between the parties as to the entitlement to Security Account Money shall be dealt with in accordance with Condition 25.

7 Evidence of title to, and boundaries of, the Site

Prior to the date of this Contract, the Contractor has satisfied itself as to the Owner's title to the **Site** and, where relevant to the **Works**, of the boundaries and position of the **Site**.

8 Copyright

- 8.1 A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.
- 8.2 Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** by the Contractor in accordance with those plans.

9 Building approval

- 9.1 Within 10 **business days** from the date on which the Owner has satisfied its obligation under Condition 5.1 the party named in Schedule Item 13 (or if no party is named, then the Contractor) must lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building work with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.
- 9.2 All parties must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.

10 Termination for lack of building approval

- 10.1 Either party may give a written notice to the other terminating this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of building has not issued within 3 months of the date of this Contract or such further period extended by the parties' agreement in writing.
- 10.2 If the Contract is terminated pursuant to this Condition the parties' entitlements and obligations shall be the same as if the Contract were brought to an end under Condition 5.3 and Conditions 5.4, 5.5 and 5.6 shall apply.

11 Contractor's indemnity in favour of the Owner

The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by an act or omission of the Owner.

12 Contractor's insurance obligations

- 12.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
 - (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) Queensland Home Warranty Scheme cover, the premium for which must be collected from the Owner and paid to QBCC within 10 **business days** after the date the Contract was entered into and before the **work under this Contract** starts (whichever is earlier); and
 - (c) Contract Works insurance for an amount not less than the **Contract Price** and Public Liability insurance for not less than 5 million dollars, both until 4pm on the **Date of Practical Completion**, with a reputable and financially sound insurer

upon usual and reasonable terms which name or include as an insured the Owner and the Contractor for their respective rights.

12.2 The insurances required under Condition 12.1(c) will include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.

12.3 Prior to commencement of the **work under this Contract**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract Works and Public Liability Insurances required under this Condition are current.

13 Access to the Site

13.1 The Owner gives the Contractor a licence to access the **Site** sufficient to enable the Contractor to commence and carry out the **work under this Contract** from the Starting Date until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.

13.2 The rights granted by the Owner to the Contractor under Condition 13.1 do not convey to the Contractor an interest in the land comprising the **Site**.

13.3 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:

- (a) have reasonable access to the **Site**; and
- (b) view any part of the **work under this Contract**.

13.4 The Owner or the **Owner's Authorised Representative** must not unreasonably interfere with the performance of the **work under this Contract** when at the **Site**.

14 Care of the work under this Contract

14.1 The Contractor is responsible for the care of the **work under this Contract** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.

14.2 The Contractor must promptly make good loss or damage to the **work under this Contract**, or to the Owner's property, occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

15 Workplace health and safety

15.1 For the purposes of this clause:

'Act' means the *Work Health and Safety Act 2011*

(Qld), as amended from time to time;

'Regulation' means the *Work Health and Safety Regulation 2011* (Qld), as amended from time to time; and

'workplace', 'inspector', 'notifiable incident', 'principal contractor', 'structure', 'dangerous goods' and 'regulator' have the same meaning as in the Act.

15.2 In relation to the **work under this Contract**, the Contractor will:

- (a) comply with and discharge all obligations and duties imposed on a person by the Act, the Regulation and any other regulation in connection with health and safety including without limitation obligations imposed on a person who conducts a business or undertaking; and
- (b) accept that it is the principal contractor and the person having management and control of the workplace at which the **work under this Contract** is being undertaken.

15.3 The Contractor will indemnify the Owner against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by the Owner as a result of or in connection with:

- (a) any breach of this clause by the Contractor;
- (b) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety; and
- (c) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulation in connection with health and safety.

16 Communication between Owner and Contractor

The Owner or the **Owner's Authorised Representative** must communicate and deal with the Contractor personally or with the **Contractor's Authorised Representative**. The Owner must not give directions to the Contractor's employees or subcontractors or rely on information provided by them.

17 Commencement and performance of the Works

17.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.

17.2 Within 10 **business days** after the date on which **work under this Contract** commences on **Site**, the Contractor must give a written notice to the Owner (such as QBCC Form 1 - *Commencement Notice*) stating:

- (a) the date on which **work under this Contract** commenced on **Site**; and
- (b) the **Date for Practical Completion**.

- 17.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

18 Assignment and subcontracting

- 18.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 18.2 The Contractor may subcontract parts of the **work under this Contract** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

19 Payment

- 19.1 The Owner must pay the Contractor the **Contract Price** for the **Works** calculated and adjusted as provided by this Contract in accordance with the following provisions:

- (a) The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 2 upon the signing of this Contract.
- (b) The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 8A or 8B which claim shall consist of the percentage of the **Contract Price** applicable to that stage as set out in Schedule Item 8A or 8B, subject to the following adjustments:
 - (i) an adjustment for any **Prime Cost Item** incorporated in the **Works** to that stage, and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8A or 8B depending on whether the final cost of the **Prime Cost Item** is more or less than the amount allowed and stated in the *Prime Cost Items Schedule*;
 - (ii) an adjustment for the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8A or 8B depending on whether the final cost of the **Provisional Sum** Item is more or less than the amount allowed and stated in the *Provisional Sums Schedule*; and
 - (iii) an increase to the relevant stage payment in respect to an amount payable under a Variation Document where the work the subject of the variation has been completed

and for which payment has not previously been made; and

- (iv) a decrease in the relevant stage payment in respect to a variation which reduces the **Contract Price**.

- (c) Such adjustments referred to in Condition 19.1(b) shall be recorded by the Contractor on the Form 3 - *Progress Claim* or similar appropriate document and the relevant progress claim shall be adjusted accordingly.
- (d) The QBCC Form 3 - *Progress Claim* or similar appropriate document must be accompanied by a QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice and any certificates of inspection relevant to the payment stage.
- (e) The progress claim for the **Practical Completion Stage** must, in addition to the requirements specified for any other progress claim, be accompanied by a completed and signed QBCC Form 6 - *Defects Document* and QBCC Form 7 - *Certificate of Practical Completion*, or similar appropriate documents.
- (f) The Contractor must make all reasonable efforts to have the Owner sign the QBCC Form 6 - *Defects Document* or similar appropriate document used to record the minor defects and minor omissions.
- (g) Except in regard to the Progress Payment for the **Practical Completion Stage** payable in accordance with Condition 28.5, the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim for Progress Payment as is not disputed by the Owner, within **5 business days** of receipt of the relevant claim.
- (h) If the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must, within **5 business days** of receipt of the relevant claim, give to the Contractor a completed and signed QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice stating the reasons for so disputing the claim or part of it.
- (i) If the dispute is not resolved by the parties within **5 business days** of the receipt by the Contractor of the notice of the dispute, the dispute must be referred for resolution in accordance with Condition 25.

20 Interest on overdue payments

- 20.1 The Owner must pay the Contractor interest on overdue payments at the lesser of the rate set out in Schedule Item 11 or the rate which is the sum of following:
- (a) 10% per year; and

- (b) the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills (the 'default rate').

20.2 If no amount is entered in Schedule Item 11 the default rate shall apply.

21 Variations

- 21.1 The **work under this Contract** may be varied by way of an increase, decrease or substitution of **work under this Contract** agreed between the Contractor and the Owner provided that, before work commences and before any additional payment is required, the details of the variation are put in writing in a Variation Document agreed in writing by both parties.
- 21.2 The Variation Document may be a QBCC Form 5 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of Schedule 1B of the QBCC Act, agreed in writing by both parties.
- 21.3 The Variation Document complies with the requirements of Schedule 1B of the QBCC Act if it:
 - (a) is readily legible; and
 - (b) describes the variation; and
 - (c) states the date of the request for the variation; and
 - (d) if the variation will result in a delay affecting the subject work - states the Contractor's reasonable estimate for the period of delay; and
 - (e) states the change to the **Contract Price** because of the variation, or the method for calculating the change to the **Contract Price** because of the variation; and
 - (f) if the variation results in an increase in the **Contract Price** - states when the increase is to be paid; and
 - (g) if the variation results in a decrease in the **Contract Price** - states when the decrease is to be accounted for.
- 21.4 Any increase in the **Contract Price** as a result of the variation can not be required to be paid before work the subject of the variation has been completed.
- 21.5 The Contractor must give the Owner a readily legible signed copy of the Variation Document as soon as practicable (but within 5 **business days**) after the variation is agreed and before the variation work is commenced.
- 21.6 The Contractor may present the Variation Document to the Owner, and the Owner may respond to it in writing, by any of the communication methods detailed in the Notice provisions in Condition 30.
- 21.7 If the Contractor has requested the variation, the Contractor is only entitled to additional

payment if the variation was necessary because of circumstances that are beyond the reasonable control of, and could not have been reasonably foreseen by, the Contractor when the Contract was entered into.

VARIATIONS REQUIRED BY LAW

- 21.8 If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner, vary the **work under this Contract** accordingly. If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense. In any other case, the Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

- 21.9 If the Owner is named in Schedule Item 14 as the party responsible for extra excavations and foundations, and if it becomes apparent that extra work or materials are required in respect of excavations or foundations beyond what could reasonably be established by the required **Foundations Data**, then the Contractor may, with the prior written consent of the Owner, vary the **work under this Contract** to include the provision of such extra work or materials.
- 21.10 In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within 5 **business days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation, and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.
- 21.11 The Contractor cannot seek additional payment from the Owner for a variation in respect of extra excavations and foundations where the need for the variation has arisen because:
 - (a) the Contractor failed to obtain the appropriate Foundations Data before entering the Contract and, had the Contractor obtained the appropriate Foundations Data, the need for the additional amount could reasonably have been established; or

- (b) the Contractor obtained the appropriate Foundations Data, and the need for the extra work or materials could reasonably have been established from the Foundations Data.

22 Time for Practical Completion

The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated in or calculated in accordance with Schedule Item 7 or any extended date under Condition 23.

23 Extension of time

- 23.1 Subject to complying with Condition 23.2, the Contractor may only claim and is entitled to a reasonable extension of the **Date for Practical Completion** if:
- (a) the need for the extension of time arises because of one or more of the following causes of delay prevents the Contractor from achieving **Practical Completion** by the **Date for Practical Completion**:
 - (i) a variation complying with Condition 21; or
 - (ii) a delay caused by the Owner or the **Owner's Authorised Representative**; or
 - (iii) a delay event stated in Schedule Item 6B which exceeds the stated allowance; or
 - (iv) another cause of delay which is not reasonably foreseeable and beyond the reasonable control of the Contractor; and
 - (b) the claim is made to the Owner in writing using a QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document with the particulars, including the cause of the delay and the extension of the **Date for Practical Completion** claimed, completed; and
 - (c) the claim is given to the Owner within 10 **business days** of the earlier of the Contractor becoming aware of the cause and extent of the delay and when the Contractor reasonably ought to have become aware of the cause and extent of the delay; and
 - (d) the Owner approves the claim in writing using the QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document.
- 23.2 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.
- 23.3 The Contractor must give the Owner a signed copy of the claim for an extension of time within 5 **business days** of the Owner approving the claim.
- 23.4 The Owner must, within 10 **business days** of receiving the Contractor's claim, reasonably assess and return to the Contractor the said QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or

similar appropriate document either agreeing to the extension of time claimed or giving reasons for the rejection of the whole or part of the said claim, failing which the said extension of time claim will be deemed to be disputed by the Owner.

- 23.5 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to damages arising from the unreasonable rejection of all or part of a claim for an extension of the **Date for Practical Completion**.

24 Liquidated damages

- 24.1 If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 10.
- 24.2 If Schedule Item 10 is left blank, a default amount of \$50 per day shall be deemed to apply.
- 24.3 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

WARNING TO OWNER

The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract. Any valid extensions of time must be taken into consideration when calculating the number of days of liquidated damages which can be claimed.

25 Dispute resolution

- 25.1 If a dispute under the Contract arises between the parties, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 25.2 If the dispute is not resolved within 10 **business days** of the receipt of the notice of dispute, either party may refer the matter to a dispute resolution process administered by the Queensland Building and Construction Commission.
- 25.3 A party will not commence any proceedings in respect of the dispute in any court or tribunal of competent jurisdiction until the dispute resolution process referred to in Condition 25.2 is at an end.
- 25.4 Where a dispute has arisen under or in connection with this Contract, including Condition 23.4, the Contractor must proceed diligently with the **work**

under this Contract notwithstanding the existence of the dispute.

26 Termination after notice of default

26.1 If:

- (a) a party is in substantial breach of this Contract; and
- (b) the other party gives a notice to the party in breach identifying and describing the breach and stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within 10 **business days** from the giving of the notice; and
- (c) the breach is not so remedied,

then the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.

26.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

26.3 **Substantial breach by the Owner** includes, but is not limited to:

- (a) failing to produce evidence satisfactory to the Contractor of the Owner's capacity to pay the **Contract Price** in compliance with Condition 5.7 of this Contract;
- (b) failing to pay any money due and owing to the Contractor within 5 **business days** after the due date for payment; and
- (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.

26.4 **Substantial breach by the Contractor** includes, but is not limited to:

- (a) failing to comply with any necessary approvals associated with the **work under this Contract**;
- (b) failing to provide materials which comply with this Contract;
- (c) unreasonably failing to replace or remedy defective work or materials;
- (d) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
- (e) failing to effect or maintain any insurance required by this Contract;
- (f) failing to hold the current, active and appropriate licence required to perform the **Works**, including, without limitation, a

licence required under the QBCC Act; and

- (g) the Contractor failing to pay a judgement debt.

27 Termination for bankruptcy or liquidation

27.1 Notwithstanding Condition 26, if a party to this Contract:

- (a) is made bankrupt; or
- (b) being a company, goes into liquidation,

then the other party may forthwith by written notice terminate this Contract.

27.2 If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the **Site** and retain all unfixed materials, goods, plant and equipment previously provided at the **Site** by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.

27.3 If the Owner terminates the Contract under this Condition, the Owner may, in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials and goods previously provided at the **Site** by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract.

27.4 Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

WARNING TO OWNER AND CONTRACTOR

New legislation effective from 1 July 2018 makes it illegal to terminate a contract with a company solely because they have gone into voluntary administration, appointed a receiver/managing controller or entered a scheme of arrangement with creditors. For this reason (and the probable loss for Owners of non-completion protection under the Old Home Warranty Scheme if you terminate your Contract incorrectly), it is very important that you obtain formal legal advice before terminating the Contract for any reason.

28 Practical Completion

- 28.1 The Contractor must give to the Owner 5 **business days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach **Practical Completion**.
- 28.2 On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** will inspect the **Works** and if satisfied that the **Works** have reached **Practical Completion**, and if the Contractor produces to the Owner satisfactory written evidence that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must:
- (a) complete and sign the QBCC Form 6 - *Defects Document* or similar appropriate document identifying agreed and non-agreed minor defects and minor omissions, and when the Contractor will remedy the agreed matters, and give a copy to the Owner; and
 - (b) give the Owner a completed and signed QBCC Form 7 - *Certificate of Practical Completion* stating that date as the **Date of Practical Completion**; and
 - (c) hand over the **Works** to the Owner.
- 28.3 If the Owner considers that the **Works** have not reached **Practical Completion** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.
- 28.4 The issue of a Certificate of **Practical Completion** does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.
- 28.5 When the Contractor has satisfied all of its obligations under Condition 28.2 the Owner must immediately pay the Contractor the progress claim for the **Practical Completion Stage** (as adjusted under Condition 24, if applicable).

29 Defects after completion

- 29.1 The Contractor must make good defects or omissions in the **work under this Contract** which become apparent to the Owner within 12 months of the **Date of Practical Completion**.
- 29.2 If there are any such defects or omissions, the Owner must, as soon as practicable after becoming aware of

the defects or omissions, give the Contractor written notice to make good such defects or omissions and give the Contractor reasonable access to the **Site** for that purpose.

- 29.3 Subject to reasonable access being provided, the Contractor must within 28 calendar days of the notice being given rectify any defects or omissions notified to the Contractor under Condition 29.2 during usual business hours.

30 Notices

- 30.1 Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given at the address stated in the Schedule, or such other address as is subsequently advised in writing, in one of the following ways:
- (a) delivered to the other party by hand; or
 - (b) delivered by prepaid post; or
 - (c) sent by facsimile; or
 - (d) sent by email.
- 30.2 Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.
- 30.3 Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.
- 30.4 Any notice sent by email is deemed to be given in accordance with the following provisions:
- (a) the notice is deemed given at the time the email is sent provided it is sent before 5.00pm on a **business day** at the place of receipt on the day it is sent and otherwise on the next **business day** at the place of receipt, provided:
 - (i) the sender's computer or email account does not receive a message that the message has not been delivered (including an 'out of office' message); and
 - (ii) the email has been received fully and in legible form by the receiver; and
 - (iii) the receiver has not advised the sender in writing that a notice cannot be given to them by email for the stated period.

Notes

Contact list

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

Person	Name & Email	Other Contact Details
Solicitor	Name: Email:	  
Finance Provider	Name: Email:	  
Building Designer or Architect	Name: Email:	  
Building Contractor	Name: Email:	  
Site Supervisor	Name: Email:	  
Building Certifier	Name: Email:	  
Local Government	Name: Email:	  
Insurance Company	Name: Email:	  
Building Consultant	Name: Email:	  
Neighbours (if relevant)	Name: Email:	  

GENERAL CONDITIONS

of

QBCC New Home Construction Contract

These General Conditions should be read in conjunction with the other contract documents, especially the Contract Schedule and the Consumer Building Guide.

IMPORTANT NOTE FOR CONTRACTOR AND HOMEOWNER

In addition to the General Conditions, **this booklet now includes a new one-page document** titled **'Timeframes for Key Obligations Under this Contract'** which summarises when you need to meet important requirements under the contract and the legislation.
You should regularly check the timeframes in this document.

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TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

(NOTE: The list below is not exhaustive; 'GC' numbers below indicate the relevant clause number in the General Conditions)

HOMEOWNER	BUILDING CONTRACTOR
WHEN CONTRACT SIGNED	WHEN CONTRACT SIGNED
DEPOSIT: On signing, pay deposit stated in the Contract Schedule (GC 19.1) COOLING-OFF PERIOD: Expires 5 business days after Owner receives signed copy of both the full contract (including any plans and specifications) and the QBCC Consumer Building Guide (Sections 35-38 of Schedule 1B of QBCC Act)	CONSUMER BUILDING GUIDE: Ensure Owner given Guide before they sign contract (s18 Schedule 1B of QBCC Act) COPY OF CONTRACT (incl. plans & specs): Give to Owner within 5 business days of signing (GC 2) HOME WARRANTY INSURANCE: Collect premium from Owner and pay to QBCC within 10 business days of entering the contract and before starting work (GC 12)
BEFORE WORK COMMENCES ON SITE	BEFORE WORK COMMENCES ON SITE
FINANCE: By Finance Date (or if no date stated, within 10 business days from contract date) - give Contractor written evidence of capacity to pay Contract Price (GC 5.1) ACCESS: Ensure Contractor has clear access to Site (GC 13) INSURANCE: Arrange Public Liability insurance for the Site until work starts; check Contractor has Public Liability & Contract Works insurance, and paid Home Warranty premium to QBCC, before work starts.	FINANCIAL CAPACITY: Within 5 business days after Finance Date - Contractor may terminate contract if not satisfied with Owner's capacity to pay Contract Price (GC 5.2) INSURANCE: Ensure all insurances (incl. QBCC Home Warranty Scheme) are in place before work starts (GC 12) LODGE PLANS: Within 10 business days of Owner providing satisfactory evidence of financial capacity, Contractor must lodge plans (unless Owner responsible for lodgement, or later lodgement is agreed) (GC 9.1)
AFTER WORK COMMENCES ON SITE	AFTER WORK COMMENCES ON SITE
PROGRESS CLAIMS: Within 5 business days of receipt of progress claim - check the timing and amount of claim agrees with Item 8 of the Contract Schedule and pay valid claim (GC 19.1) VARIATIONS: Respond ASAP to all Variation Documents presented by Contractor (GC 21) EXTENSIONS OF TIME (EOT): Within 10 business days of receiving EOT claim from Contractor - assess, complete and return signed EOT Claim Form 2 (GC 23.4) AS PRACTICAL COMPLETION APPROACHES: (a) Liaise with lender to ensure final contract payment will be available when required at Practical Completion (GC 28.5) (b) Arrange Home and Contents insurance effective from Date of Practical Completion	COMMENCE WORK: On/before Start Date (GC 17.1) COMMENCEMENT NOTICE: Within 10 business days after starting on Site - give notice to Owner (GC 17.2) VARIATIONS: Give 'Variation Document' (Form 5) to Owner and get agreement in writing before starting variation work and before asking for payment (s40(5) of Schedule 1B of QBCC Act) - give Owner a signed copy within 5 business days of agreement on variation (GC 21.5) EOT: Within 10 business days of becoming aware of (or when you reasonably ought to have become aware of) the cause and extent of the delay - give claim to Owner on Form 2. Give Owner a copy of the fully signed form within 5 business days of their approval (GC 23) AS PRACTICAL COMPLETION APPROACHES: Give Owner 5 business days prior written notice of PC (GC 28.1)
AT PRACTICAL COMPLETION (PC)	AT PRACTICAL COMPLETION (PC)
CHECK CONTRACT (incl. plans & specs) AND INSPECT WORK with Contractor to ensure PC Stage has been reached (Note: Definition of PC allows for minor defects and minor omissions) (GC 28.2) DEFECTS DOCUMENT: Compile with Contractor at final inspection, sign and retain a copy (GC 28.2) PC PAYMENT: Pay Contractor immediately all PC requirements in Form 7 are satisfied (GC 28.5)	Before presenting claim for PC Stage (GC 28): (a) Inspect contracted work, compile Defects Document with Owner, sign and copy to Owner (b) Give copies of any remaining Certificates of Inspection (incl. 'Final' where applicable) to Owner (c) Complete PC Certificate (Form 7) and hand over property to Owner Present claim for PC Stage to Owner (GC 28.5)

GENERAL CONDITIONS

1. Definitions

1.1 In this Contract, unless the context otherwise requires, words and expressions used have the meaning defined or explained below:

- (a) **"Assessing Certifier"** means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the Works.
- (b) **"Base Stage"** means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
- (c) **"Building Product"** means any material or other thing associated with, or that could be associated with, a building.
- (d) **"Business Day"** means a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday, or bank holiday in Queensland.
- (e) **"Completion Period"** means the Completion Period stated in Schedule Item 6.
- (f) **"Contract Price"** means the total price of the Works stated in Schedule Item 1, including the Fixed Price Component and any allowances for Prime Cost Items and Provisional Sums, inclusive of GST, as adjusted under this Contract.
- (g) **"Contractor's Authorised Representative"** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Owner) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
- (h) **"Date for Practical Completion"** means the date stated in or calculated by reference to Schedule Item 7 or any extended date pursuant to this Contract.
- (i) **"Date of Commencement of Works on Site"** means the date the Works commenced on Site as stated in the Commencement Notice issued by the Contractor.
- (j) **"Date of Practical Completion"** means the date certified in the QBCC Form 7 - *Certificate of Practical Completion* in accordance with Condition 28.
- (k) **"Enclosed Stage"** means that stage of the Works when: external wall cladding is fixed; the roof is fixed but without soffit linings necessarily having been fixed or for a tile roof, pointing necessarily having been done or for a metal roof, scribing and final screwing off necessarily having been done; and the structural flooring is laid; and the external doors are fixed (even if only temporarily), but if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed, and the external windows are fixed (even if only temporarily).
- (l) **"Finance Date"** means the date stated in Schedule Item 12 or, in the event no date is stated, the date 10 business days from the date of this Contract.
- (m) **"Fixed Price Component"** means the sum stated in Schedule Item 1 (a) of the Contract Price being the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the Works, other than the allowances (if any) for Prime Cost Items or Provisional Sums.
- (n) **"Fixing Stage"** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves and built-in cabinets and built-in cupboards are fitted and fixed in position.
- (o) **"Foundations Data"** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
- (p) **"Frame Stage"** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
- (q) **"GST"** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
- (r) **"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
- (s) **"Intended Use"**, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- (t) **"Non-conforming Building Product"** - a building product is a non-conforming building product for an intended use if—
 - (i) the association of the product with a building for the use—
 - is not, or will not be, safe; or
 - does not, or will not, comply with the relevant regulatory provisions; or
 - (ii) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.

- (u) **"Owner's Authorised Representative"** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Contractor) as the person empowered by the Owner to communicate with the Contractor, including giving instructions as to variations.
 - (v) **"Practical Completion"** means the date upon which the Works are completed in accordance with the requirements of this Contract, including Condition 3 and Condition 28, apart from minor omissions or minor defects.
 - (w) **"Practical Completion Stage"** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
 - (x) **"Prime Cost Item"** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Conditions 4 and 19.
 - (y) **"Provisional Sum"** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Conditions 4 and 19.
 - (z) **"Relevant Criteria"** for materials means:
 - (i) generally accepted practices or standards applied in the building industry for the materials; or
 - (ii) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
 - (aa) **"Site"** means the Site described in Schedule Item 4 of this Contract.
 - (bb) **"Starting Date"** means whichever of the following dates occurs the latest:
 - (i) the Starting Date stated in Schedule Item 5; or
 - (ii) the day which is 10 business days after the issue of the plans duly approved by the Assessing Certifier; or
 - (iii) the day which is 10 business days after the Owner has satisfied its obligations under Condition 5.1.
 - (cc) **"Substantial breach by the Contractor"** has the meaning given in Condition 26.4.
 - (dd) **"Substantial breach by the Owner"** has the meaning given in Condition 26.3.
 - (ee) **"work under this Contract"** means all that work necessary to build the Works in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
 - (i) work to make the Site accessible to the Contractor;
 - (ii) provision of any special equipment;
 - (iii) work to clear the Site for building;
 - (iv) set out of the Works and survey if necessary;
 - (v) necessary structural retaining walls;
 - (vi) sewerage, draining and electrical connections;
 - (vii) provision of temporary water and power during construction; and
 - (viii) provision of clean up and disposal of waste material from the Site.
 - (ff) **"Works"** means the work described in Schedule Item 3 to be built in accordance with this Contract, including variations authorised under the Contract, and which by the Contract is to be handed over to the Owner.
- ## 2. Withdrawal during 'cooling-off' period
- 2.1 Subject to Condition 2.5, the Owner may withdraw from the Contract within the times noted below:
- (a) within 5 **business days** after the day on which the Owner receives from the Contractor a copy of both the signed Contract, including any plans and specifications, and the QBCC Consumer Building Guide; or
 - (b) if the Contract is given to the Owner separately from the Consumer Building Guide, then within 5 **business days** after the day on which the Owner receives the second document.
- 2.2 Further, if the Contractor fails to give both the above documents to the Owner within 5 **business days** of the parties entering the Contract then, in addition, the Owner may withdraw at any time up until 5 **business days** after the day on which the Owner receives those documents in accordance with Condition 2.1 (a) or (b) above.
- 2.3 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 35 of Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the QBCC Act').
- 2.4 If the Owner withdraws from the Contract pursuant to this Condition, the Owner must pay to the Contractor an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract, plus an additional \$100 if the Contractor has provided the Owner with the documents required in accordance with Condition 2.1. If the Owner has already paid more than this amount at the time they withdraw, the Contractor must promptly refund the excess.
- 2.5 The Owner may not withdraw from the Contract under section 35 of Schedule 1B of the QBCC Act if:
- (a) the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
 - (b) the Owner received formal legal advice about

the Contract before entering into the Contract;
or

- (c) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

3. Warranties under Schedule 1B of QBCC Act

3.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:

- (a) the **work under this Contract** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
- (b) all materials supplied will be of good quality and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless this Contract expressly provides otherwise;
- (c) the **work under this Contract** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
- (d) the **work under this Contract** will be carried out in accordance with the plans and specifications and any other Contract documents described in Schedule Item 15;
- (e) if the **work under this Contract** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage reasonably suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **Works** are finished; and
- (f) any estimate of **Provisional Sums** or **Prime Cost** Items included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).

3.2 Without limiting any other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:

- (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an **intended use**; and
- (b) the Owner is given all information about the **building product** required by section 74AG(4) of the QBCC Act.

3.3 The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.

3.4 The Owner must pay the Contractor the **Contract Price** for the **Works** in accordance with this Contract.

4. Price

4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:

- (a) **Fixed Price Component**;
- (b) **Prime Cost Items Component** (if any); and
- (c) **Provisional Sum Component** (if any).

4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to the commencement of the **Works** give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**.

In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.

4.3 If allowances for **Prime Cost Items** and **Provisional Sums** are included in the **Contract Price**, the total amount for each type of allowance must be shown adjacent to the words '**Prime Cost Items**' and '**Provisional Sums**' in Schedule Item 1 and the Contractor must give the Owner a separate schedule which states, for each **Prime Cost Item** or **Provisional Sum**, the following details:

- (a) a detailed description of the **Prime Cost Item** or the contracted services to which the **Provisional Sum** relates;
- (b) a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**, including any margin the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's margin'); and
- (c) the total price payable, inclusive of **GST**, for each **Prime Cost Item** or **Provisional Sum**.

4.4 The **Prime Cost Items Schedule** must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date.

4.5 For **Prime Cost Items** which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor

in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain and supply the relevant item.

- 4.6 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.
- 4.7 The Contractor warrants that each estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*:
- (a) has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the **Site**); and
 - (b) represents the reasonable cost of supplying and delivering each **Prime Cost Item**, or providing the contracted service covered by the **Provisional Sum**, including the Contractor's margin.
- 4.8 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.9 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.10 Prior to or when presenting a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, or providing the contracted services covered by a **Provisional Sum**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost to the Contractor of supplying the item or providing the contracted services under the Contract. The Contractor cannot seek payment for the **Prime Cost Item**, or the contracted service covered by the **Provisional Sum**, until the progress claim following the incorporation of the item in the **Works** or following the completion of the said contracted service.
- 4.11 As soon as practicable after the Contractor becomes aware that the actual cost of any **Prime Cost Item** or **Provisional Sum** will be more than 20% above the Contractor's estimate for that item in the *Prime Cost Items Schedule* or the contracted service in the *Provisional Sums Schedule*, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:
- (a) describes the **Prime Cost Item** or **Provisional Sum**;

- (b) states the cost to the Contractor of the **Prime Cost Item** or **Provisional Sum**, together with the Contractor's margin, and the amount by which this total amount exceeds the total allowance for that item in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*; and
- (c) identifies the Progress Payment stage under this Contract at which payment for the **Prime Cost Item** or **Provisional Sum** will be required.

GOODS AND SERVICES TAX

- 4.12 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 21) have been or will be calculated on a **GST** inclusive basis.

5 Evidence of capacity to pay the Contract Price

- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied as to the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than **5 business days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must, subject to Condition 5.5, immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 5.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- (a) fees paid by the Contractor to another person for the **Foundations Data**;
 - (b) fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - (c) fees paid to an **Assessing Certifier** for development and/or building approval; and
 - (d) fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 5.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.
- 5.7 After commencement of **work under this Contract**, the Owner must, upon reasonable written request from the Contractor, provide the Contractor with current

evidence satisfactory to the Contractor of the Owner's continued capacity to pay the **Contract Price**.

6 Security account money

- 6.1 If Schedule Item 9 is completed, the Owner must, within 5 **business days** of the date of this Contract, deposit in an interest bearing account in a bank or other appropriate financial institution nominated by the Owner, the amount stipulated in Schedule Item 9 as Security Account Money.
- 6.2 The account must be in the joint names of the Owner and the Contractor and the authority of each of the Owner and the Contractor must be required to effect any withdrawal. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.
- 6.3 The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.
- 6.4 If the Owner fails to pay any money due and owing to the Contractor within 5 **business days**, or if the Contractor terminates the Contract pursuant to Condition 26 or Condition 27, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.
- 6.5 Upon payment of the last Progress Payment due to the Contractor as provided by Condition 19, the Owner is entitled to any remaining Security Account Money (including interest).
- 6.6 Any dispute between the parties as to the entitlement to Security Account Money shall be dealt with in accordance with Condition 25.

7 Evidence of title to, and boundaries of, the Site

Prior to the date of this Contract, the Contractor has satisfied itself as to the Owner's title to the **Site** and, where relevant to the **Works**, of the boundaries and position of the **Site**.

8 Copyright

- 8.1 A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.
- 8.2 Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** by the Contractor in accordance with those plans.

9 Building approval

- 9.1 Within 10 **business days** from the date on which the Owner has satisfied its obligation under Condition 5.1 the party named in Schedule Item 13 (or if no party is named, then the Contractor) must lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building work with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.
- 9.2 All parties must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.

10 Termination for lack of building approval

- 10.1 Either party may give a written notice to the other terminating this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of building has not issued within 3 months of the date of this Contract or such further period extended by the parties' agreement in writing.
- 10.2 If the Contract is terminated pursuant to this Condition the parties' entitlements and obligations shall be the same as if the Contract were brought to an end under Condition 5.3 and Conditions 5.4, 5.5 and 5.6 shall apply.

11 Contractor's indemnity in favour of the Owner

The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by an act or omission of the Owner.

12 Contractor's insurance obligations

- 12.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
 - (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) Queensland Home Warranty Scheme cover, the premium for which must be collected from the Owner and paid to QBCC within 10 **business days** after the date the Contract was entered into and before the **work under this Contract** starts (whichever is earlier); and
 - (c) Contract Works insurance for an amount not less than the **Contract Price** and Public Liability insurance for not less than 5 million dollars, both until 4pm on the **Date of Practical Completion**, with a reputable and financially sound insurer

upon usual and reasonable terms which name or include as an insured the Owner and the Contractor for their respective rights.

- 12.2 The insurances required under Condition 12.1(c) will include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.

- 12.3 Prior to commencement of the **work under this Contract**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract Works and Public Liability Insurances required under this Condition are current.

13 Access to the Site

- 13.1 The Owner gives the Contractor a licence to access the **Site** sufficient to enable the Contractor to commence and carry out the **work under this Contract** from the Starting Date until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.
- 13.2 The rights granted by the Owner to the Contractor under Condition 13.1 do not convey to the Contractor an interest in the land comprising the **Site**.
- 13.3 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:
- (a) have reasonable access to the **Site**; and
 - (b) view any part of the **work under this Contract**.
- 13.4 The Owner or the **Owner's Authorised Representative** must not unreasonably interfere with the performance of the **work under this Contract** when at the **Site**.

14 Care of the work under this Contract

- 14.1 The Contractor is responsible for the care of the **work under this Contract** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.
- 14.2 The Contractor must promptly make good loss or damage to the **work under this Contract**, or to the Owner's property, occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

15 Workplace health and safety

- 15.1 For the purposes of this clause:

'Act' means the *Work Health and Safety Act 2011*

(Qld), as amended from time to time;

'Regulation' means the *Work Health and Safety Regulation 2011* (Qld), as amended from time to time; and

'workplace', 'inspector', 'notifiable incident', 'principal contractor', 'structure', 'dangerous goods' and 'regulator' have the same meaning as in the Act.

- 15.2 In relation to the **work under this Contract**, the Contractor will:

- (a) comply with and discharge all obligations and duties imposed on a person by the Act, the Regulation and any other regulation in connection with health and safety including without limitation obligations imposed on a person who conducts a business or undertaking; and
 - (b) accept that it is the principal contractor and the person having management and control of the workplace at which the **work under this Contract** is being undertaken.
- 15.3 The Contractor will indemnify the Owner against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by the Owner as a result of or in connection with:
- (a) any breach of this clause by the Contractor;
 - (b) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety; and
 - (c) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulation in connection with health and safety.

16 Communication between Owner and Contractor

The Owner or the **Owner's Authorised Representative** must communicate and deal with the Contractor personally or with the **Contractor's Authorised Representative**. The Owner must not give directions to the Contractor's employees or subcontractors or rely on information provided by them.

17 Commencement and performance of the Works

- 17.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.
- 17.2 Within 10 **business days** after the date on which **work under this Contract** commences on **Site**, the Contractor must give a written notice to the Owner (such as QBCC Form 1 - *Commencement Notice*) stating:
- (a) the date on which **work under this Contract** commenced on **Site**; and
 - (b) the **Date for Practical Completion**.

- 17.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

18 Assignment and subcontracting

- 18.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 18.2 The Contractor may subcontract parts of the **work under this Contract** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

19 Payment

- 19.1 The Owner must pay the Contractor the **Contract Price** for the **Works** calculated and adjusted as provided by this Contract in accordance with the following provisions:

- (a) The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 2 upon the signing of this Contract.
- (b) The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 8A or 8B which claim shall consist of the percentage of the **Contract Price** applicable to that stage as set out in Schedule Item 8A or 8B, subject to the following adjustments:
 - (i) an adjustment for any **Prime Cost Item** incorporated in the **Works** to that stage, and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8A or 8B depending on whether the final cost of the **Prime Cost Item** is more or less than the amount allowed and stated in the *Prime Cost Items Schedule*;
 - (ii) an adjustment for the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8A or 8B depending on whether the final cost of the **Provisional Sum** Item is more or less than the amount allowed and stated in the *Provisional Sums Schedule*; and
 - (iii) an increase to the relevant stage payment in respect to an amount payable under a Variation Document where the work the subject of the variation has been completed

and for which payment has not previously been made; and

- (iv) a decrease in the relevant stage payment in respect to a variation which reduces the **Contract Price**.

- (c) Such adjustments referred to in Condition 19.1(b) shall be recorded by the Contractor on the Form 3 - *Progress Claim* or similar appropriate document and the relevant progress claim shall be adjusted accordingly.
- (d) The QBCC Form 3 - *Progress Claim* or similar appropriate document must be accompanied by a QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice and any certificates of inspection relevant to the payment stage.
- (e) The progress claim for the **Practical Completion Stage** must, in addition to the requirements specified for any other progress claim, be accompanied by a completed and signed QBCC Form 6 - *Defects Document* and QBCC Form 7 - *Certificate of Practical Completion*, or similar appropriate documents.
- (f) The Contractor must make all reasonable efforts to have the Owner sign the QBCC Form 6 - *Defects Document* or similar appropriate document used to record the minor defects and minor omissions.
- (g) Except in regard to the Progress Payment for the **Practical Completion Stage** payable in accordance with Condition 28.5, the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim for Progress Payment as is not disputed by the Owner, within 5 **business days** of receipt of the relevant claim.
- (h) If the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must, within 5 **business days** of receipt of the relevant claim, give to the Contractor a completed and signed QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice stating the reasons for so disputing the claim or part of it.
- (i) If the dispute is not resolved by the parties within 5 **business days** of the receipt by the Contractor of the notice of the dispute, the dispute must be referred for resolution in accordance with Condition 25.

20 Interest on overdue payments

- 20.1 The Owner must pay the Contractor interest on overdue payments at the lesser of the rate set out in Schedule Item 11 or the rate which is the sum of following:
- (a) 10% per year; and

- (b) the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills (the 'default rate').

20.2 If no amount is entered in Schedule Item 11 the default rate shall apply.

21 Variations

- 21.1 The **work under this Contract** may be varied by way of an increase, decrease or substitution of **work under this Contract** agreed between the Contractor and the Owner provided that, before work commences and before any additional payment is required, the details of the variation are put in writing in a Variation Document agreed in writing by both parties.
- 21.2 The Variation Document may be a QBCC Form 5 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of Schedule 1B of the QBCC Act, agreed in writing by both parties.
- 21.3 The Variation Document complies with the requirements of Schedule 1B of the QBCC Act if it:
 - (a) is readily legible; and
 - (b) describes the variation; and
 - (c) states the date of the request for the variation; and
 - (d) if the variation will result in a delay affecting the subject work - states the Contractor's reasonable estimate for the period of delay; and
 - (e) states the change to the **Contract Price** because of the variation, or the method for calculating the change to the **Contract Price** because of the variation; and
 - (f) if the variation results in an increase in the **Contract Price** - states when the increase is to be paid; and
 - (g) if the variation results in a decrease in the **Contract Price** - states when the decrease is to be accounted for.
- 21.4 Any increase in the **Contract Price** as a result of the variation can not be required to be paid before work the subject of the variation has been completed.
- 21.5 The Contractor must give the Owner a readily legible signed copy of the Variation Document as soon as practicable (but within 5 **business days**) after the variation is agreed and before the variation work is commenced.
- 21.6 The Contractor may present the Variation Document to the Owner, and the Owner may respond to it in writing, by any of the communication methods detailed in the Notice provisions in Condition 30.
- 21.7 If the Contractor has requested the variation, the Contractor is only entitled to additional

payment if the variation was necessary because of circumstances that are beyond the reasonable control of, and could not have been reasonably foreseen by, the Contractor when the Contract was entered into.

VARIATIONS REQUIRED BY LAW

- 21.8 If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner, vary the **work under this Contract** accordingly. If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense. In any other case, the Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

- 21.9 If the Owner is named in Schedule Item 14 as the party responsible for extra excavations and foundations, and if it becomes apparent that extra work or materials are required in respect of excavations or foundations beyond what could reasonably be established by the required **Foundations Data**, then the Contractor may, with the prior written consent of the Owner, vary the **work under this Contract** to include the provision of such extra work or materials.
- 21.10 In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within 5 **business days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation, and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.
- 21.11 The Contractor cannot seek additional payment from the Owner for a variation in respect of extra excavations and foundations where the need for the variation has arisen because:
 - (a) the Contractor failed to obtain the appropriate **Foundations Data** before entering the Contract and, had the Contractor obtained the appropriate **Foundations Data**, the need for the additional amount could reasonably have been established; or

- (b) the Contractor obtained the appropriate Foundations Data, and the need for the extra work or materials could reasonably have been established from the Foundations Data.

22 Time for Practical Completion

The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated in or calculated in accordance with Schedule Item 7 or any extended date under Condition 23.

23 Extension of time

23.1 Subject to complying with Condition 23.2, the Contractor may only claim and is entitled to a reasonable extension of the **Date for Practical Completion** if:

- (a) the need for the extension of time arises because of one or more of the following causes of delay prevents the Contractor from achieving **Practical Completion** by the **Date for Practical Completion**:
 - (i) a variation complying with Condition 21; or
 - (ii) a delay caused by the Owner or the **Owner's Authorised Representative**; or
 - (iii) a delay event stated in Schedule Item 6B which exceeds the stated allowance; or
 - (iv) another cause of delay which is not reasonably foreseeable and beyond the reasonable control of the Contractor; and
- (b) the claim is made to the Owner in writing using a QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document with the particulars, including the cause of the delay and the extension of the **Date for Practical Completion** claimed, completed; and
- (c) the claim is given to the Owner within 10 **business days** of the earlier of the Contractor becoming aware of the cause and extent of the delay and when the Contractor reasonably ought to have become aware of the cause and extent of the delay; and
- (d) the Owner approves the claim in writing using the QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document.

23.2 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.

23.3 The Contractor must give the Owner a signed copy of the claim for an extension of time within 5 **business days** of the Owner approving the claim.

23.4 The Owner must, within 10 **business days** of receiving the Contractor's claim, reasonably assess and return to the Contractor the said QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or

similar appropriate document either agreeing to the extension of time claimed or giving reasons for the rejection of the whole or part of the said claim, failing which the said extension of time claim will be deemed to be disputed by the Owner.

23.5 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to damages arising from the unreasonable rejection of all or part of a claim for an extension of the **Date for Practical Completion**.

24 Liquidated damages

24.1 If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 10.

24.2 If Schedule Item 10 is left blank, a default amount of \$50 per day shall be deemed to apply.

24.3 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

WARNING TO OWNER

The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract. Any valid extensions of time must be taken into consideration when calculating the number of days of liquidated damages which can be claimed.

25 Dispute resolution

25.1 If a dispute under the Contract arises between the parties, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute.

25.2 If the dispute is not resolved within 10 **business days** of the receipt of the notice of dispute, either party may refer the matter to a dispute resolution process administered by the Queensland Building and Construction Commission.

25.3 A party will not commence any proceedings in respect of the dispute in any court or tribunal of competent jurisdiction until the dispute resolution process referred to in Condition 25.2 is at an end.

25.4 Where a dispute has arisen under or in connection with this Contract, including Condition 23.4, the Contractor must proceed diligently with the **work**

under this Contract notwithstanding the existence of the dispute.

26 Termination after notice of default

26.1 If:

- (a) a party is in substantial breach of this Contract; and
- (b) the other party gives a notice to the party in breach identifying and describing the breach and stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within 10 **business days** from the giving of the notice; and
- (c) the breach is not so remedied,

then the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.

26.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

26.3 **Substantial breach by the Owner** includes, but is not limited to:

- (a) failing to produce evidence satisfactory to the Contractor of the Owner's capacity to pay the **Contract Price** in compliance with Condition 5.7 of this Contract;
- (b) failing to pay any money due and owing to the Contractor within 5 **business days** after the due date for payment; and
- (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.

26.4 **Substantial breach by the Contractor** includes, but is not limited to:

- (a) failing to comply with any necessary approvals associated with the **work under this Contract**;
- (b) failing to provide materials which comply with this Contract;
- (c) unreasonably failing to replace or remedy defective work or materials;
- (d) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
- (e) failing to effect or maintain any insurance required by this Contract;
- (f) failing to hold the current, active and appropriate licence required to perform the **Works**, including, without limitation, a

licence required under the QBCC Act; and

(g) the Contractor failing to pay a judgement debt.

27 Termination for bankruptcy or liquidation

27.1 Notwithstanding Condition 26, if a party to this Contract:

- (a) is made bankrupt; or
 - (b) being a company, goes into liquidation,
- then the other party may forthwith by written notice terminate this Contract.

27.2 If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the **Site** and retain all unfixed materials, goods, plant and equipment previously provided at the **Site** by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.

27.3 If the Owner terminates the Contract under this Condition, the Owner may, in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials and goods previously provided at the **Site** by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract.

27.4 Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

WARNING TO OWNER AND CONTRACTOR

New legislation effective from 1 July 2018 makes it illegal to terminate a contract with a company solely because they have gone into voluntary administration, appointed a receiver/managing controller or entered a scheme of arrangement with creditors. For this reason (and the probable loss for Owners of non-completion protection under the Qld Home Warranty Scheme if you terminate your Contract incorrectly), **it is very important that you obtain formal legal advice before terminating the Contract for any reason.**

28 Practical Completion

- 28.1 The Contractor must give to the Owner 5 **business days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach **Practical Completion**.
- 28.2 On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** will inspect the **Works** and if satisfied that the **Works** have reached **Practical Completion**, and if the Contractor produces to the Owner satisfactory written evidence that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must:
- (a) complete and sign the QBCC Form 6 - *Defects Document* or similar appropriate document identifying agreed and non-agreed minor defects and minor omissions, and when the Contractor will remedy the agreed matters, and give a copy to the Owner; and
 - (b) give the Owner a completed and signed QBCC Form 7 - *Certificate of Practical Completion* stating that date as the **Date of Practical Completion**; and
 - (c) hand over the **Works** to the Owner.
- 28.3 If the Owner considers that the **Works** have not reached **Practical Completion** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.
- 28.4 The issue of a Certificate of **Practical Completion** does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.
- 28.5 When the Contractor has satisfied all of its obligations under Condition 28.2 the Owner must immediately pay the Contractor the progress claim for the **Practical Completion Stage** (as adjusted under Condition 24, if applicable).

29 Defects after completion

- 29.1 The Contractor must make good defects or omissions in the **work under this Contract** which become apparent to the Owner within 12 months of the **Date of Practical Completion**.
- 29.2 If there are any such defects or omissions, the Owner must, as soon as practicable after becoming aware of

the defects or omissions, give the Contractor written notice to make good such defects or omissions and give the Contractor reasonable access to the **Site** for that purpose.

- 29.3 Subject to reasonable access being provided, the Contractor must within 28 calendar days of the notice being given rectify any defects or omissions notified to the Contractor under Condition 29.2 during usual business hours.

30 Notices

- 30.1 Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given at the address stated in the Schedule, or such other address as is subsequently advised in writing, in one of the following ways:
- (a) delivered to the other party by hand; or
 - (b) delivered by prepaid post; or
 - (c) sent by facsimile; or
 - (d) sent by email.
- 30.2 Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.
- 30.3 Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.
- 30.4 Any notice sent by email is deemed to be given in accordance with the following provisions:
- (a) the notice is deemed given at the time the email is sent provided it is sent before 5.00pm on a **business day** at the place of receipt on the day it is sent and otherwise on the next **business day** at the place of receipt, provided:
 - (i) the sender's computer or email account does not receive a message that the message has not been delivered (including an 'out of office' message); and
 - (ii) the email has been received fully and in legible form by the receiver; and
 - (iii) the receiver has not advised the sender in writing that a notice cannot be given to them by email for the stated period.

Notes

Contact list

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

Person	Name & Email	Other Contact Details
Solicitor	Name: Email:	  
Finance Provider	Name: Email:	  
Building Designer or Architect	Name: Email:	  
Building Contractor	Name: Email:	  
Site Supervisor	Name: Email:	  
Building Certifier	Name: Email:	  
Local Government	Name: Email:	  
Insurance Company	Name: Email:	  
Building Consultant	Name: Email:	  
Neighbours (if relevant)	Name: Email:	  



**QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION**

QBCC NEW HOME CONSTRUCTION CONTRACT

THIS DOCUMENT CONTAINS:

- **Schedule for QBCC New Home Construction Contract**
- **Prime Cost Items Schedule**
- **Provisional Sums Schedule**
- **Form 1 - *Commencement Notice***
- **Form 2 - *Extension of Time Claim and Owner's Response to Claim***
- **Form 3 - *Progress Claim***
- **Form 4 - *Notice of Dispute of Progress Claim***
- **Form 5 - *Variation Document***
- **Form 6 - *Defects Document***
- **Form 7 - *Certificate of Practical Completion***

These forms are produced on 'No Carbon Required' (NCR) paper.
(Fold this cover under the triplicate copy when filling out forms)

When each form or Schedule is completed, the Contractor is to retain the original document and give 2 copies to the Owner. Extra copies of forms and Schedules may be downloaded from QBCC's website.

SCHEDULE FOR QBCC NEW HOME CONSTRUCTION CONTRACT

This Contract is intended to be used for the construction of a single home or duplex.

NOTE TO OWNER: To better understand your contractual rights and obligations, **BEFORE SIGNING** carefully read this Schedule and the accompanying Consumer Building Guide and the General Conditions dated July 2018.

NOTE TO CONTRACTOR: When completed, retain original and give 2 signed copies of this Schedule to the Owner.

The Owner

Owner's name/s: Jeff and Gabrielle Cousins
Address: 7 Cassim place Redland Bay
Post Code: 4165
Business Phone: - Home Phone: 3206 7102 Fax: -
Mobile Phone: 0430 788770 Email: jandgveldeink@bigpond.com

Owner has checked the Contractor's licence and history via QBCC's Online Licence Search: ☒ Yes ☐ No

The Owner IS ☒ IS NOT ☐ a Resident Owner. (Tick the appropriate box)

NOTE: An Owner is a Resident Owner if he/she intends to reside in the building where the Works are to be performed on, or within 6 months of, completion of the contracted work.

Owner's Authorised Representative (if any): N/A
Business Phone: - Home Phone: - Fax: -
Mobile Phone: - Email: -

The Contractor

Contractor's name (must be as shown on licence): Resilient Homes Pty Ltd
Licence Number: 141526 ABN No: 51 014 891 170

Contractor confirms: My licence is current, active and appropriate for this work: ☒ Yes ☐ No

Address: 360 Lytton Road, Morningside
Postcode: 4170
Business Phone: - Home Phone: - Fax: -
Mobile Phone: - Email: admin@resilienthomes.com.au

Contractor's Authorised Representative (if any): N/A
Business Phone: - Home Phone: - Fax: -
Mobile Phone: - Email: -

Item	Subject	Notes	Particulars
1	CONTRACT PRICE Condition 4. WARNING: The Contract Price may increase or decrease due to Conditions 19, 20, 21 & 24.	For information about Prime Cost (PC) Items and Provisional Sums (PS) see Condition 4 of the General Conditions. If the Contract includes such allowances, a PC/PS Schedule must be completed by the Contractor, signed by both parties and attached.	(a) Fixed Price Component: \$ <u>665,000</u> - (incl. GST) (Includes deposit in Item 2) (b) Prime Cost Items (if any): \$ <u>30,976</u> - (incl. GST) (c) Provisional Sums (if any): \$ <u>122,19.90</u> - (incl. GST) CONTRACT PRICE = \$ <u>708,195.90</u> - (incl. GST) (a) + (b) + (c)

Item	Subject	Notes	Particulars
2	DEPOSIT Condition 19	The deposit must not exceed 5% of the Contract Price if Contract Price is \$20,000 or more.	Amount of deposit: \$ <u>33,250.00</u> (incl. GST)
3	BRIEF DESCRIPTION OF THE WORKS	Insert a brief description of the contracted work and attach and refer to plans and specifications e.g. construction of new home as per attached plans dated.../.../... & specifications dated.../.../...	<u>the build of a new low-rise residential dwelling including a kidney shaped swimming pool, landscape, gardens + lawns</u>
4	SITE Condition 13		Site Address: <u>15 Cassim place Redland Bay</u> Real Property Description: Lot No: <u>48</u> Plan Type (e.g. RP/SP/BUP): <u>SP</u> Plan No: <u>15 1202</u> Local Authority: <u>Redlands City Council</u>
5	STARTING DATE Conditions 1, 10 & 17	NOTE: The Contractor must ensure that the work under this Contract starts by the Starting Date. The Starting Date is the latest of: - the following agreed date <u>10 / 02 / 2020</u>; or 10 business days after the issue of approved plans by the Assessing Certifier; or 10 business days after the Owner has satisfied its financial obligations under Condition 5.1.	
6	COMPLETION PERIOD (including Construction Days and allowances for likely delays) Conditions 22, 23 & 28	NOTE TO CONTRACTOR: You must state here the allowances (in days) you have made for delay factors which are reasonably likely to affect the time required to carry out the work. NOTE TO OWNER: The Contractor is not entitled to claim an extension of the Date for Practical Completion (Schedule Item 7) for a delay stated here (e.g. inclement weather) unless the number of days the Contractor is actually delayed is greater than the allowance stated here in Schedule Item 6B.	A. Construction Days (excluding delays allowed in 'B') Business days needed to construct the Works = <u>145</u> PLUS B. Allowances for likely delays: (i) Inclement weather allowance (business days) = <u>10</u> (ii) Other likely delays, if any (business days) = _____ Details of delay _____ (iii) Non-working days (incl. weekends, public holidays, etc.) = <u>2</u> Total delay days allowed: (i) + (ii) + (iii) = <u>12</u> COMPLETION PERIOD: Construction Days (Item 6A) PLUS Total delay days allowed above (Item 6B) = <u>157</u> (This total represents the number of days between the Starting Date and the Date for Practical Completion)

Item	Subject	Notes	Particulars
7	DATE FOR PRACTICAL COMPLETION Conditions 22, 23 & 28	NOTE TO CONTRACTOR: Complete only one of the options in the 'Particulars' column (i.e. date or number of days) and delete the other.	Date: <u>12 / 05 / 2020</u> OR Completion Period of _____ calendar days (see Schedule Item 6) from the Starting Date or the date on which the work under this Contract is commenced, whichever is the earlier .
PROGRESS PAYMENTS (Choose Option A or Option B below)			
8A	OPTION A: <i>NOTE: This Option may be used where you believe the contracted work involves typical house construction and the progress payment Stages set out in the 'Particulars' column are appropriate.</i> Conditions 19 & 28	NOTE TO CONTRACTOR: If the contracted house construction work does <u>not</u> involve the Stages set out in the 'Particulars' column in Option A, or the payment percentages are not appropriate (e.g. if the payments in Option A would amount to payment in advance of work progress on Site), you should use Option B below.	WARNING FOR CONTRACTOR: The QBCC Act ¹ requires that all progress payments must be directly related to the progress of the work at the Site and proportionate to the value of the work that relates to the claim (e.g. the total value of the progress claims plus the 5% deposit cannot exceed 50% of the Contract Price until more than 50% of the work on Site has been performed). Breaches of this requirement attract heavy penalties. In presenting each progress claim under Option A or Option B you are warranting that the work on Site has reached the relevant Stage set out below, and that the total amount claimed to date (including the deposit) is proportionate to the progress of the contracted work at the Site. PROGRESS PAYMENT STAGES (all prices incl. GST): Base Stage (excl. 5% deposit) - 15% \$ _____ Frame Stage - 20% \$ _____ Enclosed Stage - 25% \$ _____ Fixing Stage - 20% \$ _____ Practical Completion Stage - 15% \$ _____ NOTE: The total of Stage payments in Option A or B plus the deposit must equal Contract Price in Schedule Item 1.
8B	OPTION B: Conditions 19 & 28	NOTE TO CONTRACTOR: Option B should be used where the contracted house construction work does <u>not</u> involve the Stages set out in Option A above, or the payment percentages are not appropriate for the work.	ALTERNATIVE PROGRESS PAYMENT STAGES (incl. GST) *Stage 1: <u>Base (ex 5% de post)</u> - 15% \$ <u>87,000</u> Stage 2: <u>Frame</u> - 20% \$ <u>116,000</u> Stage 3: <u>Enclosed</u> - 25% \$ <u>145,000</u> Stage 4: <u>Fixing</u> - 20% \$ <u>116,000</u> Stage 5: <u>Pool St 1</u> - 30% \$ <u>25,500</u> Stage 6: <u>Pool St 2</u> - 40% \$ <u>34,000</u> Stage 7: <u>Pool St 3</u> - 30% \$ <u>25,500</u> Practical Completion Stage - 15% \$ <u>87,000</u> <i>*If extra space is required, attach a more detailed description of the Payment Stages to this Contract Schedule.</i>
WARNING TO OWNER		Your cover under the Queensland Home Warranty Scheme may be reduced if you make payments greater than, or prior to, what the Contract requires.	

Item	Subject	Notes	Particulars
9	AMOUNT TO BE DEPOSITED IN SECURITY ACCOUNT (if relevant) Condition 6	NOTE: This Item is optional – it may be relevant where a loan is not required to finance the project.	\$ _____
10	LIQUIDATED DAMAGES Condition 24	NOTE TO OWNER AND CONTRACTOR: You must discuss whether, or what, liquidated damages (LDs) apply to this project and insert either an amount per day or 'NIL' if LDs do not apply. If this space is left blank, a default amount of \$50/day shall apply.	\$ _____ per day for each calendar day of delay in achieving Practical Completion. NOTE TO OWNER REGARDING LIQUIDATED DAMAGES (if applicable): It is very important that you carefully consider and complete this section. The liquidated damages amount should be a genuine pre-estimate of the costs/losses the Owner will incur (if any) in the event the work under this Contract is not completed by the Date for Practical Completion (including any extra rental and storage costs, lost rent for rental properties, finance costs, etc. directly related to the delay in reaching Practical Completion).
11	INTEREST RATE ON OVERDUE PAYMENTS Condition 20	The rate must not exceed the sum of 10% per year plus the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills.	<u>1</u> % per annum
12	FINANCE Conditions 1 & 5	WARNING TO OWNER: The Finance Date is the date by which the Owner must provide the Contractor with written evidence, satisfactory to the Contractor, of their capacity to pay the Contract Price (even if no loan is required). Consult your Lender before inserting a date. Delays in providing this evidence may delay the start of your project or lead to termination of the Contract.	The Contract IS/IS NOT subject to Loan Approval. (Cross out whichever does not apply) Lender: <u>Commonwealth Bank</u> Amount of Loan: \$ <u>390,000.00</u> Finance Date: <u>08</u> / <u>02</u> / <u>2020</u> (day) (month) (year) NOTE: If no date stated, Finance Date is 10 business days from date of this Contract.
13	PARTY RESPONSIBLE FOR OBTAINING BUILDING APPROVAL Conditions 9 & 10		<u>Jeff and Gabrielle Cousins</u> (State whether the responsible party is Owner or Contractor - if nothing stated, the Contractor shall be responsible)
14	PARTY RESPONSIBLE FOR COST OF EXTRA EXCAVATIONS AND FOUNDATIONS (if relevant) Condition 21	This item relates to responsibility for any extra excavations and foundations beyond what could reasonably be established from the Foundations Data.	<u>Jeff and Gabrielle Cousins</u> (State whether the responsible party is Owner or Contractor)

Item	Subject	Notes	Particulars
15	CONTRACT DOCUMENTS Conditions 4, 8 & 30	Any amendments or 'variations' to this Contract must be recorded in a Variation Document (such as QBCC Form 5) which then forms part of the Contract.	(a) PLANS (dated and attached) supplied by: Contractor Owner on ___/___/___ N/A (b) SPECIFICATIONS (dated and attached) supplied by: Contractor Owner on ___/___/___ N/A (c) PRIME COST ITEMS / PROVISIONAL SUMS Are Prime Cost Items included? YES NO Are Provisional Sums included? YES NO If YES to either question, the Contractor must complete and sign the Prime Cost Items and/or Provisional Sums Schedule/s and copy to Owner. (d) FOUNDATIONS DATA supplied by: Contractor Owner on ___/___/___ N/A NOTE: Foundations Data must be obtained if the contracted work requires the construction or alteration of, or may adversely affect, footings or a concrete slab for a building. Unless appropriate and reliable Foundation Data already exists, the Contractor is required to obtain appropriate Foundations Data and provide a copy to the Owner upon payment of the costs incurred in obtaining the data.
16	SIGNATURES	NOTE: The Contractor must give the Owner: (a) the QBCC Consumer Building Guide before the Owner signs the Contract; and (b) a signed copy of the entire Contract, including plans and specifications, within 5 business days after the Contractor signs the Contract.	Signed by the Owner/s: Owner 1: <u>Jeff Cousins</u> Owner 2 (if any): <u>Mabelle Cousins</u> In the presence of: <u>[Signature]</u> (signature of witness) Signed by the Contractor: <u>Resilient Homes</u> In the presence of: <u>[Signature]</u> (signature of witness) Dated this: <u>01</u> day of <u>February</u> 20<u>20</u>

IMPORTANT NOTICE TO OWNER: 'COOLING-OFF' PERIOD

Under Schedule 1B of the QBCC Act you may have the right to withdraw from this Contract during the cooling-off period of 5 business days commencing the day after you receive both a signed copy of this Contract and the QBCC Consumer Building Guide. If you wish to withdraw under the 'cooling-off' provisions you must give the Contractor a signed written notice stating that you withdraw from the Contract under section 35 of Schedule 1B of the QBCC Act (see Condition 2 of the General Conditions for more details).

The Owner and the Contractor agree that the Contractor shall carry out the work described in this Contract for the Contract Price it provides and upon its terms.

This Contract includes:

Schedule for New Home Construction Contract, PC and PS Schedules (if relevant) and Forms 1 - 7 (if used), all dated July 2018;

General Conditions of New Home Construction Contract dated July 2018, and

Plans, specifications and any other contract documents described in Item 15 of this Contract Schedule.

PRIME COST ITEMS SCHEDULE

(Conditions 4&19 of the General Conditions of **QBCC New Home Construction Contract**)

Description of Item to be supplied under the PC Item allowance.	Contractor's best estimate of price, and breakdown of estimate.		PLUS Contractor's margin (state \$ amount or % to be added)	Total for Prime Cost Item (incl. margin & GST)
	No. of items or quantity of materials	Cost per unit and Item total (excl. GST)		
Example: Floor tiles for kitchen	50m ²	@\$30/m ² = \$1,500 excl. GST	+ 10% margin = \$1,500 + \$150 = \$1,650 excl. GST	\$1,650 + 10% GST = \$1,815
Solar hot water systems	1x solar system	\$3,000.00	+ 10 margin = \$3000 + 300 = 3300 excl GST	\$3300 + GST = \$3630.00
ducted air-con	50m ²	\$10,000.00	+ 10% margin = \$10,000 + \$1000 = \$11000 excl GST	\$11000 + GST = \$12100.00
solar panels	18 solar panels	@ \$1700 per panel = \$12600	+ 10% margin = \$12600 + 1260 = \$13860.00	\$13860 + GST = \$15246.00
TOTAL:			\$ 30976.00	\$ 30976.00 (incl. GST)

(Transfer total to Item 1(b) of Contract Schedule)

Tate Cousins
Signed by the Owner/Owner's Representative
DATED: 1 / 02 / 2020
(day) (month) (year)

Residence Homes
Signed by the Contractor/Contractor's Representative
DATED: 1 / 02 / 2020
(day) (month) (year)

NOTE TO OWNER/S AND CONTRACTOR

These allowances should be kept to a minimum to reduce uncertainty about the final Contract Price

When this Schedule is completed, Contractor to retain original and give 2 legible copies to Owner.

PROVISIONAL SUMS SCHEDULE

(Conditions 4&19 of the General Conditions of QBCC New Home Construction Contract)

Description of contracted service covered by the Provisional Sum	Contractor's best estimate of cost of providing the contracted service excl. GST. Include the estimated quantity and unit cost of materials (if any) and labour, and any other related costs (e.g. equipment hire).	PLUS Contractor's margin (state \$ amount or % to be added)	Total for Provisional Sum (incl. Contractor's margin & GST)
Example: Rock removal from Site	Excavator hire 5 hrs @ \$160/hr = \$800 Float hire = \$400 Tip fees = \$200 TOTAL = \$1,400	+ 10% margin = \$1,400 + \$140 = \$1,540 excl. GST	\$1,540 + 10% GST = \$1,694
removal of 3 hardwood trees	excavator hire = 5 hr x \$160/hr (includes labour) = \$800	+ 10% margin = \$800 + \$80 = \$880.00	= 880 + GST = 968.00
tiling - Bathrooms, kitchen & living area	200m ² @ \$50 per sqm = \$10,000 labour x 16 hrs @ \$50 per hr = \$800 total = \$10,800.00	+ 10% margin = \$10,800 + \$1,080 = \$11,880 excl GST	= 11,880 + GST = 13,064.00
excavation of garden shed area 5m x 3m	excavator hire - 2 hrs @ \$200/hr = \$400.00 labour - 2 hours @ \$80/hr = \$160.00 total = \$560.00	+ 10% margin = \$560 + \$56 = \$616.00 excl GST	= 611 + GST = 672.10
slab of garden shed 5m x 3m	15m ² slab material + labour = \$2,000.00	+ 10% margin = \$2,000 + \$200 = \$2,200.00 excl GST	= 2,200 + GST = 2,420.00
TOTAL:			\$ 12,219.90
(Transfer total to Item 1(c) of Contract Schedule)			(incl. GST)

Signed by the Owner/Owner's Representative

DATED: 01 / 02 / 2020
(day) (month) (year)

Signed by the Contractor/Contractor's Representative

DATED: 01 / 02 / 2020
(day) (month) (year)

NOTE TO OWNER/S AND CONTRACTOR

These allowances should be kept to a minimum to reduce uncertainty about the final Contract Price.

When this Schedule is completed, Contractor to retain original and give 2 legible copies to Owner.

FORM 1

COMMENCEMENT NOTICE

(Condition 17 of the General Conditions of QBCC New Home Construction Contract)

To: (Owner/s) Jeff and Gabrielle Cousins
7 Cassim Place, Redland Bay
(insert name and postal address of Owner/s)

From: (Contractor) Resilient Homes Pty Ltd
360 Lytton Road, Morning Side
(insert name and business address of Contractor)

Site address: 15 Cassim Place, Redland Bay

NOTICE

In accordance with Condition 17 of the General Conditions of the Contract we advise:

The date on which work under the Contract commenced on Site was:

10 / 02 / 2020
(day) (month) (year)

The Date for Practical Completion (stated in, or calculated in accordance with, Schedule Item 7) is:

12 / 05 / 2020
(day) (month) (year)

SIGNED:

Resilient Homes
(Contractor/Contractor's Representative to sign here)

DATED:

11 / 02 / 2020
(day) (month) (year)

NOTE TO OWNER

The Date for Practical Completion is subject to extensions of time authorised under this Contract.

OWNER'S ACKNOWLEDGEMENT OF RECEIPT OF COMMENCEMENT NOTICE

From: (Owner/s) Jeff and Gabrielle Cousins
(insert name and postal address of Owner/s)

To: (Contractor) Resilient Homes
(insert name and business address of Contractor)

Site address: 15 Cassim Place, Redland Bay

I/we acknowledge receipt of your Commencement Notice dated:

10 / 02 / 2020
(day) (month) (year)

advising that work under the Contract commenced on Site on:

10 / 02 / 2020
(day) (month) (year)

and that, subject to extensions of time authorised under the Contract, the Works will reach Practical Completion on:

12 / 05 / 2020
(day) (month) (year)

SIGNED:

Jeff Cousins
(Owner/Owner's Representative to sign here)

DATED:

11 / 02 / 2020
(day) (month) (year)

NOTE TO OWNER

Retain the original of the entire Commencement Notice for your files
Please complete and promptly post back to the builder a signed copy of this acknowledgement section.

When both parties have completed this form, Contractor to retain original and give 2 legible copies to Owner.



FORM 2

EXTENSION OF TIME CLAIM AND OWNER'S RESPONSE TO CLAIM

(Condition 23 of the General Conditions of QBCC New Home Construction Contract)

NOTE TO CONTRACTOR: This blank form may be copied for multiple use. You must attach any relevant supporting information (e.g. dates on which rain, or its effects, prevented work on Site) and give the Owner a signed copy of this claim form within 5 business days of the Owner approving the claim.

To: (Owner/s) Jeff and Gabrielle Cousins
(insert name and postal address of Owner/s)

From: (Contractor) Resilient Homes

Regarding construction at: 15 Cassim Place, Redland Bay
(insert Site address)

The Contractor wishes to claim an extension of time of the Date for Practical Completion.

The cause of the delay in achieving Practical Completion is: Incident weather - due to bush fires in Brisbane south and additional fans request
(insert full description of a cause of delay from Condition 23.1)

The cause of the delay: ☐ is not a cause of delay listed in Schedule Item 6B.
(tick whichever is applicable) ☒ is a cause of delay listed in Schedule Item 6B, but the number of days that the Contractor has actually been delayed is more than the allowance stated in Schedule Item 6B.

The delay arose on: 11 / 03 / 2010
(day) (month) (year)

Number of additional business days claimed by the Contractor as a consequence of this delay: 5 business days
(business days)

New Date for Practical Completion after allowance for this delay: 19 / 05 / 2020
(day) (month) (year)

SIGNED: R. C. Wainwright
(Contractor/Contractor's Representative to sign here)

DATED: 13 / 03 / 2020
(day) (month) (year)

NOTE TO OWNER

The Contractor must give you this form within 10 business days of the earlier of the Contractor becoming aware of the cause and extent of the delay or when the Contractor reasonably ought to have become aware of the cause and extent of the delay. If you accept the Contractor's claim for an extension, then the Date for Practical Completion will be extended by the business days claimed by the Contractor. You must indicate your acceptance, rejection or partial rejection of the Contractor's claim by completing, signing and returning this form, or similar written notice, to the Contractor as soon as possible but within 10 business days of receiving the claim. Keep a copy for your records.

OWNER'S RESPONSE TO EOT CLAIM DATED: 14 / 03 / 2020

Tick whichever is applicable: ☒ The Owner agrees with the extension of time claim.
☐ The Owner rejects the extension of time claim.
☐ The Owner rejects part of the extension of time claim.
The part of the claim rejected is _____ business days.

Response to EOT Claim No. 001

The reason/s for rejecting all or part of the extension of time claim is/are: (state reason/s below)

Signed by the Owner/Owner's Representative: Jeff Cousins DATED: 14 / 03 / 2020
(day) (month) (year)

When both parties have completed this form, Contractor to retain original and give 2 legible copies to Owner.



FORM 3 PROGRESS CLAIM

(Condition 19 of the General Conditions of QBCC New Home Construction Contract)

NOTE TO CONTRACTOR: This blank form may be copied for multiple use. Give this form to the Owner, together with Form 4 and copies of any certificates of inspection relevant to this payment stage.

To: (Owner/s) TOFF CONCRETE - 43 BLUEWATER AVE THORNHILLS
(insert name and postal address of Owner/s)

From: (Contractor) RESIDENT HOMES

Regarding construction at: 360 LYNN ROAD, MORRINGSIDE
(insert Site address)

The Contractor certifies that the Works have reached the Stage described as:

Frame Stage - 20%

(The Stage must be a Progress Payment Stage as set out in Item 8A or 8B of the Contract Schedule)

The Contractor claims payment for the following:

1. The completion of Works to the Stage indicated above in the amount of: \$ 116,000.00
One hundred and sixteen thousand dollars
(insert the amount in words and figures)

NOTE: The percentage/amount of the Contract Price that can be claimed is set out at Item 8A or 8B of the Contract Schedule.

2. Adjustment (if any) for Prime Cost (PC) Items claimed at this Stage: (Delete this section if no PC Items in Contract Price)
2x additional Futura 132cm fan in white (this price includes labour costs) \$ 500.00

(insert description of PC Item/s and whether adjustment is + or - compared to allowance stated in the PC Schedule)

NOTE: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any Prime Cost Item.

3. Adjustment (if any) for Provisional Sums (PS) claimed at this Stage: (Delete this section if no PS Items in Contract Price)
\$ _____
\$ _____
\$ _____
(insert description of PS Item/s and whether adjustment is + or - compared to allowance stated in the PS Schedule)

NOTE: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any Provisional Sum.

4. Adjustment for variations: (must have been previously recorded in a Variation Document and authorised by Owner)
added ceiling fans as set out in QBCC Form 5 - Variation Document dated: 10/03/2020 \$ 500.00
as set out in QBCC Form 5 - Variation Document dated: ____/____/____ \$ _____
as set out in QBCC Form 5 - Variation Document dated: ____/____/____ \$ _____
(insert description of variation/s) (insert document date and any price increase/decrease due to variation)

TOTAL AMOUNT OF THIS PROGRESS CLAIM: \$ 116,500.00
(incl. GST)

(add or subtract any adjustments in Items 2, 3 & 4 above from the Stage payment stated in Item 1)

Signed by the Contractor/Contractor's Representative: RESIDENT HOMES DATED: 20/03/2020
(day) (month) (year)

NOTE TO CONTRACTOR:

Where claim is for Practical Completion Stage, you must attach a Defects Document in QBCC Form 6.

NOTE TO OWNER: Except for the Practical Completion Stage, you must pay the amount claimed by the Contractor, or any part of it with which you agree, within 5 business days of receipt of this progress claim. If you dispute all or part of the Contractor's progress claim, you must, within 5 business days of receiving the claim, give the Contractor a QBCC Form 4 - Notice of Dispute of Progress Claim or similar written notice stating that you dispute all or part of the progress claim and your reasons for doing so. For the Practical Completion Stage, you must pay the Contractor immediately after the Contractor has satisfied Condition 28.2.

When form completed, Contractor to retain original and give 2 legible copies to Owner.



FORM 4 NOTICE OF DISPUTE OF PROGRESS CLAIM

(Condition 19 of the General Conditions of QBCC New Home Construction Contract)

NOTE TO CONTRACTOR: This blank form may be copied for multiple use and must accompany a QBCC Form 3.

NOTE TO OWNER: If you intend to dispute a progress claim, this form must be returned to the Contractor within 5 business days of receipt of the disputed progress claim.

To: (Contractor) Resilient Homes
(insert name and business address of Contractor)

From: (Owner/s) Jeff and Gabrielle Cousins
(insert name and postal address of Owner/s)

Regarding construction at: 15 Cassim Place, Redland Bay
(insert Site address)

(tick whichever is applicable)

☐ The Owner **rejects all of** your progress claim dated: ____/____/____ for the Stage described in
(day) (month) (year)
Schedule Item 8A or 8B as _____

OR

☒ The Owner **rejects part of** your progress claim dated: 20/03/2020 for the Stage described in
(day) (month) (year)
Schedule Item 8A or 8B as Frame stage

The value of the part of the progress claim that is rejected is: \$ 100,500.00 - (incl. GST)
(insert amount)

The reason/s for rejecting all or part of the claim is/are: (set out reason/s)

- ① Not all conduit in the house has been set out (bathrooms still to be done)
- ② All bathrooms still don't have final placement of pipes and tapware

SIGNED:

Jeff Cousins
(Owner/Owner's Representative to sign here)

DATED:

22/03/2020
(day) (month) (year)

When form completed, Owner to give the Contractor the original and Owner to retain 2 legible copies.

FORM 5 VARIATION DOCUMENT

(Condition 21 of the General Conditions of QBCC New Home Construction Contract)

NOTE TO CONTRACTOR: This form, which may be copied for multiple use, must be presented to and signed by the Owner **before** you start any work described in the variation.

To: (Owner/s) Jeff and Gabrielle Cousins
(insert name and postal address of Owner/s)

From: (Contractor) Resilient Homes

Regarding construction at: 15 Cassin Place, Redland Bay
(insert Site address)

This document is for a variation: ☐ required by law
(tick whichever is applicable) ☒ for extra excavation and foundations
☒ requested by the Owner/Owner's Representative
requested by the Contractor/Contractor's Representative for the following reasons: _____

The change to the Works is as follows: Two ceiling fan added to the formal and informal dining areas
(insert description of the variation including any change to the work or materials required by reason of the variation)

The Contractor's/Contractor's Representative's reasonable estimate of the period of any delay in the Date for Practical Completion that will result from the variation is: 1 business days.

NOTE TO CONTRACTOR/CONTRACTOR'S REPRESENTATIVE

If the variation causes you actual delay you must also submit a QBCC Form 2 - Extension of Time Claim and Owner's Response to Claim within 10 business days of the earlier of when you became aware of the cause and extent of the delay or when you reasonably ought to have become aware of the cause and extent of the delay (see Condition 23).

The variation will change the price payable by the Owner as follows: (tick whichever is applicable)

☒ **increase** the price by: \$ 500.00
(incl. GST)

☐ **no change** to price

☐ **decrease** the price by: \$ _____
(incl. GST)

increase/decrease (delete whichever is not applicable)
the price by an amount that will be calculated as follows:

(state how the increase/decrease will be calculated)

The increase or decrease (if any change) in the Contract Price payable by the Owner as a result of the variation will be taken into account in the Contractor's progress claim for the following Stage described in Schedule Item 8A or 8B:

(insert description of Stage from Schedule Item 8A or 8B)

Jeff Cousins

(Owner/Owner's Representative to initial here)

NOTE: The Contractor cannot require payment for an increase in the Contract Price due to a variation before the variation work has been completed.

SIGNED: Jeff Cousins
(Owner/Owner's Representative to sign)

DATED: 10 / 03 / 2020
(day) (month) (year)

SIGNED: Resilient Homes
(Contractor/Contractor's Representative to sign)

DATED: 10 / 03 / 2020
(day) (month) (year)

When form completed, Contractor to retain the original and give 2 legible copies to Owner.



FORM 6

DEFECTS DOCUMENT

(Conditions 19, 28 & 29 of the General Conditions of QBCC New Home Construction Contract)

For domestic building work at (insert Site address): 15 Cassim place Redland Bay

NOTE TO CONTRACTOR: This form (which ideally should be completed with the Owner or their Representative at handover) may be copied for multiple use.

Identify below those minor defects or minor omissions which are agreed between the parties and those minor defects or minor omissions which are **not** agreed by the Contractor, then sign and date this form.

AGREED MINOR DEFECTS/MINOR OMISSIONS (attach additional pages if required)

The Owner/Owner's Representative and the Contractor/Contractor's Representative agree that the following minor defects or minor omissions exist at Practical Completion.

Item No.	Description of minor defect or minor omission	Date for rectification
001	master ensuite main light flickers	29/05/2020
002	shared bathroom vanity taps leak	29/05/2020
003	garage doors have blown out	29/05/2020

MINOR DEFECTS/MINOR OMISSIONS CONTRACTOR DOES NOT AGREE WITH (attach additional pages if required)

The Owner/Owner's Representative believes that the following additional minor defects or minor omissions exist at Practical Completion. The Contractor does not agree.

Item No.	Description of minor defect or minor omission	Contractor to state why they do not agree that there is a minor defect or minor omission.
002	shared bathroom vanity taps leak	due to the type of tap they need to be turned off tighter

Deek Cousins

(Signed by the Owner/Owner's Representative)

DATED: 22 / 05 / 2020
(day) (month) (year)

Resident Homes

(Signed by the Contractor/Contractor's Representative)

DATED: 22 / 05 / 2020
(day) (month) (year)

When form completed, Contractor to retain original and give 2 legible copies to Owner.

FORM 7

CERTIFICATE OF PRACTICAL COMPLETION

(Conditions 19, 28 & 29 of the General Conditions of QBCC New Home Construction Contract)

NOTE TO CONTRACTOR/CONTRACTOR'S REPRESENTATIVE

The Contractor must complete, sign and give 2 copies of this Certificate to the Owner before seeking payment for the Practical Completion Stage.

The Contractor states that the Works at 15 Cassim Place, Redland Bay have reached Practical Completion as: (insert Site address)

upon inspection of the Works, the Owner was satisfied that the Works had reached Practical Completion in accordance with the requirements of this Contract, including Condition 3 of the General Conditions of QBCC New Home Construction Contract; and

the Contractor has provided the Owner with all written evidence (including, where the Owner has **not** engaged the building certifier, copies of all relevant certificates of inspection produced or held by the building certifier) that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and any body having the relevant jurisdiction were satisfactorily completed; and

the Contractor has completed and signed a QBCC Form 6 - *Defects Document* and given 2 copies to the Owner; and

the Contractor handed over the Works to the Owner on the Date of Practical Completion.

The Date of Practical Completion was: 19 / 05 / 2020
(day) (month) (year)

Jeff Cousins
(Signed by the Owner/Owner's Representative)

DATED: 20 / 05 / 2020
(day) (month) (year)

Resident Home
(Signed by the Contractor/Contractor's Representative)

DATED: 20 / 05 / 2020
(day) (month) (year)

NOTE TO OWNER/OWNER'S REPRESENTATIVE

If the Contractor has completed all of the requirements listed in this Certificate, the Owner must, upon receiving a signed copy of this Certificate, immediately sign this Certificate and pay the Contractor the Progress Claim for the Practical Completion Stage (as adjusted under Condition 24, if applicable).

When form completed, Contractor to retain original and give 2 legible copies to Owner.

CPCCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT CPCCBC4016A ADMINISTER A CONSTRUCTION CONTRACT

PRACTICAL ASSESSMENT INSTRUCTIONS

8. The following practical assessment will require the Participant to complete work related activities.
9. The Assessor will conduct observations of the Participant's work to determine whether they display sufficient practical skills and knowledge.
10. Please fill in the details below – providing your name, signature and date of assessment.
 1. The Participant's signature acknowledges that the Assessor provided clear instructions and the Participant understood what was required to complete this assessment.
11. The Assessor may substitute a Practical Task with an alternate task of equal value.
 1. Alternate tasks must be fully documented by the assessor in the Assessor Comments area.

Participant name Tess Veldink

Participant signature Tess Veldink

Date 28/01/2020

Assessor name _____

Assessor signature _____

Date _____

Task	Task outcome (Tick)	
	Satisfactory	Not Yet Satisfactory
Task 1 (Occasion 1)	☐	☐
Task 1 (Occasion 2)	☐	☐

ASSESSOR COMMENTS

Practical Task 1 (2X)

Description of task:

On two (2) occasions, a suitable observer is to verify the participant's ability to apply contract law to residential and/or commercial construction sales processes.

The participant is to gather evidence of how they have completed each component of the Practical Task, which is to be submitted with this Practical Assessment sheet. Evidence to be submitted may include:

1. Copy of a contract issued to sub-contractor for your project with relevant AS code on the front
2. Proof of consultation with sub-contractor regarding contract and contract terms, inclusions and omissions (emails)
3. Copy of HSE minimum requirements sent as contract condition
4. Construction contracts that have been developed, signed off, or contributed to by the candidate
5. Proof of correspondence with client regarding construction contract. Redact sensitive information as required.

The assessor is to verify the observer's comments and provide the outcome for the practical task on the front cover of the Practical Assessment.

Resources required:

Two (2) pre-contract agreements; two (2) sales contracts (e.g. QBCC contracts), telephone, facsimile machine, computer.

Assessment of task

Name of participant:	Tess Veldink		
Name of observer:	Michael Knowles		
Role of observer (Confirm suitability to sign)	General Manager – Blue Star Atlantic		
Email address of observer	reception@bluestarcorporate.com.au		
Signature of observer:			
Date:	20/02/2020		
When completing the task, did the participant:	Tick if satisfactorily completed. Provide comments if left unticked.		
	1 st Occasion	2 nd Occasion	
Q1. Explain to the client: 6. Essential terms and elements of a valid contract 7. Types and purposes of agreements employed with the industry (including sales contracts and pre-contract agreements) 8. The range of documents that collectively make up a contract (including construction schedules, reports, specifications) 9. The importance of the contract to sales process 10. Implications of legislation, regulations and codes of practice (including Australian Consumer Law)	☒	☒	
Q2. Discuss and agree upon clauses of a pre-contract agreement, including payment or deposit.	☒	☒	
Q3. Ensure the pre-contract agreement is signed and processed according to organisational requirements.	☒	☒	

Q4. Select appropriate contract and seek expert advice in the preparation of the contract, considering: 11. Contract rise and fall amounts 12. Schedule of progress payments 13. Processes for applying of extensions of time	☒	☒
Q5. Break down contract clauses/terms/conditions with the client, including: 14. Rights, liabilities and potential penalties of parties under the contract 15. Definitions of building work, common contract terms and procedures, considering – 1. Practical completion and issuing a final certificate 2. Defects liability and completion at the cost of the contractor 3. Effect of ousting the contractor from the building or site 16. Cooling off periods 17. Provisional sum and prime cost allowances 18. Measures to be taken in the event of an anomaly in the rendering of the contract, considering – 1. Variations 19. Circumstances that bring about a breach and termination of contract, considering – 1. Unreasonable/vexatious notice 2. Abandonment of a contract 1. Methods for resolving contractual disputes	☒	☒
Q6. Effectively communicated with clients, subcontractors, colleagues and external parties using the following methods: 20. Verbally using language/concepts appropriate to cultural differences 21. Non-verbal communication 22. Using technology (including telephone, facsimile, email) 23. In writing (including drafting responses to queries about contracts)	☒	☒
The participant's performance was: ☒ Satisfactory ☐ Not Satisfactory		

OBSERVER COMMENTS

Occasion 1 - Commercial contract

Criteria 1

This criteria was completed with an email trail from the client to the contractor. A table was created with multiple terms and elements important to a contract. The importance of a pre-agreement was discussed including the different stages. Contract importance and documentation was discussed and Australian Consumers Law was highlighted in regards to codes and regulations of a contract. This email was an introduction email to the contractor discussing the overall parts of a contract in relation to the sales process.

Criteria 2 & 3

A meeting took place between the client and contractor to discuss the pre-contract agreement. The contractor then revised the quote, qualifications and conditions. The pre-contract agreement was then signed by both parties as part of the organisations process, for then the contract to be developed.

Criteria 4

The client contract was then sent through the contractors to read over and initial each page. The contractors then had some questions regarding a couple of the topics in the contract. The client then got their legal representative to discuss the three topics in further detail.

Criteria 5

A breakdown of the contract was discussed in a meeting between the client and contractor. The contract administrator took meeting minutes and sent them to the contractor so they can also have a copy. Multiple terms, clauses and condition were defined through the contract. Both parties agreed on the breakdown and were happy to proceed.

Criteria 6

Effective communication was displayed throughout the scenario, non-verbal communication was used through the meeting minutes, contract and pre-contract agreement. Different forms of technology were used such as email, calendar for the meeting request and telephone. The client also responded to all of the contractor questions in a timely matter and if they couldn't answer the question, they ensured someone did.

Occasion 2 - Residential contract

Criteria 1

This criteria was discussed through an initial email to the client. Two tables were included discussing essential terms and elements in a contract. The email also discussed what a pre-agreement and the importance of a pre-agreement before signing a contract. A contract importance was then highlighted giving the client an insight into the kinds of documents included in a residential contract. Australian Consumers Law was highlighted in regards to codes and regulations of a contract. This email was an introduction email to the contractor discussing the overall parts of a contract in relation to the sales process.

Criteria 2 & 3

The builder and client had a meeting to discuss and agree upon clauses in the pre-contract agreements. These agreements included the request, prices and specifications of a building. The pre-agreement was then signed by the client and builder which is part of the organisational requirements.

Criteria 4

The contract was then presented to the client for them to read over and sign. The clients then received advise from a legal representative to discussed and understand three terms – Contract rise and fall amounts, Schedule of progress claims and applying for extensions of time. Once the information was sent through the clients signed the contract.

Criteria 5

A meeting was set up between the client and builder to breakdown the contracts clauses, terms and conditions. Both parties agreed on the breakdown and meeting minutes were taken and sent out to refer back to.

Criteria 6

Effective communication was displayed throughout the scenario, non-verbal communication was used through the meeting minutes, contract and pre-contract agreement. Different forms of technology were used such as email, meeting invites and telephone. The builder also responded to all of the client's questions in a timely matter and if they couldn't answer the question, they ensured someone did.

Occasion 1 – Commercial contract

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

Again many thanks to Blue Star for tending the Hilton Brisbane project in Eagle Street. As one of our subcontractors for this project Epoca is required to inform everyone of all the aspects that go into our contracts.

Below are two tables that explain essential terms and elements of a contract with Epoca. We provide these tables so that our subcontractors can have it in writing and can refer back to these elements throughout the project.

Clause	Purpose
Offers and acceptances	Special conditions may be inserted into a contract that require the offer and acceptance to be either accepted or rejected by a certain date – otherwise the contract will not be binding.
Scope of work	A vital element of construction contracts is a clearly defined scope of work clause. It should be sufficiently detailed and cover any new issues or works that may have arisen.
Terms	A term is a provision that forms part of the contract, for which remedies can be sought if breached. There are two types of terms – Conditions: These are essential terms. If a condition is not fulfilled, the nature of the contract is drastically changed. Warranties (NB. This is not the same as a 'guarantee'): If a warranty is not fulfilled, the nature of the contract is not drastically changed.
Payments	These clauses will outline the requirements for deposits and progress payments.
Retention of moneys	Retention is money held by a procuring contractor to guarantee the performance of a supplying contractor and safeguard against defects of the supplying contractor.
Cost adjustments	There is a risk that, during the course of a commercial contract, the costs of performing that contract will rise or fall from the costs initially estimated. Cost adjustment provisions address this risk by providing mechanisms for adjusting contract payment to reflect changes in costs, but they only apply to long-term costs and some specific costs (e.g. labour and materials, currency exchange rates for overseas-purchased goods, duties, taxes, shipping).
Extensions of time	These clauses provide specific reasons that allow the contractor to be entitled to an extension of time of the contract period.

Term	Definition
Addition	Any construction or change to a building or facility that increases its external dimensions and cubic contents.
Arbitration	A procedure for resolving disputes that involves less formality than a court hearing. An arbitrators decision is final and cannot be appealed.
Building inspections	Assists builders, contractors and owners by ensuring that construction projects meet building regulations and codes of practice. Inspections assess design documentation and make on-site inspections during building work.
Compliance	The achievement of performance criteria described in a regulation or other statutory requirement. This is usually demonstrated by a compliance or approval certificate.
Contract	An agreement entered into between two or more parties that involves an exchange or specified goods and/or services for specified financial reimbursement or other considerations.
Domestic dwelling	One or more buildings which in association constitute a single dwelling being a detached house or one or more attached dwellings.
Final inspection certificate	It is obtained once the final inspection has been inspected and passed.

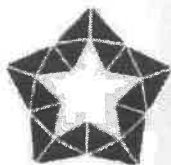
Before the contract is drawn up there is a range of different agreements you have to enter into, these agreements are legally binding and also meet legal requirements. The four important agreement stages are offer, acceptance, intention of legal consequences and consideration. If any of these elements are missing the agreement will not be legally binding. Clauses within the pre-contract agreement might also be carried over to the official contract so it's important that these points are discussed and approved.

A written contract plays an important role in business transactions as it outlines expectations for both parties and protects both parties from misunderstandings, complaints or disputes. The signed agreement then becomes legally binding and holds both parties accountable throughout the duration of the project. There are a range of different elements that collectively make up this contract. These documents include terms and conditions, specifications and scope of works, project construction timelines and schedules, reports from site, cost schedules and budgets.

Sales contracts are not only governed by specific building-related laws but also must meet the requirements of the Australian Consumer Law which is made up by the 'Competition and Consumer Act 2010 (Cth)' which outlines rights for asserting a right to payment, consumer agreements and requirements against defects notices. The next act is the Fair Trading Act 1989 (Qld) that outlines the consumer trader transactions and the supply of goods and services in Queensland. These two acts prohibit, unfair contract terms, misleading or deceptive conduct and unconscionable conduct. Additional codes that contracts must also meet the requirements of is the 'National Consumer Credit Code' that outlines the importance of anyone wanting to lend you money must be registered or licenced and must lend responsibility.

We understand this is a lot of information to take in however, please feel free to contact me at anytime to discuss.

Thanks,
Tess Veldink – Contract Administrator



REF: A7073C

7th November, 2019

Epoca Constructions Pty Ltd

Attention:

We take pleasure in submitting our revised Quotation A7073C for the above project generally in accordance with our **Confirmation of commercial conditions and documentation** (dated 25th September, 2019), subject to certain clarifications and conditions consistent with our interpretation of your requirements.

1. SOLAR TENDER INCLUSIONS:

- A) NEW SOLAR LIGHT POLES & LED LUMINAIRES P4 LIGHTING DESIGN REV3 DATED 05/11/19
- B) FOUNDATIONS, ERECTION & GROUTING
- C) NEW LED LUMINAIRES FOR CRANES
- D) TESTING & COMMISSIONING

TOTAL TENDER AMOUNT \$200,000.00

2. MAINS CONNECTION TENDER INCLUSIONS:

- A) NEW LIGHT POLES & LED LUMINAIRES P4 LIGHTING DESIGN REV2 DATED 07/11/19
- B) FOUNDATIONS, ERECTION & GROUTING
- C) NEW LED LUMINAIRES FOR CRANES
- D) TESTING & COMMISSIONING

TOTAL TENDER AMOUNT \$210,000.00

If successful, reserves the right to negotiate the commercial conditions of Contract.
Validity of offer 30 days.



2.

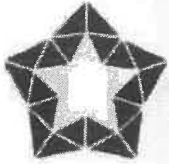
QUALIFICATIONS AND CONDITIONS:

- a) We have made allowance for the lighting to meet Category P4 as per our design drawing Rev 3 dated 05/11/19. Please note this is a Solar Lighting Option only.
- b) We have made allowance for the lighting to meet Category P4 as per our design drawing Rev 2 dated 07/11/19. Please note this is a normal Mains Connection Powered Lighting Option only.
- c) The client will have to select the most appropriate option listed above.
- d) We have allowed for 1 x point of supply switchboard at either end of the main pathway. Please refer to the relevant hand marked up drawings for both options.
- e) One power supply will originate from Allgas Street green box which will be 3 phase. Street will require a property pole erected with the switchboard mounted directly to the pole. This supply will be single phase 40-amp supply. The switchboards shall be a standard B & R Type galvanised enclosure with a LCC pad lock arrangement. Inside the switchboards we have allowed space for the meter to be supplied and fitted by others, however we shall provide statutory fuse links etc for this connection. 1 x GPO shall be mounted inside each switchboard. The lights will be controlled by a Daylight Sensor to turn on and off the mains connected light poles.
- f) We have allowed for provision for a future CCTV system at 3 x Camera locations using the light poles with 2 x 6m pole and 1 x 10m Pole. All CCTV equipment is now removed from this offer, to be supplied, installed and commissioned by others.
- g) Our offer is based on our own interpretations and intent of the design brief, specification, drawings. reserves the right to re-negotiate our contract amount should these interpretations differ from those intended or required.
- h) Allowance has been made for all poles to have 450mm diameter bored footings to be carried out in soils free of rock.
- i) under no circumstances will accept liability for poor workmanship by other trades when in the process of correctly locating electrical wiring for equipment. Reworks, if necessary, will be additional to our tender amount.
- j) Equipment, specifications and drawings not supplied by Blue Star are accepted as being adequate and technically correct for the function intended without the need for modification/s.
- k) Testing and commissioning of services to be by Independent or third party testing is not included.
- l) Our offer is generally based on the provision of material/equipment as indicated in the documentation, however, we reserve the right to offer equivalent materials/equipment.
- m) We assume sizes and quantities of equipment shown on the drawings are sufficient to meet the relevant rules, regulations and codes that are applicable to our works.
- n) Our quotation is based on the project being asbestos and other toxic substances free. The client shall accept full responsibility for removal of such substances prior to us entering the worksite.

3.

EXCLUSIONS: We have made NO allowance for the following:

- a) Arborist work including the treating of roots and trees.
- b) We have not allowed for LCC CCTV Work including Head-End Upgrade work, Termination and LCC Lead-in fibre work.
- c) High voltage reticulation, cabling, transformer/substation or any fees / charges, i.e. kVA / capital contributions to supply authorities / statutory bodies, other than inspection fees. Including Energex costs.
- d) Security/Access Control/ data/fire detection/software/programming/signage/builder/arborist works.
- e) Out of hours work.
- f) Traffic control.
- g) Temporary Pedestrian Lighting and/or power, temporary fencing.
- h) Gas Conduits, sewer, stormwater and/or any plumbing work.
- i) Removal of contaminated soil and rock including disposal/dump fees.
- j) Soil/Geotechnical tests and compaction testing. Surveyor and ADAC As Built costs.
- k) Reinstatement of concrete and turfed areas.
- l) Lost time of personnel where not able to proceed because of security restrictions, equipment being in service or no clear access.
- m) Site establishment and ablutions (to be supplied by Head Contractor).
- n) Asphalt and/or concrete cutting, sand, compaction & reinstatement.
- o) Patching, painting and making good surfaces and furniture items for equipment alterations.
- p) All trenching, conduit, pits and reinstatement shall be provided by Epoca. All assistance and documentation shall be provided by or the civil works to be carried out by Epoca.



For further information regarding _____, or to discuss the enclosed proposal, please do not hesitate to contact us on
or by email gabrielle@bluestarcorporate.com.au

Yours faithfully,

Thanks

Gabrielle Dunning

Epoca Constructions

Blue Star Corporate

Sign: _____

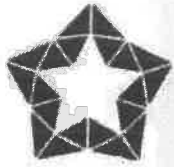
Sign: _____

date: _____

date: _____

Witness: _____

Witness: _____



REF: A7073C

7th November, 2019

Epoca Constructions Pty Ltd

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- B) FOUNDATIONS, ERECTION & GROUTING
- C) NEW LED LUMINAIRES FOR CRANES
- D) TESTING & COMMISSIONING

TOTAL TENDER AMOUNT

\$200,000.00

2. **MAINS CONNECTION TENDER INCLUSIONS:**

- A) NEW LIGHT POLES & LED LUMINAIRES P4 LIGHTING DESIGN REV2 DATED 07/11/19
- B) FOUNDATIONS, ERECTION & GROUTING
- C) NEW LED LUMINAIRES FOR CRANES
- D) TESTING & COMMISSIONING

TOTAL TENDER AMOUNT

£210,000.00

If successful, reserves the right to negotiate the commercial conditions of Contract.
Validity of offer 30 days.



2.

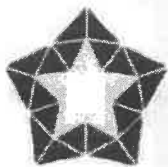
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- f) Traffic control.
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- p) All trenching, conduit, pits and reinstate shall be provided by Epoca. All assistance and documentation shall be provided by or the civil works to be carried out by Epoca.



For further information regarding or to discuss the enclosed proposal, please do not hesitate to contact us on
or by email gabrielle@bluestarcorporate.com.au

Yours faithfully,

Thanks

Gabrielle Dunning

Epoca Construction

Sign: Neldin

Date: 21/11/20

Witness: - director
Epoca Construction

Blue Star Corporate

Sign: Gabrielle Dunning

Date: 21/11/20

Witness: Ulli - director
Blue Star Corporate.

To: tess@epocaconstructions.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Gabrielle – Blue Star Corporate

Hi Tess,

Thank you for sending us through that information. We are excited to be working with Epoca Constructions once again. My team and myself will see you tomorrow morning to discuss clauses of the pre-contract agreement.

Thanks,

Gabrielle Dunning
Project Manager

To: tess@epocaconstructions.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Gabrielle – Blue Star Corporate

Hi Tess,

As discussed in our meeting today please find attached the Blue Star revised quote, along with mutually agreed qualifications and condition, exclusions and Scope of works for the Hilton.

Thanks,

Gabrielle Dunning
Project Manager

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

I've discussed this pre-contract agreement done by Blue Star with the General Manager and Director and we are happy to proceed. As part of our organisational requirements we ask that you sign the pre-contract agreement after Epoca. Once is signed by both parties I will arrange for it to be uploaded to the shared project folder for availability and review. I will now start arranging for the contract to be sent through.

Please let us know if you have any issues.

Thanks,

Tess Veldink
Contract Administrator

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

Please see attached the Hilton project contract. Please read and understand the contract thoroughly. Epoca have approached experts to help prepare this contract to ensure all conditions are clear and concise. Please take note that this contract is not an Australian Standard contract. The contract attached is a Commercial Minor Works contract formulated from Epoca Constructions.

If you have any questions regarding the contract please give me a call or alternatively you can liaise with a lawyer or legal representative.

Please let me know if you have any issues.

Thanks,

Tess Veldink
Contract Administrator

To: tess@epocaconstructions.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Gabrielle – Blue Star Corporate

Hi Tess,

I tried calling you but your phone went straight to message bank can you please provide information on the below topics, we can see that it isn't clearly stated in the contract?

1. Contract rise and fall amounts
2. Schedule of Progress Claims
3. Processes for applying of extension of time

Once we have a better understanding of these topics we will be able to sit down together and breakdown the contract section by section before both parties initially and sign.

Thanks,

Gabrielle Dunning
Project Manager



SUBCONTRACT ORDER AND AGREEMENT

Reviewed: 7/01/2016
Revision: 5

Procedure:
Printed Copies are Uncontrolled

Main Contract No: _____

Sub-Contract No: _____

Epoca Job No: _____

Main Contract: _____

Principal: _____

Company: Epoca Constructions Pty Ltd

Sub-Contractor: _____

Details of Work: Design, supply and install Mains Power P4 lighting and CCTV, and up lights to crane sculptures, as described in further detail in the accompanying documentation. (Not including conduits and pits)

TERMS AND CONDITIONS OF SUB-CONTRACT ORDER AND AGREEMENT

1.
 - (a) The work shall be carried by the Sub-Contractor in a proper and workmanlike manner and to the satisfaction of Epoca Constructions Pty Ltd (hereinafter referred to as 'the Company') and the Principal and in accordance with the plans, specifications, general and special conditions and the relevant documents relating to the contract between the Company and the Principal. It is the Sub-Contractors responsibility to inform himself of all the said plans, conditions and documents.
 - (b) Any conditions of contract or of sale attached to or embodied in the Sub-Contractor's quotation are deemed to be withdrawn in favour of the conditions of contract incorporated herein.
2. Sufficient labour shall be employed by the Sub-Contractor to complete the work expeditiously in accordance with the main contract programme. If in the Company's opinion there is insufficient labour being employed by the Sub-Contractor then it may, without prejudice to any further remedy, after giving notice to the Sub-Contractor employ at the expense of the Sub-Contractor additional labour to complete the work by the required date. If the Sub-Contractor fails to complete the works by the date stated for practical completion in this agreement or within any extended time allowed in writing by the Company the Sub-Contractor shall pay or allow to the Company any sum which the Company shall be obliged to pay to the principal as liquidated damages under the terms of the main contract together with the costs suffered by the Company from whatsoever cause as a result of any delay or breach.
3. all persons engaged on site on the work under the Subcontract shall:
 - (i) Comply with approved Epoca policies and procedures and Epoca appointed supervision. Particular attention is drawn to Epoca Fitness for Work (FFW) procedures,
 - (ii) comply with the requirements outlined in the Site Induction
 - (iii) comply with health and safety rules and environmental rules advised in writing by the Company from time to time;



SUBCONTRACT ORDER AND AGREEMENT

Reviewed: 7/01/2016
Revision: 5

Procedure: EC-4-06-01-F5
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- (iv) comply promptly with health and safety and environmental directions issued by Epoca including but not limited to directions to cease and overcome work practices that are unsafe or that adversely affect the environmental issues as so required by Epoca;
- 4.
- (a) Relevant industrial award conditions governing the class of work shall apply to the sub-contract work.
 - (b) The contract sum is firm for the duration of the contract without any adjustment for any rise or fall in the cost of labour or materials.
 - (c) The Sub-Contractor's employees shall work the hours established for the site by the Company unless otherwise arranged.
5. The Company reserves the right following death of or default by the Sub-Contractor, or termination of the Head Contract, or direction by the principal to terminate the work being done by the Sub-Contractor. Upon such termination the Sub-Contractor shall be entitled to payment only for that part of the work completed excepting that in the case of death or default of the Sub-Contractor the Company shall be at liberty to employ any other person or persons to complete the work and the Company may recover from the Sub-Contractor any additional costs or expenses in having the work so completed. The Sub-Contractor shall be entitled to payment only for that part of the work completed at the time of the said termination.
6. The Sub-Contractor shall if requested present the Company with satisfactory evidence that all debts have been paid or settled for wages, materials and expenses connected with the work.
7. Should defects or faults arise due to the workmanship or materials supplied by the Sub-Contractor before or during the defects maintenance period provided by the Head Contract the Sub-Contractor shall immediately rectify, replace or renew such work at his own expense to the satisfaction of the Company or the Principal. Should the Sub-Contractor fail to comply with this condition the Company may for arrange the execution of the said work at the Sub-Contractors expense.
- 8.
- (a) The Sub-Contractor shall insure and keep insured in his own name (and in the name of the Company to the extent that the same shall be necessary) against any liability loss, claim, demand, proceedings, costs and expenses whatsoever whether arising at Common Law or by Statute (including the Workers Compensation Act 1926) (as amended) in respect of any person employed by him in or about the execution of the work and thereby indemnifies the Company from and against the same. The Sub-Contractor shall before proceeding with the work, lodge with the Company evidence to the satisfaction of the Company that such insurance has been effected.
 - (b) The Sub-Contractor shall indemnify and keep indemnified the Company against any loss or damage to the Sub-Contractor's works materials or plant arising from any cause.
9. Retention moneys shall be deducted progressively as follows: 10 per cent of the values of the work incorporated into the works until 5 per cent of the contract sum is reached.
- 50 percent of the Company entitlement to retention moneys shall be reduced once the project reaches practical completion. The remaining 50 per cent of the Company entitlement to retention moneys shall be reduced following the expiry of the defect liability period or when the project reaches final completion, whichever is the later.
10. The Sub-Contractor shall remove from site all rubbish as it accumulates and upon completion shall leave the whole of the works in a clean and tidy condition. If within 48 hours from the receipt of a reasonable direction of the Company to remove rubbish the Sub-Contractor fails to comply, the Company may remove the rubbish at the cost of the Sub-Contractor or deduct the cost from any monies payable to the Sub Contractor.
11. The Sub-Contractor shall vary the work only as and when required by the Company and no variation shall vitiate this contract
- (a) No claim by the Sub-Contractor for the cost of executing extra work shall be paid by the Company unless the company has received from the Sub-Contractor a quotation for such extra work and accepted the same and has been given written approval for such work.



SUBCONTRACT ORDER AND AGREEMENT

Reviewed: 7/01/2016

Revision: 5

Procedure: EC-4-06-01-F5

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- (b) The price of any variation shall be added to, or deducted from the contract sum.
12. The company will provide adequate sanitary facilities, temporary power, and water outlet at site compound location only. The Sub-Contractor is entirely responsible for the supply, delivery and hoisting of all his own materials, for the supply, erection and dismantling of scaffold unless noted otherwise, and for his own temporary sheds located as directed. HOWEVER in the event of the Sub-contractor being permitted to use any scaffolding hoisting plant or storage areas belonging to or provided by the Company such use shall be on the express condition that no warranty or other liability on the part of the Company or of its other Sub-Contractors shall be created or implied in regard to the fitness, condition or suitability of the said items.
- 13.
- (a) If neither the Specifications nor the Drawings contain any particulars of minor parts the intention to include which is nevertheless clearly to be inferred and which parts are obviously necessary for the proper completion of the work all such parts shall be supplied and executed by the Sub-Contractor without extra charge.
- (b) Anything indicated on the Drawings and not in the Specifications or vice-versa, shall be equally binding as if it were indicated in each of them. Figured dimension on the drawings shall be followed in preference to the dimensions indicated in the scale.
- 14.
- (a) The Sub-Contractor shall not assign or sublet the whole or any part of the contract or the work without first obtaining written approval from the Company.
- (b) Any permission to assign or sublet any part of the contract, or the work shall not discharge the Sub-Contractor from any liability under this Agreement.
- 15.
- (a) At all times whilst actually engaged on the work the Sub-Contractor when not personally superintending the work shall have a competent foreman or representative in charge who will be authorized and able to take and carry out such instructions as may be given by the Company or the Principal Contractor.
- (b) Any notice or instructions to be given or delivered to the Sub-Contractor under this Agreement shall be deemed to have been received when given or delivered to the Sub-Contractor or his representative via email or at the site where the work is being carried out, or left at or sent by pre-paid post addressed to the Sub-Contractor's usual or last known place of abode or business.
16. The Sub-contractor shall take proper and reasonable steps to protect from damage the work, materials and equipment of the Company or of any of its agents or other sub-contractors and should any damage be caused to the same by any act or omission of the Sub-Contractor his agents or employees then such damage shall be made good by the Sub-Contractor at his own cost and expense PROVIDED HOWEVER that in the event of the Sub-Contractor failing or neglecting to make good such damage then the Company may make or cause to be made good such damage at the Sub-Contractors expense.
17. The Sub-Contractor shall obtain all permits and pay all fees required for his own work other than QUU Network Access Permit, Traffic Permits.
18. Any disputes arising between the Sub-Contractor and the Company must be referred to the Company within seven days of the occurrence, so that the matter can be dealt with in a proper manner.

Sub Contract Sum \$ excl. GST) (Lump Sum)

(in words)

Exc GST

Date for submission of progress claim: on or before the 25th day of the month

Date of payment: 30 days from EOM



SUBCONTRACT ORDER AND AGREEMENT

Reviewed: 7/01/2016
Revision: 5

Procedure: EC-4-06-01-F5
Printed Copies are Uncontrolled

Date required on-site 06/12/2019 Completion date of sub-contract 24/04/2020
Maintenance/Defects Liability Period 12 Months from the date of practical completion of Head Contract

Please indicate your acceptance of this Sub-contract by signing and returning the duplicate hereof to EPOCA CONSTRUCTIONS PTY LTD prior to commencement of work. Should you commence the work without signing and returning the duplicate hereof to EPOCA CONSTRUCTION PTY LTD, you will be deemed to have accepted all terms and conditions printed on the following pages.

**NO PAYMENT WILL BE MADE FOR WORK PERFORMED UNTIL THE SIGNED DUPLICATE HEREOF HAS BEEN RECEIVED.
THE ABOVE WORK IS TO BE CARRIED OUT SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE ATTACHED PAGES.**

Signed for Subcontractor:

(signature)

Gabrielle Dunning 01/12/2019

(name)

(date)

witnessed by:

(signature)

Jessica James

(name)

01/12/2019

(date)

Signed for and on behalf of Epoca:

(signature)

Tess Veldink

(name)

01/12/2019

(date)

witnessed by:

(signature)

Tiana Lam Sam

(name)

01/12/2019

(date)



SUBCONTRACT ORDER AND AGREEMENT

Revision: 5

Procedure: EC-4-06-01-F5
Printed Copies are Uncontrolled

Attachments:

- Contract Drawing Register (Including the documents to which it refers)
- Scope of Work Details
- Project Construction Program
-

To the extent of any inconsistency between the documents, the documents shall be given precedence in the order they appear, with the document listed first taking priority.

Electrical Works

Subcontract Drawings & Specifications

This subcontract is based on the following:

<u>Drawing No.</u>	<u>Title</u>	
SCK-PTW-RO2-071119		Lighting
SHS-6-8	CPA - SHS pole - Rev 1	
C001 to C024		- Civil Package
C101 to C103		Bridge Package

Specifications

DNS Lighting - Danty

Davis Lighting – Kingston Series

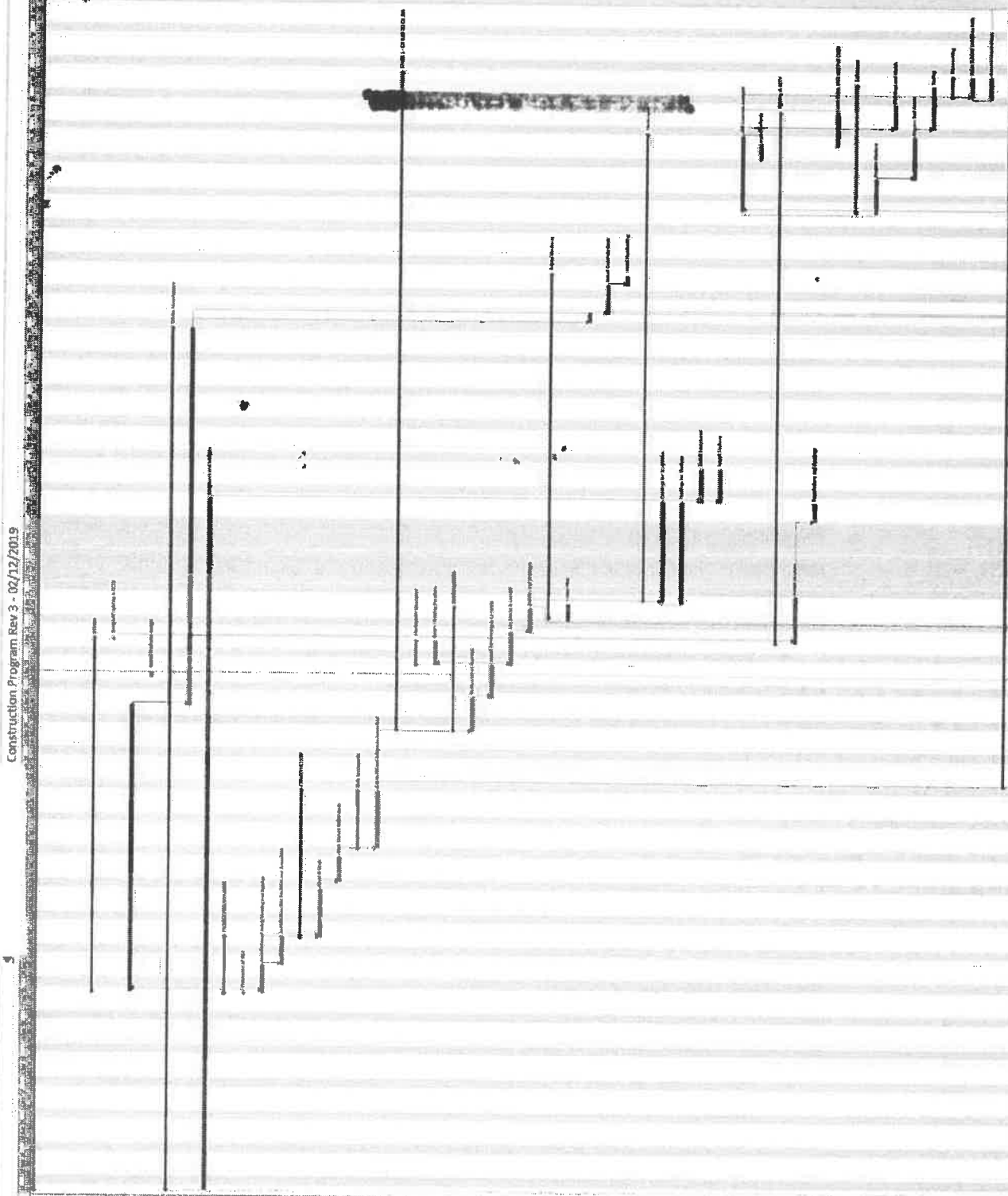
Electrical

Scope of Work

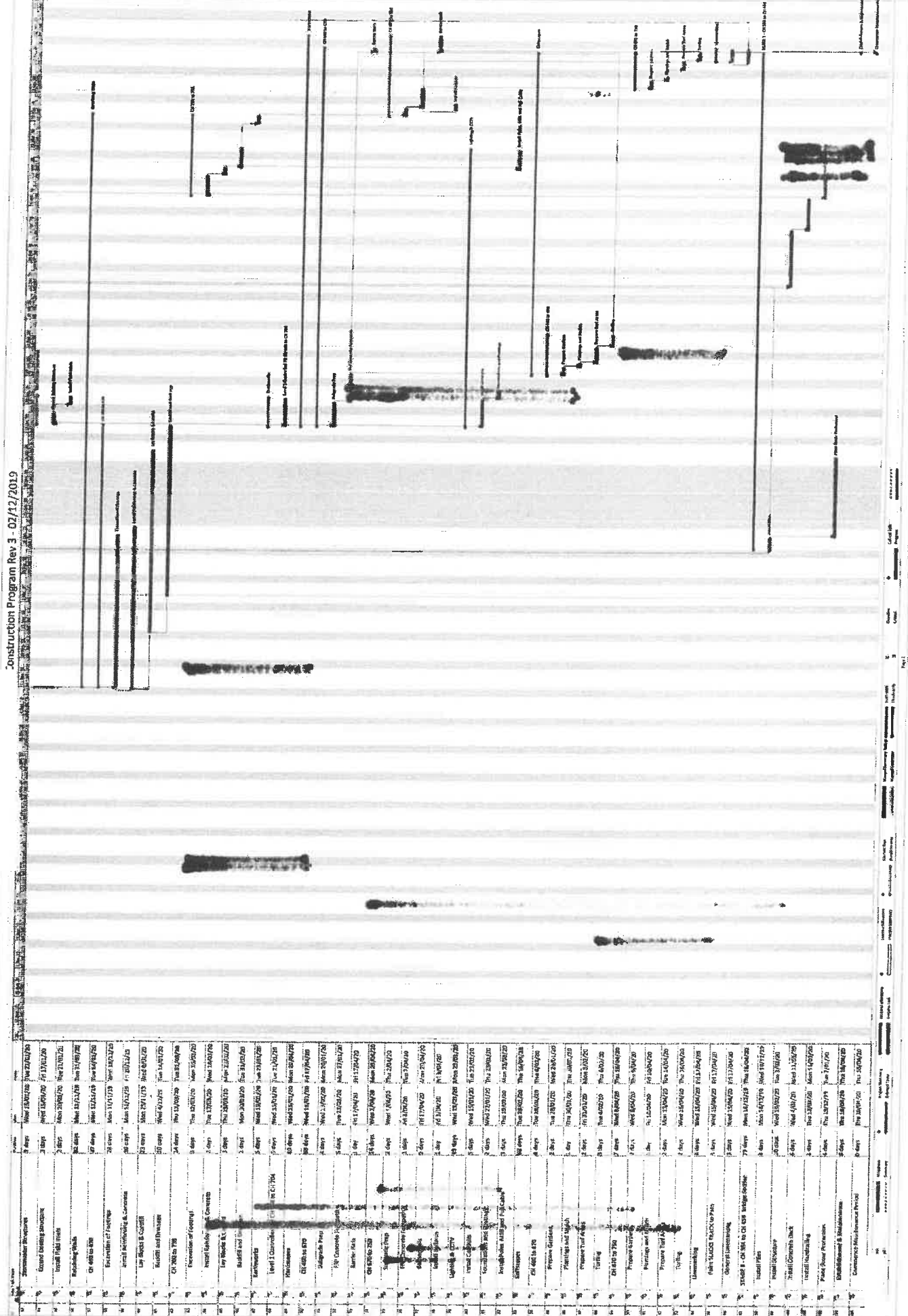
The general scope of works is:

- Design, certification, supply, installation and commissioning of P4 pathway lighting and provisions for future CCTV cameras installed on 3 light poles (2 * 6m poles and 1 * 10m pole) and 5x up lights to crane sculptures, in accordance with drawings and specifications, notwithstanding other relevant drawings, details, specification and standards that are relevant to complete the works
- Allow to obtain Energex approval for the design.
- Preparation and supply of all pre-construction deliverables and documentation, as described in the Contract Documents and specifications for approval prior to site establishment;
- Undertake and provide all required performance testing as specified
 - Epoca to provide geotechnical testing as is required
- Establishment of all required plant and equipment
- Allow to fully conform with Epocas Project Management Plan including but not limited to
 - Safety
 - Traffic
 - Environmental
- Construct to the lines, levels and details as shown on the drawings and as described in the specifications
 - Survey Setout by Epoca
- Allow to coordinate with the certifying surveyor and other subcontractors and consultants relative to the works
- Allow to conform with relevant service providers policies and procedures relative to the works, including supply of work procedures as will be required.
 - Cost of any Energex or APA spotters that may be required shall be borne by Epoca
- Allow to identify, avoid and protect all known services during excavation works
 - Epoca shall undertake pre works locating, marking, potholing and survey of all known services and also preconstruction CCTV of required services. This information shall be provided to Integrated via excavation permit process
- Supply of all as-built documentation, quality assurance documentation, warranties and all other post-construction deliverables as described in the Contract Documents and specifications.
 - Survey pick up and survey ascon by Epoca
 - o provide red pen markups

Activity	Start	End	Duration	Predecessors	Successors
1. Project Initiation	01/01/20	01/01/20	1 day		2. Project Planning
2. Project Planning	01/01/20	01/01/20	1 day		3. Project Execution
3. Project Execution	01/01/20	01/01/20	1 day		4. Project Monitoring
4. Project Monitoring	01/01/20	01/01/20	1 day		5. Project Reporting
5. Project Reporting	01/01/20	01/01/20	1 day		6. Project Review
6. Project Review	01/01/20	01/01/20	1 day		7. Project Closeout
7. Project Closeout	01/01/20	01/01/20	1 day		8. Project Evaluation
8. Project Evaluation	01/01/20	01/01/20	1 day		9. Project Archiving
9. Project Archiving	01/01/20	01/01/20	1 day		10. Project Completion
10. Project Completion	01/01/20	01/01/20	1 day		



Activity	Start	End	Duration	Predecessors	Successors
1. Project Initiation	01/01/20	01/01/20	1 day		2. Project Planning
2. Project Planning	01/01/20	01/01/20	1 day		3. Project Execution
3. Project Execution	01/01/20	01/01/20	1 day		4. Project Monitoring
4. Project Monitoring	01/01/20	01/01/20	1 day		5. Project Reporting
5. Project Reporting	01/01/20	01/01/20	1 day		6. Project Review
6. Project Review	01/01/20	01/01/20	1 day		7. Project Closeout
7. Project Closeout	01/01/20	01/01/20	1 day		8. Project Evaluation
8. Project Evaluation	01/01/20	01/01/20	1 day		9. Project Archiving
9. Project Archiving	01/01/20	01/01/20	1 day		10. Project Completion
10. Project Completion	01/01/20	01/01/20	1 day		



Task	Start Date	End Date	Duration
Excavation	10/1/2018	10/15/2018	14 days
Foundation	10/15/2018	10/30/2018	15 days
Structural Steel	10/30/2018	11/10/2018	11 days
Roofing	11/10/2018	11/25/2018	15 days
Interior Finishes	11/25/2018	12/10/2018	15 days
Mechanical	12/10/2018	12/25/2018	15 days
Electrical	12/25/2018	1/10/2019	15 days
Plumbing	1/10/2019	1/25/2019	15 days
HVAC	1/25/2019	2/10/2019	15 days
Painting	2/10/2019	2/25/2019	15 days
Flooring	2/25/2019	3/10/2019	15 days
Landscaping	3/10/2019	3/25/2019	15 days
Site Work	3/25/2019	4/10/2019	15 days
Permitting	4/10/2019	4/25/2019	15 days
Mobilization	4/25/2019	5/10/2019	15 days
Demobilization	5/10/2019	5/25/2019	15 days
Closeout	5/25/2019	6/10/2019	15 days
Final Inspection	6/10/2019	6/25/2019	15 days
Project Completion	6/25/2019	7/10/2019	15 days

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

I've contacted our Epoca legal representative to give you more information about the three topics. Please see below their notes that are being added to the contract.

Rise and fall amounts

The rise and fall clause in the contract ensure that the risk of fluctuating building costs are shared with client and the subcontractor. The clause ensure that the builder (Epoca) can pass on costs that either increase or decrease and that changes in prices can be adjusted or passed on to the subcontractor (Blue Star) according to the agreement formula stated in the contract (to be added) and monthly Australian Bureau statistics are published which the subcontractor can refer when creating a rise and fall formula. See the current formula used

HICAP2 Rise and fall formulae:

$$\text{Effective value} \times \text{proportional value} \times \frac{\text{Current index no.} - \text{base index no.}}{\text{Base index no.}}$$

Progress payments

As you are probably aware progress payments are made at the end of each construction stage, you are required to submit this with an invoice. The progress payment must match the work carried out, if you submit an invoice with works that aren't completed on site, We as the client have the right to hold or knock back the whole invoice value or part of the invoice.

Here is a table of the stages and percentages Epoca requires there progress payments.

Stage	% of total contract
Deposit	5%
Base stage	15%
Frame stage	20%
Enclosed stage	25%
Fixing stage	20%
Practical completion	15%

Extension of time

If the subcontractor requires extra time to complete works they are to complete an extension of time variation. The variation must be in writing and contain a specific reason as to why the subcontractor wants the extension. In the contract there will be a General Contract Conditions that will outline what time extensions you are entitled to over the contract period.

Hope this information helps Blue Star.

Thanks,

Tess Veldink
Contract Administrator

To: tess@epocaconstructions.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Gabrielle – Blue Star Corporate

Hi Tess,

Thank you for that information that clarifies a few things for us. Can you please send through a meeting request to discuss the contract, so the whole Blue Star team can attend?

Thanks,

Gabrielle Dunning
Project Manager

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

See below a meeting request for the Blue Star team to review and breakdown the official contract clauses, terms and conditions. Epoca Constructions will be taking the meeting minutes and send them through.

Meeting request

Subject: Breakdown of contract – Hilton, Eagle Street

Date: 25/11/19

Location: Epoca Construction Head Office, 250 Queen Street Brisbane

Thanks,

Tess Veldink
Contract Administrator

To: gabrielle@bluestarcorporate.com.au

Subject: Commercial Project – Hilton Brisbane, Eagle Street

From: Tess Veldink - Epoca Constructions

Hi Gabrielle,

Please find attached the agreed meeting minutes from yesterday. These minutes are a breakdown/definitions of the Epoca contract clauses, terms and conditions.

**CONFIDENTIAL
MEETING MINUTES
EPOCA CONSTRUCTIONS & BLUE STAR CORPORATE**

Contract Topics	Actioned By	Action Date
Rights, Liabilities & Potential penalties		
Rights - As a contractor you have the right to ensure the following elements are included in the contract. Timeframes, budget, payment method, materials, dispute resolution, Payment penalties. If not you have the right to request the elements be included in the contract or not go ahead with the contract. As the subcontractor you also have rights under the agreement and the subcontractor also has rights under the legislation in relation to the agreement.	ALL	NOTED
Penalties & Liabilities – Here are some proactive tips to take to try and reduce your liabilities, always issues an extension of time for practical completion, carry thorough records of all discussions if there is any damages or loss throughout the project and ensure a detailed formula is provided on how liquidated damages will be calculated. Ensure that all parties have copies of the applicable and current insurances to ensure all works/procedures are covers for the duration of the project.	ALL	NOTED
Definitions		
Practical completion/final certificate – This is the point when all scope of works has been completed in accordance to the contract and the building is ready for residence and intended use. Before the final certificate is issued building certifiers must approve the works and write an overall summary of the building conditions. The subcontractor (Blue Star) will receive copies of the certificate once they have been issues to the builder.	ALL	NOTED
Defects liability & Completion – There are certain timelines in which subcontractors are meant to respond to rectify defects. Rectification obligations includes, a well drafted contract with a clear definition of a 'defect', the client must notify the subcontractor in accordance with the general condition of a contract, then the contract is to make a justified decision. Poor works being carried out or the weather may have also caused the defects, if the contractor believes the defect is not caused by them, they can claim not responsible to fix the works.	ALL	NOTED
Effects of ousting the contractor – Both parties must be careful when applying the dismissal procedure exactly as stated in the contract. There is little likelihood that applying for this will actually	ALL	NOTED

result in involuntary removal with clear evidence.		
Provisional Sum & Prime Cost Allowance – These two allowances are in a standard building contract. Prime Cost is an amount of money included in a contract sum to purchase a specific item such as GPO's and down lights. Epoca will estimate the costs or a reasonable cost of the items. Provisional Sum is an amount of money included in a contract to cover site works/materials that aren't details in a contract. These costs are usually unforeseen events during the build.	ALL	NOTED
Contract anomalies & variations – A variation of a contract may be additions to or deductions from the works in the contract. Variations are to be approved prior to their execution. As usual variations must be in writing and agreed upon both the Blue Star and Epoca. Both parties should agree on extra costs before alterations are made to the contract. The contractor should also provide an extension of time and payments with the time stated on the variation. If the variation procedure isn't followed and not documented to the original contract it can cause disputes.	ALL	NOTED
Breach of Contract		
Unreasonable/vexatious notice – One party might fail to form duties in a reasonable timeframe. The 'injured' party may terminate only after serving the defaulting party with notice including a reasonable timeframe, a statement of the consequences and what occur to perform the works of a contract. If the notice fails to include these elements it may be deemed unreasonable.	ALL	NOTED
Abandonment of a contract – This can have two different meanings. One is when the parties both have conducted in a way that the original contract is no longer valid; both parties may mutually agree to do this. The second type is when contractor fails to perform the works by not starting in a reasonable time, not completing the works or failing to resume works without legal excuse.	ALL	NOTED
Methods for resolving contractual disputes – The contractors should always refer to the contract, which outlines all contractual details; responsibility for defects, directing the contractor to rectify defects or complete works. At Epoca this is how we deal with complaints; 1. Deal with the complaint immediately 1. Stay calm deal with the complaint immediately 2. Stay calm 3. Identify the problem 4. Decide what can be done 5. Arrange a second opinion to confirm your view 6. Keep records 7. Fix the problem	ALL	NOTED

Thanks,

Tess Veldink
Contract Administrator

Occasion 2 – Residential contract

To: jandgveldink@bigpond.com

Subject: Residential home – 7 Cassim Place

From: Tess Dunning – Coral Homes

Hi Gabrielle & Jeff,

Thank you for choosing Coral Homes to build your home at 7 Cassim Place Redland Bay. In order to get started we like to include information on essential term and elements of a contract identifying and pre-contract agreements, the importance of a contract in the sale process and implications of legislation regulations and codes of practise.

Please see below two tables with terms and elements of a contract. Please let us know if you have any questions regarding these clauses and terms as these will be heavily present through the pre-agreement and contract.

Clause	Purpose
Offers and acceptances	Special conditions may be inserted into a contract that require the offer and acceptance to be either accepted or rejected by a certain date – otherwise the contract will not be binding.
Scope of work	A vital element of construction contracts is a clearly defined scope of work clause. It should be sufficiently detailed and cover any new issues or works that may have arisen.
Terms	• A term is a provision that forms part of the contract, for which remedies can be sought if breached. There are two types of terms – • Conditions: These are essential terms. If a condition is not fulfilled, the nature of the contract is drastically changed. • Warranties (NB. This is not the same as a 'guarantee'): If a warranty is not fulfilled, the nature of the contract is not drastically changed.
Payments	These clauses will outline the requirements for deposits and progress payments.
Retention of moneys	Retention is money held by a procuring contractor to guarantee the performance of a supplying contractor and safeguard against defects of the supplying contractor.
Cost adjustments	There is a risk that, during the course of a commercial contract, the costs of performing that contract will rise or fall from the costs initially estimated. Cost adjustment provisions address this risk by providing mechanisms for adjusting contract payment to reflect changes in costs, but they only apply to long-term costs and some specific costs (e.g. labour and materials, currency exchange rates for overseas-purchased goods, duties, taxes, shipping).
Extensions of time	These clauses provide specific reasons that allow the contractor to be entitled to an extension of time of the contract period.

Term	Definition
Addition	Any construction or change to a building or facility that increases its external dimensions and cubic contents.
Arbitration	A procedure for resolving disputes that involves less formality than a court hearing. An arbitrators decision is final and cannot be appealed.
Building inspections	Assists builders, contractors and owners by ensuring that construction projects meet building regulations and codes of practice. Inspections assess design documentation and make on-site inspections during building work.
Compliance	The achievement of performance criteria described in a regulation or other statutory requirement. This is usually demonstrated by a compliance or approval certificate.
Contract	An agreement entered into between two or more parties that involves an exchange or specified goods and/or services for specified financial reimbursement or other considerations.
Domestic dwelling	One or more buildings which in association constitute a single dwelling being a detached house or one or more attached dwellings.
Final inspection certificate	It is obtained once the final inspection has been inspected and passed.

Before the contract is drawn up there is a range of different agreements you have to enter into, these agreements are legally binding and also meet legal requirements. The four important agreement stages are offer, acceptance, intention of legal consequences and consideration. If any of these elements are missing the agreement will not be legally binding. Clauses within the pre-contract agreement might also be carried over to the official contract so it's important that these points are discussed and approved.

A written contract plays an important role in business transactions as it outlines expectations for both parties and protects both parties from misunderstandings, complaints or disputes. The signed agreement then becomes legally binding and holds both parties accountable throughout the duration of the project. There are a range of different elements that collectively make up this contract. These documents include terms and conditions, specifications and scope of works, project construction timelines and schedules, reports from site, cost schedules and budgets.

Sales contracts are not only governed by specific building-related laws but also must meet the requirements of the Australian Consumer Law; which is made up by the 'Competition and Consumer Act 2010 (Cth)' which outlines rights for asserting a right to payment, consumer agreements and requirements against defects notices and the Fair Trading Act 1989 (Qld); that outlines the consumer trader transactions and the supply of goods and services in Queensland. These two acts prohibit, unfair contract terms, misleading or deceptive conduct and unconscionable conduct. Additional codes that contracts must also meet the requirements of is the 'National Consumer Credit Code' that outlines the importance of anyone wanting to lend you money must be registered or licenced and must lend responsibility.

We understand this is a lot of information to take in however, please feel free to contact me at anytime to discuss.

Thanks,

Tess Dunning
Contract Administrator

To: tess@coralhomes.com.au
Subject: Residential home – 7 Cassim Place
From: jandgveldink@bigpond.com

Hi Tess,

Thank you for sending through that information. We will see you in the morning for the pre-agreement meeting. From our phone call today can you confirm that we will be going over the house specification agreement and two preliminary agreements one for the preparation of engineer's design and one for tender letter & contract package.

Thanks,

Gabrielle Veldink

To: jandgveldink@bigpond.com
Subject: Residential home – 7 Cassim Place
From: Tess Dunning – Coral Homes

Hi Gabrielle,

Yes I can confirm we will be discussing the three documents tomorrow. See you then.

From: tess@coralhomes.com.au
Subject: Residential home – 7 Cassim Place
From: jandgveldink@bigpond.com

Hi Jeff & Gabrielle,

Please find attached your signed copies of the two preliminary agreements and the building specification agreement. As discussed our pre-contract agreement include a price and clauses that will be transferred to the official contract coming in a few days. The contract is a Coral Homes built contract with the help of our in house legal team. You will have a copy of the contract to review in the next 5 business days.

Please let me know if you have any questions.

Thanks,

Tess Dunning
Contract Administrator

From: tess@coralhomes.com.au
Subject: Residential home – 7 Cassim Place
From: jandgveldink@bigpond.com

Hi Jeff and Gabrielle,

As discussed please find attached the contract for 7 Cassim Place, Redland Bay. Once reviewed please initial each page to indicate you have read and understood each element. This is part of our contract procedure at Coral Homes; once this has been completed this then becomes a legally binding contract between Coral Homes and the Veldink's. Please note that this is not an Australian Standard contract. The contract attached is a New Homes Construction Contract from the HIA.

Please let us know if you have any questions.

Thanks,

Tess Dunning
Contract Administrator

To: tess@coralhomes.com.au
Subject: Residential home – 7 Cassim Place
From: jandgveldink@bigpond.com

Hi Tess,

Thank you for sending through a copy of the contract. There a few questions regarding the below. Could Coral Homes please provide definitions and details, as we don't fully understand the topics?

1. Contract rise and fall amounts
2. Schedule of Progress Claims
3. Processes for applying of extension of time

Thanks,

Jeff Veldink



PRELIMINARY AGREEMENT Job Order / Receipt

TYPE: Sales Form
TITLE: SF02
Page 1 of 1

House Design: ANTIGUA 307

Date: 6/3/2003

Job No: _____

Received From:

Jeffrey Veldink and Gabrielle Veldink

(Client to complete their own name details by printing in CAPITALS Please – Note, these details will be used as the basis for all future contractual documentation, so ensure appropriate details are recorded ie: single name, joint names, company name etc)

11 Garter St Alexandra Hills QLD Post Code: 4161

(Clients Full Postal Address)

07 38245417

(Clients Home Phone Number)

0411 517 251 Jeff

(Clients Work Phone No - His)

0412 368 836 Gabe

(Clients Mobile Phone Number)

07 38212520

(Clients Work Phone No - Hers)

Privacy Policy and Collection Statement Signed (SF58) ☐ Yes ☒ No Initials: _____

NOTE: BEFORE receipting monies on Newcastle jobs ensure you have received a fax from the Mine Subsidence Board acknowledging the fact that there is NO mine subsidence issues relative to this particular block of land. Any queries on this to be directed to MSB on (02) 4908 4395.

Tick Applicable
Box/s ☒

Receipting:

☐ Cash

☐ Cheque

☒ Credit Card

I/We authorise and request you to:

- ☒ Arrange for a Tender Letter & Contract Package (includes Soil Test, Contour & Feature Survey; Site Inspection, Wind Rating, Sewer Plan, AHD Flood Survey (where applicable), Tender Letter Presentation and prepare Contract Documentation) \$1,000.00
- ☐ Owner Supplied Plan Costing (Complete SF20 & SF21) \$350.00
- ☐ Modified Standard Plan Costing – Single Storey Homes (Complete SF20a & SF21) \$150.00
- ☐ Modified Standard Plan Costing – Two-Storey Homes (Complete SF20a & SF21) \$250.00
- ☐ Arrange for the preparation of an engineers design, submit building application to all appropriate authorities for their approval and arrange for warranty insurance. \$

Preliminary Agreement Price (inclusive of GST)

\$1,000.00.

For Lot: 48 Street: CASSIN PLACE

Suburb: REDLAND BAY Estate: PACIFIC RISE (Site Address) RED/SP/151202

Sales Consultant: BILL LEE Display Centre: REDLAND BAY UBD Ref: _____

I/We acknowledge and agree that the property and ownership and the copyright of all plans, sketches and designs prepared by the Contractor in accordance with this Agreement shall remain the property and the ownership of the Contractor at all times and nothing in this Agreement shall give a license or otherwise to the owner to use any plans, sketches or designs prepared by the Contractor unless otherwise provided in writing.

I/We give permission to Coral Homes to expend the above monies on the services noted. I/We further agree this money is non refundable, but will be deducted from the contract price should I/we enter into a building agreement with Coral Homes for the building works.

Signed By Client

Signed for Coral Homes

AUTHORISED:
ISSUED: 12/10/01
UPDATED: 29/01/03



PRELIMINARY AGREEMENT Job Order / Receipt

TYPE: Sales Form
TITLE: SF02
Page 1 of 1

House Design: ANTIGUA307 Date: 26/6/2003 Job No: 37847

Received From: JEFFREY & GABRIELLE VELDINK

(Client to complete their own name details by printing in CAPITALS Please - Note, these details will be used as the basis for all future contractual documentation, so ensure appropriate details are recorded ie: single name, joint names, company name etc)

3 CAMORE COURT, CLEVELAND Post Code: _____
(Clients Full Postal Address)

3821-0940

(Clients Home Phone Number)

(Clients Work Phone No - His)

0411-517 251

(Clients Mobile Phone Number)

3821-2520

(Clients Work Phone No - Hers)

Privacy Policy and Collection Statement Signed (SF58) ☒ Yes Initials: _____

NOTE: BEFORE receipting monies on Newcastle jobs ensure you have received a fax from the Mine Subsidence Board acknowledging the fact that there is NO mine subsidence issues relative to this particular block of land. Any queries on this to be directed to MSB on (02) 4908 4395.

Tick Applicable
Box/s ☒ ✓

Receipting: ☐ Cash ☒ Cheque ☐ Credit Card

I/We authorise and request you to:

- ☐ Arrange for a Tender Letter & Contract Package (includes Soil Test, Contour & Feature Survey, Site Inspection, Wind Rating, Sewer Plan, AHD Flood Survey (where applicable), Tender Letter Presentation and prepare Contract Documentation) \$ _____
- ☐ Owner Supplied Plan Costing (Complete SF20 & SF21) \$350.00
- ☐ Modified Standard Plan Costing - Single Storey Homes (Complete SF20a & SF21) \$150.00
- ☐ Modified Standard Plan Costing - Two-Storey Homes (Complete SF20a & SF21) \$250.00
- ☒ Arrange for the preparation of an engineers design, submit building application to all appropriate authorities for their approval and arrange for warranty insurance. \$8,358.00

Preliminary Agreement Price (inclusive of GST)

\$8,358.00

For Lot: 48 Street: CASSIN PLACE

Suburb: REDLAND BAY (Site Address) Estate: PACIFIC RISE ROAD/SP: 15/202

Sales Consultant: BILL LEE Display Centre: REDLAND BAY UBD Ref: _____

I/We acknowledge and agree that the property and ownership and the copyright of all plans, sketches and designs prepared by the Contractor in accordance with this Agreement shall remain the property and the ownership of the Contractor at all times and nothing in this Agreement shall give a license or otherwise to the owner to use any plans, sketches or designs prepared by the Contractor unless otherwise provided in writing.

I/We give permission to Coral Homes to expend the above monies on the services noted. I/We further agree this money is non refundable, but will be deducted from the contract price should I/we enter into a building agreement with Coral Homes for the building works.

[Signature]
Signed By Client

[Signature]
Signed for Coral Homes

AUTHORISED:
ISSUED: 12/10/01
UPDATED: 29/01/03

OWNERS COPY

SPECIFICATION SP7847
THESE SPECIFICATIONS FORM PART OF THE BUILDING AGREEMENT

PREPARED FOR:

OWNER: Jeffrey Veldink and Gabrielle Veldink
at
SITE ADDRESS: Lot 48 Cassim Place, Redland Bay

JOB NO: J7847

DATE: 26-May-03

TERMS:

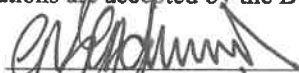
These Specifications are a "Standard Specification" which means these are the Standards applying to all new homes built by Coral Homes. Changes to these Standards can only be made by documenting the change required in writing separate to this document which must then be signed by both parties. This Standard Specification Document Page 1 to 6 inclusive cannot be altered on these pages by either the Owner or the Builder.

These Specifications form part of the contract for the proposed work. Where a discrepancy occurs, the order of precedence as stated in the contract documents shall take effect.

These Specifications are to be read in conjunction with Coral Homes New Home Tender TL7847.3. Any items detailed in Coral Homes New Home Tender TL7847.3 which alter the items included in this Specification take precedence over the Specification item in all aspects.

These Terms and Specifications are accepted by the Builder and Owner.

Signed by the Owner:



Date:

26 / 05 / 2003

Signed by the Owner:



Date:

26 / 05 / 2003.

Signed by the Builder:



Date:

26 / 05 / 03.

I. GENERAL

- (A) Unless otherwise specified, the works shall be constructed in accordance with the Building Code of Australia and where appropriate the Australian Standard AS1684 SAA Timber Framing Code.
- (B) The Owner is responsible for the provision of access suitable to allow trucks as normally used in the building industry to drive in and out of the site. Should such access not be available, the Builder may, with the Owner's prior approval, cause work to be carried out to enable such access and this will be at additional expense to the Owner.
- (C) Unless otherwise specified, the contract price allows that house water supply will be available from an existing main of the Local Authority prior to commencement of construction. Where no such water supply exists, the Owner is to arrange, at their expense, a temporary fresh water supply for building purposes by means satisfactory to the Builder, and to be available prior to commencement of construction.
- (D) This contract allows for 240 volt power being available prior to and during the construction of the dwelling. Where no such power is available, the Owner is to arrange temporary power to such means as is satisfactory to the Builder at the Owner's expense.
- (E) Building application fees (consisting of reticulated sewerage connection, reticulated water connection, development application, portable long service levy, occupational health and safety and inspection fees), contour survey, Engineer's soil report and slab design to be provided by the Builder, unless otherwise stated in the signed Coral Homes New Home Tender. Any additional Council fee/s will be at the Owners expense and will be documented on a 'Variation to Contract'.
- (F) All specification items requiring a colour or finish to be selected shall be selected from the Builder's range of standard colours (at time of colour selection) or supplied as per the colour or finish specified in the item. Selections outside the Builder's standard range may incur additional charges.

2. EXCAVATION

- (A) Builder to excavate and fill as required to provide a level pad (cut/fill area) for concrete floor slab (900mm larger than house dimensions for single-storey home and 2000mm larger than house dimensions for 2-storey home). Refer to working drawings for levels of house pad (cut/fill area) and concrete floor slab.
- (B) Excess excavated material, spoil, etc., to be spread over the site by the Builder. Should the quantity of excess excavated material exceed the amount required for spreading over site the remainder of material will be stockpiled on site for removal by Owner.
- (C) All trees within the building zone, including stumps and entire root system, must be removed from site by the Owner prior to commencement of construction. All costs to remove trees from site are at the Owner's expense.
- (D) Rock excavation, if required by any trade, has been allowed for and will be at the Builder's expense.

3. CONCRETING

- (A) Footings as per Engineer's details.
- (B) Slab on ground as per Engineer's details, with steel trowelled finish.
- (C) Piering to Engineer's requirements.
- (D) Concrete pumps will be required to pump concrete for the pouring of the slab and have been allowed for.
- (E) All to comply with AS2870, AS3600, AS3798 and AS3600.

4. TERMITE MANAGEMENT SYSTEM

- (A) Exposed concrete termite detection strip to the perimeter of the dwelling and physical barrier to all slab penetrations. Standard product and system warranty to comply with Australian Standard AS3660.
- (B) It is the Owner's responsibility at their expense for all on-going maintenance of the termite management system. Please refer to "Home Owner's Termite Management Agreement – A Plain English Explanation – SF19" supplied by Coral Homes together with the Queensland Government "Termite Management Systems" Booklet also supplied by Coral Homes.

5. RETAINING WALLS

- (A) No allowance has been made in the event that retaining walls are required, unless otherwise stated in Coral Homes New Home Tender. Should retaining walls be required, due to site conditions or requested by Local Council, then all costs including drafting fees, Engineers design fees, Local Council fees and administration fees will be incurred by the Owner. Retaining walls required by Local Council must be erected prior to footing inspection.

6. DRAINAGE

- (A) Sewerage installation to be in accordance with Sewerage and Water Supply Act 1981, and Amendments, Local Council requirements and approved drainage plan.
- (B) Stormwater dispersal as detailed in Coral Homes New Home Tender referred to on Page 1.
- (C) Gully drains for site drainage as indicated on the site plan. All associated costs for any additional site drainage that Local Council may require, over and above that allowed in the contract, will be at the Owner's expense.
- (D) All to comply with AS2870, AS1289, AS3798 and AS3600.

7. ROOF PLUMBING

- (A) Fascia and Guttering to be Colorbond.
- (B) Colours to be selected from the Builder's standard range of Colorbond colours at time of colour selection.
- (C) Profile of gutters to be selected from the Builder's standard range of profiles at time of colour selection.
- (D) Downpipes to be Colorbond 100mm x 75mm.
- (E) All to comply with AS3500.3.2.

8. ROOF COVERING

- (A) Roof covering to be un-sarked concrete tiles. Concrete roof tiles to be selected from Builder's standard range of colours and profiles at time of colour selection. **Please Note:** Half round cappings are non-standard. Selection of this style of capping will incur additional costs.
- (B) Roof pitch to be as noted on working drawings.
- (C) Coral Homes recommends that all concrete tiled roofs be sarked.
Please Note: Roof sarking is an extra cost over and above the basic house price.
- (D) All to comply with AS2049 and AS2050.

9. BRICKLAYING/BLOCKLAYING AND APPLIED EXTERNAL WALL FINISHES

- (A) External masonry to be selected from Builder's standard range of bricks at time of colour selection.
- (B) Mortar to be Natural.
- (C) Joints to be raked.
- (D) All to comply with AS3700.

10. STRUCTURAL STEEL AND METALWORK

- (A) Galvanised steel lintel bars supporting brickwork above windows and doors where shown on working drawings.

11. WINDOWS AND ASSOCIATED DOORS

- (A) Window and sliding door sizes to be standard sizes as noted on the working drawings.
- (B) Window and sliding door frames to be powder coated aluminium.
- (C) All windows to be clear glass except bathroom, WC and ensuite, which will be white obscured glass.
- (D) All to comply with AS1288 and AS2047.

12. CARPENTRY/JOINERY

- (A) Timber Framing to be in accordance with Australian Standards AS1684 Pine.
- (B) Provide W33N wind rating unless otherwise specified.
- (C) Timber floor to top floor of 2-storey home:
 - Floor framing to be to Engineer Designed Systems.
 - Flooring cover to be structural grade particle sheet flooring fixed to manufacturer's recommendations.
- (D) Stairs to 2-storey home:
 - Stringers, treads and risers to be manufactured from carpet cover grade timber.
 - Handrails and balustrades to be in accordance with Building Code of Australia and provided as shown on working drawings.

13. DOORS

- (A) Size of all internal and external doors to be 2040mm high x widths indicated on the plan.
- (B) Front entrance door/s to be selected from the Builder's standard range of entrance doors at time of colour selection.
- (C) Front door frame fixed glass panel/s to be of sizes as drawn on the working drawings. Glazing to the fixed glass panel/s to be selected from the Builder's standard range of glass options at time of colour selection. Fixed glass panel/s to be pre-hung and incorporated into the 140mm x 31mm rebated treated preprimed pine frame assembly for the front door/s.
- (D) External laundry door to be a Duracote tempered hardboard (honeycomb core) clear half glass door or a clear glass sliding door as nominated on working drawings.
- (E) External garage door to be a Duracote tempered hardboard (honeycomb core) flush panel door or a Duracote tempered hardboard (honeycomb core) clear half glass door for single-storey home and a Duracote tempered hardboard (honeycomb core) clear half glass door or a clear glass sliding door for 2-storey home as nominated on working drawings.
- (F) Garage door to be a manually operated 2080mm x 4800mm sectional overhead door.
- (G) Internal doors to be flush panel hardboard (honeycomb core) doors. (Refer to Clause 19 for style of linen cupboard, pantry and wardrobe doors).
- (H) Internal door furniture to be selected from the Builder's standard range at time of colour selection.
- (I) Door stops to be 75mm white cushion style stops.
- (J) External door furniture to be selected from the Builder's standard range at time of colour selection.
- (K) Glazing to comply with AS1288.

14. DOOR FRAMES

- (A) All external doors to be pre-hung into a 140mm x 31mm rebated treated primed pine frame assembly complete with a hardwood French lite sill and door seal.
- (B) All internal doors to be pre-hung into a 93mm x 19mm F/J pine frame assembly including a F/J pine stop bead.

15. ARCHITRAVES AND SKIRTINGS

- (A) Architraves to be 42mm x 12mm F/J pine in profile as nominated from the Builder's standard range at time of colour selection.
 - (B) Skirting to be 68mm x 12mm F/J pine in profile as nominated from the Builder's standard range at time of colour selection.
- Please Note:** All timber skirtings to be fixed with bottom edge flush with top of concrete floor slab.

16. INTERNAL LININGS

- (A) Wall and ceiling linings to be 10mm thick plasterboard to Australian Standard AS2588-9 (1983).
- (B) Plasterboard linings to internal garage walls to single-storey home and plasterboard internal linings to garage **except** face brickwork to wall dividing garage and home for 2-storey home. If 2-storey home has rendered or bagged and painted finish the internal walls to garage will have plasterboard linings.
- (C) Villaboard linings to parts of wet areas as required by Local Council.
- (D) Cornice to be 55mm "cove" style.

17. ELECTRICAL SERVICES

- (A) Underground single phase power connection from Local Electricity Board pillar box to meterbox. Meterbox location as nominated on working drawings.
- (B) Electrical fixtures and fittings as specified in Coral Homes New Home Tender referred to on Page 1.
- (C) Telephone pre-wire is the responsibility of the Owner.
- (D) Telephone underground cable, conduit and connection is the responsibility of the Owner. However, Coral Homes will organise for telephone underground cable and conduit to be laid to the house where the water service or underground powerbox is adjacent to the Telstra box. If however, service trenches are not applicable (ie. overhead power or non-mains connected water-rainwater tanks), then it will be the Owner's responsibility to make alternative arrangements for the Telstra underground cable including all associated costs.
- (E) All to comply with SAA Wiring Rules.

18. ELECTRICAL APPLIANCES

- (A) Wall oven to be a Blanco BSO600X/W stainless steel multi function fan forced electric wall oven.
- (B) Cooktop to be a Blanco BCER642NIX stainless steel 4 plate solid cooktop.
- (C) Rangehood to be a Blanco "Caprice" BRFS601SS Slimline stainless steel fixed rangehood.

19. CUPBOARDS

- (A) Kitchen cupboard doors to be Laminate finish in colours selected from the standard range shown on the colour boards at the display homes.
Kitchen bench tops to be Laminate finish in colours selected from the standard range shown on the colour boards at the display homes.
Kitchen bench tops to be 180 degree postformed finish to edges and square finish to ends. Interiors to be white melamine modular units.
- (B) Dishwasher space NOT fully lined.
- (C) Minor manufacturing differences in cupboard construction may occur including kickboard height, width of drawers and voids to angled corners dependent upon kitchen manufacturer.
- (D) Wall oven tower to be full height to ceiling level and constructed from painted plasterboard linings with a square set plasterboard microwave space as indicated on the working drawings.
- (E)
 - (i) Rangehood bulkhead housing to extend to ceiling level and be constructed from painted plasterboard linings with a feature moulding as indicated on the working drawings for single-storey home.
 - (ii) Rangehood bulkhead housing/overhead cupboards to be laminate finish cupboards with laminate finish doors from standard colour range to 2100mm above floor level with painted finish timber/plaster to ceiling for 2-storey home.
- (F) Bathroom vanities to be Australian Bathrooms "V-Foil" design with "Matisse Deluxe" polymarble tops. Door design to be selected from the Builder's standard range at time of colour selection. Colours of tops and doors/drawers to be selected from the Builder's standard range at time of colour selection. Size and configuration of vanities to be as indicated on the working drawings.
- (G) Built-in linen cupboard to have four (4) painted pyneboard shelves with doors as indicated on working drawings.
- (H) Pantry unit to be built by the carpenter to have (4) painted pyneboard shelves and a painted flush panel hardboard (honeycomb core) hinged door.
- (I) Wardrobe to include one (1) painted pyneboard shelf and one (1) chrome hanging rail. Wardrobe Doors to be aluminium framed vinyl faced sliding doors in sizes as indicated on working drawings.

20. PLUMBING FIXTURES AND FITTINGS

- (A) Bath to be a 1525mm long Dorf Stirling coloured porcelain enamel pressed steel bath.
- (B) Corner bath only to be a Caroma Mirage 1300mm x 1300mm corner style bath white in colour.
- (C) Kitchen sink to be a Clark "Advance" 2503F 1 ½ bowl 1230mm stainless steel sink.
- (D) Laundry tub to be a 45 litre Everhard MC10 white laundry tub.
- (E) W.C. suites to be Caroma Trident 6/3 litre dual flush cisterns with white Caroma Concorde or equivalent 'S' trap pans.
- (F) Hot water unit to be a Coral Homes nominated 250 litre off peak system for single-storey home and a Coral Homes nominated 315 litre off peak system for 2-storey home. Position as indicated on the working drawings.
- (G) Hot water temperature to all fixtures to be regulated to Australian Standards by in-line tempering valve.
- (H) Two (2) external brass hose taps. Positions as indicated on the working drawings.
- (I) Double towel rails to be medium size Caroma "Bathmate" style. One (1) only to each bathroom and ensuite. Where double towel rails will not fit in a single-storey home or a 2-storey home Coral Homes will supply and fit a matching single Caroma "Bathmate" towel ring.
- (J) Toilet roll holders to be Caroma "Bathmate" style. One (1) only to each W.C.

(K) Floorwastes to wet areas when required by Local Council.

(L) All to comply with AS3500.

21. TAPWARE

(A) Wet areas (excluding Kitchen)

- Dorf Irwell "Tasman" tapware. Colours of taps and handles to be selected from the Builder's standard range at time of colour selection

(B) Kitchen

- Irwell "Tasman" chrome finish mixer tap with ceramic disk inserts.

22. SHOWER SCREENS AND MIRRORS

(A) Shower screens to be pivot door enclosures in powder coated aluminium frame with clear laminated glass.

(B) Mirrors (silver) to be 1000mm high by the width of the vanity. Frame to be powder coated aluminium.

(C) Installation to comply with AS1288/1994 and all to comply with AS2208/1996.

23. WATERPROOFING

(A) Waterproofing of wet areas as required to Australian Standards AS3470.

24. CERAMIC TILING

(A) All ceramic floor and wall tiles to wet areas are to be selected from the Builder's standard range at time of colour selection.

Please Note: Décor, Feature and Frieze tiles are NOT included in the Builder's standard range. If Décor, Feature or Frieze tiles are selected, then additional costs will apply.

Please Note: All floor and wall tiles are to be laid in "Stack Bond" pattern. Additional costs will be incurred if a different pattern (i.e. diamond pattern, stretcher bond pattern etc.) is selected. Any additional laying costs to be discussed between the Owner and tiler on site prior to works commencing.

(B) No responsibility will be taken for wall tiles selected by the Owner for use as floor tiles.

(C) Floor tiles with any dimension equal to or larger than 300mm are unsuitable to obtain falls to floor wastes in wet areas. If tiles of this size or larger than this are selected, Coral Homes will NOT lay them.

(D) White grout to wall tiles and cement grout to floor tiles.

(E) 200mm x 100mm Eureka S84 or equivalent ceramic soap holders. One only to each shower.

(F) Tile heights to Wet Areas are:-

Shower recesses - 1800mm high.

Around bath measured from floor - 900mm high.

Skirting tile to remainder - 150mm high.

Splashback to laundry tub - 400mm high.

Splashback to kitchen benches - 400mm high for single-storey home and 600mm high for 2-storey home.

Extent of floor tiling to wet areas depicted on working drawings by hatching marks ##.

25. PAINTING

(A) External painting as described below:-

*** To all external surfaces that require a paint finish (eg eave linings, gable linings and trims, external timber doors etc)

Please Note: Painted fascia and gutter is an extra cost over and above standard Colorbond.

(B) Internal painting as described below:-

* All walls to be Low Sheen Vinyl paint all in one colour.

* All ceilings to be Flat Plastic Ceiling paint all in one colour.

* All internal woodwork to be Full Gloss Enamel paint all in one colour.

* All doors to be Full Gloss Enamel paint all in one colour.

Any additional colour to any of the above surfaces is an extra cost.

(C) Paints used to be Dulux (or its subsidiaries) white based paint.

(D) Paintwork to be Coral Homes standard 3-coat system in colours selected from the Builder's standard range at time of colour selection.

26. MISCELLANEOUS ITEMS

(A) Builders debris will be cleared from site and excess reusable building materials are the property of the Builder.

27. FLOOD AFFECTED AND UNSTABLE SITES

Most Local Councils restrict the issuing of information to Builders on minimum floor levels for houses in flood affected areas until a building application has been approved.

This greatly affects Coral Homes ability to foresee any extra costs involved in raising building platform/floor levels to meet Local Council's minimum requirements at contract signing stage.

Therefore Coral Homes CANNOT include such costs to raise the minimum floor levels in our fixed price site costs.

No allowance has been made should Local Council require the level of the building platform/floor slab to be raised to meet any minimum flood level requirements. If required, then all costs including imported fill, machine hire, flood survey to determine AHD levels, Engineers slab design fees, Local Council fees, drafting fees and administration fees will be incurred by the Owner.

This contract does NOT include an independent test and report on unstable sites. All costs associated with the Geotechnical Engineer's test/report and any additional foundation costs will be incurred by the Owner.

We understand that Coral Homes has not allowed for any extra costs that may be associated with raising the floor level to meet Local Council's minimum floor level requirements and all costs associated with a Geotechnical Engineer's test/report.



Owner's Initials



Owner's Initials

26/5/2003
Date

QC1
2000

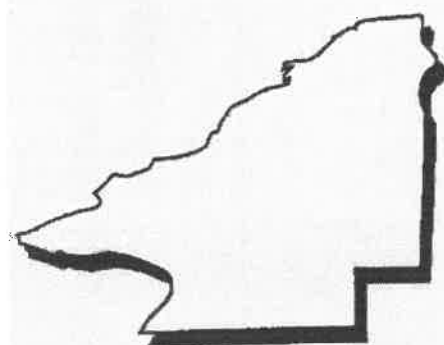


☐ OWNER'S COPY ☐ BUILDER'S COPY

OWNERS: Jeffrey Veldink and Gabrielle Veldink
SITE ADDRESS: Lot 48 Cassin Place, Redland Bay

Plain Language New Home Construction Contract

**This Contract is suitable for the
construction of a new home to
completion only**



This Contract complies with Domestic Building
Contracts Act 2000

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consent of HIA.



These general conditions have been prepared by HIA based on
policy and risk allocation decisions of HIA.

These general conditions are not suitable for domestic building
work outside Queensland as that work may be covered by
particular legislation in different States.

The terms and condition set out in These conditions may not
be suitable for every project and have been designed for use
for building a new home to completion.

HIA does not make any representation as to the suitability of
these conditions for any particular project.

As legislation affecting domestic building work may change
from time to time users should, prior to using these general
conditions, satisfy themselves about the effect on these general
conditions of any such changes made after the date of these
general conditions

Users of these conditions must make their own assessment (or
seek professional advice) as to the appropriateness of these
conditions for a project or any changes that may need to be
made to these conditions.

ATTENTION NEW HOME BUYER:

Schedule 1 provides for the Owner's e-mail address.

Please only complete this if you prefer we forward correspondence to you by e-mail rather than by mail.

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

SCHEDULE 1 PARTICULARS OF CONTRACT

ITEM

1. This contract is dated the 2 day of June 20 03

2. The owner's name(s) Jeffrey Veldink & Gabrielle Veldink
address 3 Camdrecht Cleveland
Email address _____
ACN _____ ABN _____
Mobile Phone 041517251 Phone (w) 38212520 Phone (h) 38210940
Is the owner a resident owner? YES/NO (Delete one)

3. The builder's name(s) Carol Homes Old Pty Ltd
address 42 Silegato Drive, Oxenford, Queensland, 4210
Email address customerservice@carolhomes.com.au
ACN 097 304 062 ABN _____
builder's licence no. 1014053 HIA membership no. 857597
Fax 07 5529 4188 Mobile phone N/A
Phone (w) 07 5529 4222 Phone (h) N/A
TO VERIFY YOUR BUILDER IS A HIA MEMBER CALL 1902 973 535

4. The works (describe generally (ie. Low set brick veneer house) and state the plans and specifications that set out the detail of the works and form part of this contract).
Brick veneer house as described in plans numbered 1 to 15 dated 28-May-03 and Specifications numbered 1 to 6 dated 26-May-03 reference SP7847 and New Home Tender numbered 1 to 12 dated 26-May-03 reference 100003.

5. Contract price (Clause 1 and 38). The contract price includes GST.
Price excluding GST \$170,155.46
Plus GST on the above amount \$17,015.54
The contract price is GST inclusive One Hundred and Eighty Seven Thousand One Hundred and Seventy One Dollars (\$187,171.00)

WARNING-The contract price is subject to change. The clauses that allow for changes to the contract price are clauses 9, 19, 11, 13, 15, 16, 19, 20, 21 and 22.

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

However, the contract price may include amounts for the above services if you are to make payment for such services directly to the builder.

6. Start and price review date (Clauses 2 and 16) 18-Aug-03

7. The land (Clause 6)

Lot 48

RP/SP No. 131202

Certificate of Title

Street Address Cassara Place, Redland Bay

8. Matters affecting the site (Clause 6) - The owner must complete this

The 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.

The Owner agrees to take full responsibility for compliance of any matters stated and indemnifies the

Builder against same.

X

9. Lending body (Clauses 2, 4 and 7)

Westpac

initials g p

10. Building period (Clause 3 and 17)

The works must reach practical completion within 221 days after commencement, subject to Clause 17.

(a) Calculable delays

The building period includes the following allowances for:

- Inclement weather and the effects of inclement weather 17 days
- Weekends, public holidays, restricted days off and other days not generally available for the carrying out of the works 66 days
- Any other matter that is reasonably likely to delay the carrying out of the works N/A days

(b) Incalculable delays

The works will be delayed due to the following specific causes of delay that the builder cannot adequately estimate the period of likely delay:

Specific cause

General effect that the delay is likely to have on the carrying out of the works.

Material and/or trade shortages

If experienced, any delay will be for a period of time

Owner supplied work and/or materials

Any items noted "By Owner" in the plans dated 20-May-03 and/or New Home Tender reference TL 7847, issued 26-May-03 may delay work for a period of time

Read Imported Para A10

If experienced, any delay will be for a period of time

X

initials g p

Incalculable delays include things like obtaining a specific imported material (such as marble cladding) that the builder knows is subject to the vagaries of international shipping.

The building period stated above is the total of the allowances for calculable delays and the allowance for the carrying out of the works. The building period is in calendar days and not working days.

11. Late completion damages (Clause 23)

\$ 15.00 per day

(if nothing stated then \$15)

12. Other contract documents (Clauses 13 and 38)

I, New Home Tender reference TL 7847, dated 26-May-03 read in conjunction with the Specifications.

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.

X

initials g p

13. Owner's Guarantors (Clause 35)

X

initials g p

SCHEDULE 2 PROGRESS PAYMENTS

PART A - PRESCRIBED PROGRESS PAYMENT SCHEDULE

This part applies unless Part B is completed.

Section 66 of the Domestic Building Contracts Act prescribes the following payment schedule:

STAGE	PERCENTAGE (%)	AMOUNT (\$)
Deposit		
Base	10	
Frame	15	
Enclosed	35	
Fixing	20	
Practical Completion		
Balance		
TOTAL		

Note: The total must equal the contract price stated at item 5. The deposit may not exceed 5% if the contract price is \$20,000 or more, or 10% if the contract price is less than \$20,000.

In the above schedule the stages have the following meanings:

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

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

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

- (a) the external wall cladding is fixed; and
 - (b) the roof covering is fixed, but without:
 - (i) soffit linings necessarily having been fixed; or
 - (ii) for a tile roof - pointing necessarily having been done; or
 - (iii) for a metal roof - scribing and final screwing off necessarily having been done; and
 - (c) the structural flooring is laid; and
 - (d) the external doors are fixed (even if only temporarily), but, if a lockable door separating the garage from the rest of the building has been fixed, without the garage door necessarily having been fixed; and
 - (e) the external windows are fixed (even if only temporarily).
- "Fixing stage" means the stage when all internal lining, architraves, cornice, skirting, doors to rooms, baths, shower trays, built-in cabinets and built-in cupboards of a building are fixed and fixed in position.

"Practical completion" means the stage when the works:

- (a) have been completed in accordance with this contract and all relevant statutory requirements apart from minor defects or minor omissions; and
- (b) are reasonably suitable for habitation.

PART B - CUSTOMISED PROGRESS PAYMENT SCHEDULE

Notice: The Domestic Building Contracts Act generally prohibits a builder from demanding or receiving progress payments that are more than the amounts set out in the Act.

Part B is to be used where the regulated table is inappropriate for the works or you wish to use your own stages or percentages. To use Part B you must state the reason why you are not using the regulated table and complete the progress payment table. If this Part B is completed then Part A does not apply.

REASON: Progress Payments as set out below are amended under Schedule 2 Part B due to the methods and timing of the construction schedule.

PROGRESS PAYMENT TABLE

You need to complete this table giving a full description of the stages at which payment claims may be made and the percentage and amount of the contract price that is payable at each stage. If you use the name of a stage in Part A, it will have the same meaning unless you give a different meaning in the schedule.

STAGE	PERCENTAGE	AMOUNT
1 DEPOSIT	5%	\$9,358.00
2 BASE	10%	\$18,716.00
3 FRAME (see description below)	15%	\$28,074.00
4 ENCLOSED (see description below)	35%	\$66,509.00
5 FIXING	20%	\$37,434.00
6 PRACTICAL COMPLETION	15%	\$28,074.00
TOTAL	100%	\$187,171.00

Note: The total must equal the contract price stated in item 5. The deposit by law cannot exceed 5% if the contract price is \$20,000 or more, or 10% if the contract price is less than \$20,000.

In the above schedule the stages have the following meanings:

"Base stage" means:

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

"Frame stage" means the stage when a building's frame is finished on a single storey home. On 2-storey and split level constructions the frame of the garage and or portico are not required to be completed.

"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) on 2-storey and split level constructions the roof covering to any ground floor area is not required to be completed
- (d) the structural flooring is laid; and
- (e) the external doors are fixed (even if only temporarily), this excludes the garage door and any internal access door from the garage to the dwelling; and
- (f) the external windows are fixed (even if only temporarily).

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

"Practical completion" means the stage when the works:

- (a) have been completed in accordance with this contract and all relevant statutory requirements apart from minor defects or minor omissions; and
- (b) are reasonably suitable for habitation.

Owner's initials

Owner's initials

SCHEDULE 3 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.

All items listed "By Owner" as described on the plans dated 26-May-03 and/or New Home Tender reference T179473 dated 26-May-03 are excluded items.

X Initials *[Signature]*

SCHEDULE 4 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 are fixtures and fittings that the owner is to select after this contract is signed and may include 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				
Defined description of the item	Estimated quantity allowed for	Estimated \$ per item	Allowance \$	Margin on excess (if building started 2009)
<i>[Signature]</i>				

PROVISIONAL SUM ITEMS				
Defined description of the item	Estimated quantity allowed for	Estimate rate	Allowance \$	Margin on excess (if building started 2009)
<i>[Signature]</i>				

SPECIAL CONDITIONS

[Signature]

SIGNATURES

This contract is made between the owner and the builder.

The schedule form part of this contract; however Annexure 2 does not form part of this contract.

The parties have signed this contract on the date stated in item 1.

The owner has read and understood this contract.

Owner 1

Name: *Gabrielle Veldink* Owner's Signature: *[Signature]*

Witness's name: *[Signature]*

Witness's signature: *[Signature]*

Owner 2

Name: *Jeffrey Veldink* Owner's Signature: *[Signature]*

Witness's name: *[Signature]*

Witness's signature: *[Signature]*

Builder

Name: *Karen Heabsol* Builder's Signature: *[Signature]*

Signed for and on behalf of Coral Homes Qld Pty Ltd

Witness's name: *D. Bowen*

Witness's signature: *[Signature]*

Please note:

- Where a company is signing, "by A. Smith, director", "Signed for and on behalf of XYZ Pty Ltd".
- Where a partnership is signing, "Enterprises by A. Smith, partner" or "Signed for and on behalf of XYZ Building".
- The owner is also to initial: (a) If Part B of schedule 2 is used, on page 6 and (b) Clause 16 where indicated.

Note: the builder must give the owner a signed copy of this contract within 5 working days after it is signed by the builder.

NOTICE TO THE BUILDING OWNER OF RIGHT TO WITHDRAW FROM THIS CONTRACT UNDER SECTION 72 OF THE DOMESTIC BUILDING CONTRACTS ACT

You may end this contract within 5 business days after the receipt day for this contract. The receipt day for this contract means:

- the day on which you receive the following documents from the building contractor:
 - a copy of this signed contract;
 - a copy of the appropriate contract information statement for this contract; or
- if the documents mentioned in paragraph (a) are received by you from the building contractor on different days - the later of the days.

To end this contract within the time allowed you must complete a withdrawal notice and:

- give it to the building contractor; or
- leave it at the address shown as the building contractor's address in this contract; or
- serve it on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by you

GENERAL CONDITIONS

Clause 1

Builder's obligation

PERFORMANCE

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

Date for commencement

COMMENCEMENT

2.1 Commencement is to take place on or before the start and price review date stated in item 6 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 to the builder the contract price under Clause 7;
- (c) the owner establishes the security account under Clause 8;
- (d) the owner gives the builder possession of the site under Clause 10;
- (e) the builder receives all permissions, consents and approvals required from the relevant statutory or other authority under Clause 11; or
- (f) where the name of a lending body is stated in item 9, the owner gives the builder a notice from the lending body that construction of the works may commence, whichever is the later.

When essential matters not satisfied

2.2 If any of the requirements set out in subclause 2.1 are not satisfied by the start and price review date, the builder may, by written notice to the owner:

- (a) end this contract and, in which case, subclause 28.8 applies; or
- (b) extend the time for the owner to satisfy the requirements of subclause 2.1 and, at the option of the builder, increase the contract price under Clause 16.

Commencement of the building period

2.3 The building period starts on the actual day of commencement.

Builder to ensure commencement

2.4 The builder must ensure commencement occurs as soon as is reasonably possible.

Clause 3

Builder to complete the works

COMPLETION AND PROGRESS

3.1 The builder must complete the works on or before the end of the building period stated in item 10 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

Owner to pay progressively

PROGRESS PAYMENTS

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;
- (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.

Due date for payments

4.5 The owner must pay a progress claim to the builder within 5 working days of receiving the progress claim.

No certificates required

4.6 The builder is not required to give any certificate of approval from any relevant statutory or other authority to the owner as a precondition to the payment of a progress claim.

Owner liable if lending body does not pay

4.7 The owner must ensure the lending body, if any, pays a progress claim by the due date. If payment is not made by the due date, the builder is entitled to claim default interest under Clause 33.

Payment on account

4.8 Other than in relation to the final claim:

- (a) payment of a progress claim is on account only; and
- (b) the owner has no right of set off.

Clause 5

Lending body may directly pay the builder

DIRECTION TO THE LENDING BODY

5.1 The lending body may pay all money advanced to the owner for payment of all or part of the contract price, adjusted by any additions or deductions made under this contract, directly to the builder.

Direction to the lending body

5.2 The owner must give a direction to the lending body to pay all such money advanced by the lending body directly to the builder.

Clause 6

Owner to give evidence of title

EVIDENCE OF TITLE

6.1 As soon as practicable after the date of this contract, the owner must give to the builder evidence, to the builder's satisfaction, of the owner's title to the land.

Owner warrants title and description

6.2

The owner warrants:
(a) that the owner is entitled to build on the land; and
(b) the accuracy of the description of the land as set out in item 7.

Owner warrants disclosure of restrictions affecting the site

6.3

The owner warrants that all easements, covenants, caveats and zoning restrictions that may affect the works being carried out and constructed on the site are disclosed in item 8.

Clause 7

Not subject to finance

EVIDENCE OF CAPACITY TO PAY

7.1 This contract is not subject to finance.

Owner to give evidence of ability to pay on signing

7.2

As soon as practicable after the date of this contract, the owner must give the builder evidence, to the builder's satisfaction, of the owner's capacity to pay the contract price by the progress payments and at the stages specified in schedule 2.

Owner to give evidence of ability to pay on request

7.3

From time to time if requested by the builder, the owner must give to 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.

Owner to use best endeavours

7.4

Where the name of a lending body is stated in item 9, the owner must use best endeavours to sign all documents and do all acts necessary to obtain:

- (a) approval from the lending body on its usual terms for a loan of an amount sufficient to enable the owner to pay the contract price; and
- (b) a notice from the lending body to the builder that all documents relevant to the loan are completed and that construction of the works may commence.

Owner to give evidence of any failure

7.5 If the owner does not obtain:

- (a) approval under subclause 7.4(a); or
 - (b) the notice under subclause 7.4(b),
- then the owner must give the builder written evidence, signed by the lending body, as to the reason for the failure.

Clause 8

Owner to establish security account

SECURITY ACCOUNT

8.1 The owner must:

- (a) on or before commencement; and
- (b) immediately on the request of the builder from time to time, 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 signatures 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.

Clause 9

Owner to identify the site

SITE INFORMATION AND SURVEY

9.1 Unless stated elsewhere in this contract, the owner must, prior to the builder commencing, identify the land, the site and the siting of the works.

Owner to survey

9.2

If, in the builder's opinion, the boundaries of the land or the site or the siting of the works are unclear, the builder must give the owner a written notice asking the owner to provide a survey of the land or the site, as required.

If the Owner does not survey

9.3

If the owner does not provide a survey within 5 working days of the builder giving such notice, the owner is deemed to have requested a variation for the builder to obtain the survey.

Clause 10

Owner to give exclusive possession

SITE POSSESSION AND ACCESS

10.1 The owner must, as soon as practicable after the date of this contract, give the builder exclusive possession of the site to carry out the works.

All weather access

10.2 The owner must provide all weather access. If the owner does not provide all weather access and the builder will be required to carry out extra work to achieve such access, the owner is deemed to have requested a variation for the builder to carry out such extra work.

Owner not to impede

10.3 The owner and officers of the lending body:

- (a) must not interfere with:
 - (i) the builder's access or possession of the site; and
 - (ii) the progress of the works;
- (b) must not:
 - (i) make inquiry of;
 - (ii) issue directions to; or
 - (iii) give instructions to, the builder's workers, suppliers or subcontractors. Communication must only be with the builder; and
- (c) may only have access to the works under the builder's supervision, at reasonable times and after giving reasonable prior written notice, for the purposes of inspecting the progress of the works.

Owner to pay costs of interference

10.4 Notwithstanding any other provision of this contract, the owner is liable to pay to the builder, on demand, any additional costs the builder incurs because the owner or the owner's representative interferes with the carrying out of the works.

Builder to claim interference costs

10.5 To claim payment from the owner, the builder must give the owner written notice of such costs within 5 days after the interference comes to the builder's knowledge.

Owner liable for damage

10.6 The owner will be solely responsible for any loss or damage sustained by the owner if the owner accesses the site without the builder's prior written approval.

Owner indemnifies the builder

10.7 The owner indemnifies the builder against any liability, loss, claim or proceeding in respect of any injury to any person or loss or damage to any property on the site to the extent that such injury, loss or damage is connected with the owner's breach of this Clause.

Clause 11

Requirements of statutory and other authorities

COMPLIANCE WITH REQUIREMENTS OF LOCAL AND OTHER AUTHORITIES

11.1 The builder must, on behalf of the owner, comply with any lawful requirement of any statutory or other authority but only to the extent that such requirement relates to carrying out and completing the works.

Variation to comply with a requirement

11.2 The builder must:

- (a) notify the owner of any extra work required to comply with subclause 11.1; and
- (b) request for a variation to carry out that extra work.

Owner to do acts

11.3 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.

Owner's works and final certificate

11.4 If the owner is to carry out other works and the failure to complete those works on or before practical completion prevents the builder from obtaining a final certificate from the relevant statutory or other authority, the owner releases the builder from any obligation to obtain the final certificate.

Clause 12

Where the owner is to supply

USE OF PLANS

12.1 If the owner is to supply the plans to the builder then, without cost to the builder, the owner must give the builder 5 copies of the plans to enable the builder to carry out the works.

Indemnity

12.2 Each party indemnifies the other party for all costs and expenses incurred relating to any claim for breach of copyright if the builder carries out the works according to plans which are:

- (a) supplied by that party;
- (b) prepared under instruction of that party; or
- (c) prepared from sketches provided by that party.

Grant of licence

12.3 Where the builder draws the plans, the owner agrees that the builder retains copyright in those plans but the builder grants to the owner a licence to cause the construction of the works by the builder in accordance with those plans.

Licence fee

12.4 The parties agree that the reasonable fee for the licence granted to the owner is 5% of the contract price. It is acknowledged that the contract price includes this licence fee.

Unauthorised use of plans

12.5 If the owner uses the builder's plans without the builder's written consent, other than under the above licence, the owner must pay to the builder on demand the licence fee referred to in subclause 12.4.

Clause 13

Owner warrants contract documents

DISCREPANCY OR ERROR IN DOCUMENTATION

13.1 The owner warrants the accuracy of the contract documents supplied by the owner and the suitability of the design, materials and methods of working each specified therein.

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 subclause 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.

Order of precedence 13.6 The order of precedence is:

(a) any special conditions;

(b) these general conditions;

(c) the specification;

(d) the plans; then

(e) other documents in the order listed in item 12.

Clause 14 INSURANCE AND RISK

Builder to have works insurance cover 14.1 The *builder* must:

- (a) 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
- (b) 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) note the insured as jointly being the *builder* and the *owner*; 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.

Public liability risk 14.3 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,

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.

Workcover 14.4 The *builder* must comply with all obligations imposed on the *builder* under the Workcover Act.

Builder not liable for certain property 14.5 The *builder* is not liable for any liability, loss, claim or proceeding in respect of any property placed on the *site* without the *builder's* written approval.

Clause 15 UNFORESEEN CIRCUMSTANCES

Builder to give notice of unforeseen circumstances 15.1 If the *builder* becomes aware of *unforeseen circumstances*, the *builder* must promptly notify the *owner* in writing and cease the carrying out of the *works*.

Effect of unforeseen circumstances 15.2 Subject to subclause 15.5, if the *unforeseen circumstances* differ from those either:

(a) disclosed to the *builder* prior to this *contract* being signed; or

(b) shown in the *contract documents*, and:

(c) if the effect of that difference requires more or less work than that which a reasonable *builder* would have anticipated on the signing of this *contract*; and

(d) that work is not provided for elsewhere in this *contract*,

then the *builder* is to ask for a *variation* to carry out that work under subclause 20.3.

Builder may end contract 15.3 If the *owner* does not agree to such *variation* within 5 *working days* on and from the date the *builder* gives the *owner* a *variation document*, the *builder* may, at any time thereafter, do either or both of the following:

- (a) suspend the carrying out of the *works* under Clause 19;
- (b) end this *contract* under Clause 28.

Builder's entitlement to extra costs 15.4 If the *owner* agrees to the such *variation*, the *builder* is only entitled to payment of an additional amount for such work where the *builder*:

- (a) had the *foundations data* when the *builder* entered into this *contract*, if the need for the additional amount can not be established from that data; or
- (b) did not have the *foundations data* when the *builder* entered into this *contract*, if the need for the additional amount could not have been reasonably established, and the amount calculated, had the *builder* obtained the *foundations data* before entering into this *contract*.

Builder to carry out the work 15.5 Notwithstanding the above, the *builder* must, if subclause 15.2 does not apply, carry out that work at the *builder's* cost.

Clause 16

Regulated clause -
delay before
commencement

DELAY DAMAGES

16.1 Subject to subclause 16.3, where *commencement* is delayed for longer than 4 weeks on and after the *start and price review date* due to a cause of delay for which the *builder* is not responsible, the *owner* must pay to the *builder*, as a debt due and payable, the lesser of the amount:

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

Regulated clause -
delay after
commencement

16.2 Subject to subclause 16.4, 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 lesser of the amount:

- (a) of the costs incurred by the *builder* because of the delay;
- (b) representing 0.05% of the *contract price* for each *day* of the delay.

Delay before
commencement -
unregulated clause

16.3 Where:

- (a) the *contract price* is more than the *set amount*; or
- (b) this *contract* is to be administered by an architect engaged by the *owner*,

and *commencement* is delayed for longer than 4 weeks on and after the *start and price review date* due to a cause of delay for which the *builder* is not responsible, the *owner* must pay to the *builder*, as a debt due and payable, the greater of the amount:

- (c) of the costs incurred by the *builder* because of the delay; and
- (d) 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.

Delay after
commencement -
unregulated clause

16.4 Where:

- (a) the *contract price* is more than the *set amount*; or
- (b) this *contract* is to be administered by an architect engaged by the *owner*,

then for every day that, 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 greater of the amount:

- (c) .. of the costs incurred by the *builder* because of the delay; and
- (d) representing 0.05% of the *contract price* for each *day* of the delay.

Clause 17

Builder entitled to
claim

DELAYS AND EXTENSIONS OF 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 claim

17.2 A claimable delay means a delay caused by the *builder* suspending the *works* under Clause 19 or from a cause beyond the *builder's* sole control that was not reasonably foreseeable at the time the *builder* entered into this *contract* including:

- (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*; or
- (c) a *claimable delay* in excess of the allowance for that cause of delay stated in item 10;
- (d) an *incalculable delay* if the cause and the general effect that the delay is likely to have on the carrying out of the *works* are stated in item 10;
- (e) an act of God, fire, explosion, earthquake or civil commotion;
- (f) an industrial dispute;
- (g) a dispute with adjoining or neighbouring residents or owners;
- (h) anything done or not done by the *owner*;
- (i) delays in getting any approvals;
- (j) a delay in the supply of materials selected by the *owner*;
- (k) the need for a survey or other report in relation to the *site*; or
- (l) the industry shutdown being a 3 week period commencing on or about 22 December in each year.

How the builder is to
claim

17.3 To claim an extension of time, the *builder* must give the *owner* written notice detailing both:

- (a) the cause of the delay; and
 - (b) the extension of time claimed,
- by the later of the day that is:

- (c) 20 *working days* on and after the *builder* is aware of both the cause and the extent of the delay; or
- (d) 5 *working days* on and before the *date of practical completion*.

17.4 If the *owner* wishes to dispute a claimed extension of time the *owner* must, within 5 *working days* of receiving the *builder's* claim, give the *builder* a written notice:

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

Allowance for
omissions

17.5 The *builder* must allow a reasonable reduction to the *building period* if, by *variation*, work is omitted from the *works*.

Clause 18

COMPLIANCE WITH WORKPLACE HEALTH & SAFETY ACT

Principal contractor

18.1 The *builder* is the "principal contractor" for the purposes of Section 13(2) of the Workplace Health and Safety Act 1995.

Right to exclude

18.2 The *builder* may exclude or remove from the *site* any person who fails to comply with the requirements of the Workplace Health and Safety Act 1995.

Clause 19

Builder's right to suspend

SUSPENSION OF WORKS

19.1 The *builder* may by written notice to the *owner* suspend the carrying out of the works if:

- (a) the *owner* does not pay a progress claim as required by Clause 4;
- (b) the *owner* does not give the *builder* evidence, satisfactory to the *builder*, of the *owner's* capacity to pay the balance of the *contract price* when requested by the *builder* under subclause 7.3;
- (c) the *owner* enters the *site* in breach of Clause 10;
- (d) the *owner* does not give an instruction within 5 *working days* of becoming aware of a problem under Clause 13;
- (e) the *builder* gives written notice of unforeseen circumstances under Clause 15 and the *owner* fails to agree to a *variation* within 5 *working days* of receiving the *builder's* request;
- (f) the *owner* objects to the *builder's* selection of a substitute prime cost item in accordance with Clause 21;
- (g) the *owner* or the *owner's* contractors when supplying materials or goods or carrying out any work breach the requirements of Clause 24;
- (h) the *owner* takes possession of the *site* or the works, without the *builder's* written consent, prior to payment of all moneys owing under this *contract*;
- (i) any dispute or difference between the *owner* and the *builder* has been referred for determination to the Queensland Building Tribunal under Clause 37; or
- (j) the *owner* is otherwise in breach of this *contract*.

Builder in
recommence

19.2

The *builder* must recommence the carrying out of the works within a reasonable time after the *owner* gives the *builder* written notice that the reason for the suspension no longer exists.

Costs of suspension
and recommencement

19.3

The *owner* must, on demand, pay to the *builder*, in addition to any other amounts the *builder* may have a right to claim, the *builder's* costs of suspending and recommencing the works including the *builder's margin* applied to those costs.

No waiver

19.4

The *builder's* exercise of the right of suspension does not prevent the *builder* from exercising any right to end this *contract* under Clause 2.5 in regard to the same occurrence.

Clause 20

Contents of a variation
document

VARIATIONS

20.1

A *variation document* must be in readily legible English and:

- (a) in all cases, state:
 - (i) the work required to carry out the *variation*;
 - (ii) the price of the *variation*;
 - (iii) when that price becomes payable; and
 - (iv) if there will be a delay because of the *variation*, a reasonable estimate of that delay; and
- (b) where the *builder* requests the *variation* must, in addition, state the reason for the *variation*.

Owner's request

20.2

If the *owner* requests a *variation*, the *builder* must, before commencing the work and as soon as is reasonable, either:

- (a) agree to carry out the *variation* by giving the *owner* a *variation document* signed by the *builder*; or
- (c) refuse to carry out the *variation*. If the *builder* refuses, the *builder* does not have to give any reasons for such refusal.

Builder's request

20.3

If the *builder* requests a *variation*:

- (a) the *builder* must, before commencing the work, give the *owner* a *variation document* signed by the *builder*;
- (b) if the *owner* agrees to the *builder's* request, the *owner* must sign the *variation document* and return it to the *builder* as soon as practicable after receiving it.

Where the owner does
not sign the variation
document

20.4

If a *variation* is agreed and the *owner* has not, within 5 *working days* of the *builder* giving the *owner* a *variation document*, signed that *variation document* and given it to the *builder*, the *builder* may:

- (a) if the *builder* has taken all reasonable steps to ensure the document is signed by the *owner*, carry out the *variation*; or
- (b) withdraw the request or acceptance, as applicable.

Builder to give copy of
variation document

20.5

As soon as practicable (but within 5 *working days*) after a *variation* is agreed, the *builder* must give the *owner*:

- (a) a copy of the *variation document* signed by the *owner* and the *builder*; or
- (b) where the *owner* has not signed the *variation document* and the *builder* has taken all reasonable steps to ensure the document is signed by the *owner*, a copy of the *variation document* signed by the *builder*.

Where work is
required urgently

20.6

Notwithstanding the above, the *builder* is not required to create a *variation document* 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.

If the price is not
agreed

20.7

If the price of a *variation* is not agreed, the price is:

- (a) for additional work, the reasonable price for that work including an amount for the *builder's margin*; and
- (b) for omitted work, the reasonable price for that work.

Payment of variation

20.8

The price of a *variation* becomes payable immediately after that work is commenced unless otherwise agreed.

Owner must not refuse
where work is
requested by law

20.9

The *owner* must not refuse a request by the *builder* for a *variation* where the *variation* is required for the works to comply with the law.

Where builder is not
entitled to be paid

20.10

In the case of a *variation* requested by the *builder*, the *builder* is not entitled to payment for extra work unless the *variation* became necessary because of circumstances that could not have been reasonably foreseen by the *builder* at the date of this *contract*.

Clause 21
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.

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.

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.

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.

21.5 Each prime cost item must be described and have an allowance stated next to it in schedule 4 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.

21.6 Each provisional sum item must be described and have an allowance stated next to it in schedule 4 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.

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; and

(b) more than the allowance, the total of the difference plus the relevant margin on excess stated in schedule 4 or a schedule forming part of this contract applied to the difference is added to the contract price.

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.

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.

Clause 22
Items that are not part of the works

22.1 The owner and the builder agree that the materials, goods, labour and services set out in schedule 3 are excluded from the works and the cost of those items are not included in the contract price.

Clause 23
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 other regulation after the date of this contract.

Clause 24
Owner's obligation

24.1 Materials, goods and work to be provided by the owner must be:

(a) suitable for inclusion 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.

24.2 Notwithstanding subclauses 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.

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.

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.

24.5 Notwithstanding subclause 14.5, 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.

Feedage, 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:

(a) had the foundations data when the builder entered into this contract, the need for the additional amount can not be established from that data; or

(b) did not have the foundations data when the builder entered into this contract, the need for the additional amount could not have been reasonably established, and the amount calculated, had the builder obtained the foundations data before entering into this contract.

Clause 24
Builder not responsible

24.1 Materials, goods and work to be provided by the owner must be:

(a) suitable for inclusion 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.

24.2 Notwithstanding subclauses 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.

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.

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.

24.5 Notwithstanding subclause 14.5, 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.

Clause 25
Builder to give evidence of cost

25.1 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.

Clause 26
Builder to give evidence of cost

26.1 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.

Clause 27
Builder to give evidence of cost

27.1 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.

Clause 28
Builder to give evidence of cost

28.1 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.

Clause 29
Builder to give evidence of cost

29.1 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.

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 coordination 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 subclause 24.6.
Builder may exclude people	24.8	If the owner or the owner's contractor does not observe all of the requirements in subclauses 24.6 and 24.7 the builder may exclude or direct the owner or the owner's contractor 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 Builder to give estimate	PRACTICAL COMPLETION	
	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	On reaching practical completion the builder must give the owner:
		(a) a notice of practical completion stating the builder's opinion of the date of practical completion; and
		(b) the final claim.
Final claim	25.3	Subject to subclause 25.4, the owner must, within 5 working days of receiving the final claim, pay the amount of the final claim to the builder.
Final claim due	25.4	The final claim is not due until the builder:
		(a) gives the owner a defects document signed by the builder listing minor defects and minor omissions:
		(i) that are agreed to exist and the time for when those items will be completed or rectified; and
		(ii) that the owner claims to exist but the builder does not agree with; and
		(b) makes all reasonable efforts to have the owner sign the document to acknowledge its contents.

Owner's notice	25.5	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	25.6	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	25.7	On completion of those requirements the builder must give a further notice of practical completion stating the new date of practical completion and subclause 25.3 applies.
Payment is evidence	25.8	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; and
		(b) the builder's liability under subclause 27.1.
Date of practical completion	25.9	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 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 Illegal early possession	OWNER TAKING 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.

26.3 If the *owner* breaches subclause 26.1 then, unless such possession or use is with the written consent of the *builder* under subclause 26.2 or after the *owner* has lawfully ended this *contract* under Clauses 28 or 29:

- (a) the *owner* must, in addition to the *builder's* other rights, immediately pay all money then payable under this *contract* to the *builder*;
- (b) the *owner* is deemed to have accepted the *works* in satisfaction of the *builder's* obligations under this *contract*;
- (c) the *builder* is deemed to be discharged and released from:
 - (i) carrying out further *works* including any defects liability on the incomplete part of the *works*; and
 - (ii) all liabilities, costs, losses or damages which the *owner* may suffer or incur which in any way relate to the non-completion of the *works* or any defect in the *works* due to the non-completion; and
- (d) 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 anyway related to:
 - (i) the *owner's* breach of subclause 26.1; or
 - (ii) any direction to rectify or complete incomplete parts of the *works* issued by the Queensland Building Services Authority or Queensland Building Tribunal.

26.4 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*.

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

Clause 27

27.1 The *builder* must rectify any defects or other faults (except for minor settlement or minor shrinkage) due to the *works* not being in accordance with this *contract* that appear and are notified in writing by the *owner* to the *builder* within 6 calendar months after the date of practical completion.

DEFECTS LIABILITY PERIOD

Clause 28

28.1 The *builder* is in substantial breach of this *contract* if the *builder*:

- (a) suspends the carrying out of the *works*, otherwise than under Clause 19;
- (b) has the *builder's* licence cancelled or suspended; or
- (c) is otherwise in substantial breach of this *contract*.

28.2 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 subclause 4.2;
- (c) does not give evidence of the *owner's* title as required by Clause 6;
- (d) does not give evidence of the *owner's* capacity to pay the *contract price* from time to time as required by Clause 7;
- (e) where a *lending body* is stated in item 9, does not comply with:
 - (i) the requirements of subclauses 7.3 or 7.4;
 - (ii) any of the requirements of the *lending body*; or
 - (iii) the requirements of subclause 5.2;
- (f) does not establish or maintain the security account as required by Clause 8;
- (g) does not give possession of the site as required by subclause 10.1;
- (h) interferes with or obstructs the *builder* or the *builder's* workers, suppliers or subcontractors in carrying out the *works* in breach of subclause 10.3;
- (i) does not give an instruction within 5 *working days* of becoming aware of a problem under Clause 13;
- (j) does not, or does not ensure that the *owner's* contractors, comply with the requirements of Clause 24;
- (k) takes 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; or
- (l) is otherwise in substantial breach of this *contract*.

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

- (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*.

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

28.5 A party is not entitled to end this *contract* if, within 5 *working days* of receiving the notice to show cause, the party in substantial breach refers the question as to whether the other party has the right to end this *contract* for determination by the Queensland Building Tribunal under Clause 37.

28.6 If a reference for determination is made under subclause 28.5 the carrying out of the *works* is suspended and the notice to show cause is not effective until the Queensland Building Tribunal has made a determination.

When notice is ineffective

28.7 Neither party is entitled to give a notice to show cause while that party is in substantial breach of this contract. A notice given by a party in substantial breach is ineffective.

Builder's rights

28.8 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 as 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.

Other rights unaffected

28.9 Nothing in this Clause 28 alters or affects any rights of either party at law or otherwise to end this contract without notice consequent upon the repudiation of this contract by the other party.

Clause 29

TERMINATION FOR INSOLVENCY

Builder's rights on ending of contract

29.1 If a party:

- (a) informs the other party in writing or its creditors generally that the party is insolvent;
 - (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 subclause 28.8 if this contract is ended under this Clause 29.

Clause 30

No assignment without consent

ASSIGNMENT AND SUBCONTRACTING

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

When given and received

NOTICES

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, 2 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; and
- (d) e-mailed to the party's current e-mail address.

Clause 32

When the owner is entitled

LATE COMPLETION DAMAGES

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 1.1 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; and
- (c) the date that the owner takes possession of the site or any part of the site.

Clause 33

Default interest payable

DEFAULT INTEREST

33.1 If the owner does not pay any amount owing to the builder in full by the due date, then the owner must pay default interest on such amount that is unpaid from time to time.

Clause 34

Owner to pay additional costs

DEBT COLLECTION 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 over the site

CHARGE ON MATERIALS AND 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.

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.

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.

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.

Owner to sign a mortgage
Owner to pay fees and duties

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 13 and enforceable against each such guarantor.

Clause 36

Builder's warranties

STATUTORY WARRANTIES

36.1 To the extent required by the Domestic Building Contracts Act, the builder warrants that:

- 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;
- the works will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975;
- the works will be carried out in an appropriate and skilful way and with reasonable skill and care;
- the works will be carried out in accordance with the plans and the specifications to this contract;
- 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
- 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 paragraph 36.1(a) means:

- generally accepted practices or standards applied in the building industry for the materials; or
- specifications, instructions or recommendations of manufacturers or suppliers of materials.

Clause 37

Reference to Queensland Building Tribunal

DISPUTES

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 Tribunal.

Clause 38

Meanings

INTERPRETATION

38.1 In this contract, except where the context otherwise requires:

"all weather access" means adequate access to the site as reasonably required by the builder to carry out the works;

- that complies with the law; and
- gives the builder access in all weather conditions.

"builder" means the party named in item 3 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 10 as extended by Clause 17;

"calculable delay" means a delay to the carrying out of the works caused by inclement weather, non-working days or any other cause of delay 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 10;

"commencement" means when the builder commences physical work on the site;

"contract" means the agreement between the parties set out in the contract documents;

"contract documents" means these general conditions, any special conditions, the specifications, the plans and other documents specified in item 12;

"contract price" means the amount stated in item 5;

"date of practical completion" has the meaning in Clause 24;

"days" means calendar days;

"default interest" means the annual rate equal to the Commonwealth Bank overdraft index rate: quarterly charging cycle plus 5%;

"defects liability period" has the meaning in subclause 26.1;

"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, 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 Domestic Building Contracts Act;

"*guarantor*" means those persons or entities named as guarantor in *item 13*;

"*incalculable delay*" means a specific cause described in *item 10* that the builder believes will delay the carrying out of the works but for which it is not possible to adequately estimate the period of likely delay;

"*item*" means the relevant item number in *schedule 1*;

"*land*" means the land described in *item 7*;

"*lending body*", where stated in *item 9*, means the 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;

"*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 2* 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*;

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

"*security account*" means an account with a financial institution, bank or building society 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;

"*set amount*" means the greater of \$200,000 or an amount above \$200,000 prescribed as the set amount under a regulation to Section 56 of the Domestic Building Contracts Act.

"*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*;

"*start and price review date*" means the date stated in *item 6*;

"*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;

"*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 subclause 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.

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

Defined terms indicated 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.



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;
- (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.

ANNEXURE 1.

DEED OF GUARANTEE AND INDEMNITY

INTERPRETATION

"builder" is

"owner" is

"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 money's 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 referred to in Clause 1.

3. Principal Debtor

The guarantor is deemed to be a principal debtor jointly and severally liable with the owner to discharge the obligations referred to in Clause 1.

4. No Merger

The guarantor agrees that this Deed does not merge in 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. 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.

6.

Where 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 one of them.

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 independent legal advice prior to executing this Deed of Guarantee and Indemnity.

Signed as a Deed

Guarantor's initials:

Witness' name and signature:

Witness's address:

Date:

ANNEXURE 2

CONTRACT INFORMATION STATEMENT

This Statement is approved under S. 99(1) of the Domestic Building Contracts Act 2000 for HIA QC1, QC2 and QC3 contracts only. This Statement is not to be used for a cost plus contract.

In this Statement, the Domestic Building Contracts Act is referred to as the Act

This Statement contains general information about regulated contracts for the benefit of building owners.

Contract Checklist

- ☐ If the work under the contract is valued at more than \$3300 and involves:

- (a) the construction of a new home or duplex;
 - (b) the construction of any building or fixture associated with your home, such as a garage, carport, retaining wall, driveway, fence, workshop, swimming pool or spa;
 - (c) renovations, extensions, alterations, improvements or repairs to your home, duplex or home unit;
 - (d) kitchen or bathroom refits; or
 - (e) landscaping and paving.
- then, you must enter into a written contract. Your contractor is to provide you with a copy of the written, signed contract as soon as practicable after the contract is entered into (no later than 5 days from the date of the contract) and before commencing work.

Before signing the contract, you should read it thoroughly, together with this statement, and ask your contractor about anything that you do not understand. Check that:

- ☐ the contract is in English and legible;
- ☐ the names and addresses of you and your contractor are clearly stated;
- ☐ your contractor's licence number is stated on the contract and it is the same as on the contractor's licence card;
- ☐ the date the contract is made is indicated;
- ☐ the start and finish dates for the work are stated or if the start date is not known, the contract must state a building period and that your contractor will start the work as soon as it is reasonably possible;
- ☐ the allowances that the contractor has made in working out the time required to do the work for certain types of likely delay (such as bad weather, weekends and public holidays etc) are reasonable for when it is anticipated that the work will be carried out;
- ☐ if the start date is unknown, the contract should state how the start date is to be decided;
- ☐ the location of building site and description of location, including lot-on-plan or similar is included;
- ☐ the total price and payment provisions are clearly stated;
- ☐ definitions of key terms are included;
- ☐ there is description of any fixtures or fittings shown on the plans which are not included in the work;
- ☐ if the work involves footings or slabs, the contractor has obtained appropriate foundations data. You are entitled to a copy of this data on paying for it; and
- ☐ the applicable statutory warranties are set out in the contract.

Other Contract Documents

If your contract includes prime cost items, or provisional sum items, the contract is to have a separate schedule describing each item and showing a breakdown of the estimated prices for each and any margin that your contractor may charge when the actual price is more than the allowance and when claiming payment your contractor must give you evidence of the cost.

The plans and specifications showing in detail what work is to be done are to be attached to the contract. These must be sufficiently detailed to enable any necessary approvals or authorisations from local government or private certifiers to be obtained.

Check the plans for accuracy ensuring all variations are included. Advise your contractor immediately of any errors or omissions. If you have specific requirements with regard to quality and finish, these details (e.g. type and number of coats of paint, materials to be used, etc) should be written in the contract.

Display Homes

If your contract is to construct a home similar to your contractor's display home, your contractor must, unless you agree otherwise and clearly indicate that agreement in your contract, use the same plans and specifications and build to the same quality using materials of the same quality.

The Cooling-Off Period

Under the Act, you have a right to withdraw from the contract during a *cooling-off* period. You may withdraw from the contract during the following periods of time:

- ☐ within 5 working days of receiving, from your contractor, a copy of both the signed contract and this information statement or
- ☐ if the items above are given to you separately, then within 5 working days of receiving the second document.

To withdraw from the contract you must give a written notice of withdrawal to your contractor or to your contractor's address as shown on the contract before the 5 working day period expires. If you withdraw your contractor is entitled to \$100 plus all out of pocket expenses reasonably incurred to the date of withdrawal.

If your contract does not contain a notice advising you of your right to 'cool off', then you are entitled to withdraw within the period up to 7 days after you become aware that the contract should have contained such a notice.

You do not have a right to withdraw if you:

- and your contractor had a previous contract on substantially the same terms for the same site or home; or
- have received independent legal advice before entering into the contract.

You may sign a notice waiving your rights to the cooling off period under a repair contract to enable the contractor to immediately start the repair work.

Building Approvals

Approvals for building work must be obtained from a building certifier. All building certifiers must be accredited by BSA. If you wish to engage a building certifier, legislation states that the engagement must be in writing and must state the certification fee. It is unlawful for a building certifier to certify or approve work with which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

Building inspections on dwellings must be performed by a building certifier or a competent person authorised by the certifier at the footing, slab, frame and final stage. The primary function of these on-site inspections are to ensure that construction work complies with approved plans and recognised building standards, including the *Building Code of Australia* (BCA). These inspections do not ensure compliance with the terms of the contract or judge the quality of the work.

It is your responsibility, working together with your contractor, to ensure that the work is constructed to an acceptable standard.

Your contractor must also provide you with a copy of each certificate of inspection as it is issued. As soon as is practicable after the work is completed, your contractor must also provide you with copies of any reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water or sewerage.

Insurance

For construction of a new home

Make sure that construction insurance has been arranged and paid for by your contractor. This insurance covers your home during the construction phase against such things as fire, storm and temper, flood, theft, vandalism, etc.

For construction involving an existing home

Advise your existing insurance company of the details of the work before it is started. Your home property insurance policy may be inoperative while construction is in progress. Discuss this with your insurance company.

Statutory Insurance

For contracts for residential construction work over \$3,300 in value, the BSA Statutory Insurance Scheme provides up to \$200,000 cover for a 6 1/2 year period if a licensed contractor performs the work. The residential construction work covered includes:

- (a) the construction of a dwelling or unit (provided the building is not over 3 storeys in height) and residential outbuildings (i.e. garage, pool change room, etc); and
- (b) certain replacements of, or extension to, part or all of a residential building (including refitting bathrooms and kitchens).

Your contractor is required to pay the premium directly to the BSA before the plans can be approved by the local government or building certifier. When you receive your Certificate of Insurance and policy from the BSA, read the terms of the policy (note the extent of cover and exclusions) and check that the Notified Contract Value agrees with your contract price. If these amounts vary by more than \$5,000 you should contact the BSA to amend your cover.

PART TWO: DURING CONSTRUCTION

Payments

The Act places restrictions on amounts that your contractor can claim.

The deposit is to be no more than 5% where the price is \$20,000 or more or where the price is less than \$20,000, can be up to 10%.

If the price is to be paid in instalments, the amount of each instalment is to be stated in the contract. The Act sets the following payment schedules for relevant contracts:

Stages	Percentage of Original Contract Price
1. Contract to build to enclosed	20%
Frame Stage	25%
Completion of Contract	Balance
2. Contract to build to fixing stage	12%
Frame Stage	18%
Enclosed Stage	40%
Completion of Contract	Balance
3. Contract to build all stages	10%
Base Stage	15%
Frame Stage	35%
Enclosed Stage	20%
Fixing Stage	20%
Practical Completion	Balance

You and your contractor may agree that a relevant schedule does not apply to your contract and, in which case, an amended schedule must form part of your contract. You can not agree to vary the maximum deposit.

You should be aware of any upcoming progress payments. Carefully follow the arrangements for payments made in your contract, making sure that you pay by the due date and do not pay more than the required amount.

In the schedules mean:

Base Stage means

For buildings with a timber floor with base brickwork, when:

- ☐ concrete footings for the floor are poured; and
- ☐ base brickwork is built to floor level; and
- ☐ bearers and joists are installed;

OR

For buildings with timber floor without base brickwork, when

- ☐ stumps, piers or columns are finished; and
- ☐ bearers and joists are installed;

OR

For buildings with suspended concrete slab floor, when

- ☐ concrete footings are poured; and
- ☐ formwork and reinforcing for the suspended slab are installed;

OR

For a building with a concrete floor (not suspended), when the floor is finished.

Enclosed Stage means when:

- ☐ External wall cladding is fixed;
- ☐ The roof covering is fixed;
- ☐ Structural flooring is laid;
- ☐ External doors are fixed (even if only temporarily); and
- ☐ External windows are fixed (even if only temporarily)

Fixing Stage means when all internal lining, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed.

Where the contract is to build to a stage suitable for habitation, the payment on practical completion is due only once the home is suitable for habitation. If there are any minor omissions or defects then your contractor should provide you with a

signed list of these stating by when your contractor is to correct each defect or omission. The list must also state any defects or omissions which you believe exist but that your contractor does not agree with.

Variations

Any change to the work to be done under a contract is known as a variation.

Your contractor must put any variations in writing as soon as practicable and, if the variation means additional work, it is to be done before that work is started except where the work is urgent and it is not practicable to get it in writing first.

Your contractor must give you a copy of the variation document as soon as practicable and at least within 5 business days from when the document is signed. The variation document must:

- (a) be in English and legible;
- (b) be signed by your contractor. Your contractor must also take reasonable steps to have you sign the document;
- (c) describe the variation;
- (d) state the reason for the variation (only if sought by your contractor);
- (e) provide a reasonable estimate of any delay to the work which may result;
- (f) state the change to the contract price or set out the method for calculating the price change. If this is not stated, your contractor may still be entitled to the cost of the variation plus a reasonable profit; and
- (g) provide for when the price for the variation is to be paid or credited.

If you agree with the contents of the variation document, you should sign it.

If your contractor asks for a variation involving additional work, you are only liable to pay for that extra work, including excavations, if your contractor could not reasonably have foreseen that work at the time of contracting.

The Site

Your contractor is entitled to occupy the site for the purposes of carrying out the work. You are entitled to reasonable access to the site to view the work but you must not interfere with the carrying out of the work. If you do so, you become liable for resulting costs or delays.

If you are going to live in the completed work within 6 months of completion then the contractor has no right to place a caveat over your land.

Dispute Prevention

Disputes between contractors and consumers occur for many reasons including:

- (a) inaccurate or incomplete documentation;
- (b) poor communication;
- (c) unsatisfactory work;
- (d) delays; and
- (e) lack of knowledge of building practices.

You should maintain regular contact with your contractor and ask your contractor about anything you do not understand. Record key events, for example dates and details of meetings, phone calls, etc. in your diary. This can be very useful to avoid or resolve disputes.

Quality Control

It is your responsibility, working with your contractor, to check the quality of the work. The best way to achieve the desired quality is to conduct regular inspections of the work (at roughly the progress payment stages), by appointment with your contractor.

If you are not confident that you have the experience or time to sufficiently safeguard quality then you may wish to engage an appropriately qualified and experienced building consultant. If you are going away you should appoint an attorney to deal with your contractor in your absence. If you intend to engage a building consultant or appoint an attorney, you should advise your contractor.

On Completion / Handover

When your contractor advises you of handover, a final, pre-handover inspection should be arranged. This inspection, with your contractor, is an opportunity for you to:

- (a) check the house thoroughly for defective or missing items;
- (b) make sure you receive from your contractor a list of minor defects and omissions;
- (c) record details on the hand over document of any items missing, damaged or unfinished; and
- (d) provide the final progress payment (Do not withhold this payment without first obtaining legal advice).

PART THREE: DISPUTES

If you have any concerns about the building work:

- Advise your contractor immediately of any problems.
- Your first step is to convey your concerns in writing to your contractor, giving a reasonable time (say, 14 days) in which to address the matter. Make sure you keep a copy for your records.
- For unresolved technical disputes after completion, you may refer the issue to the BSA.

You should note that the BSA can not assist with minor matters that are more than 6 months old so you should contact the BSA about any such matter as soon as it is apparent. After you have lodged a complaint, a BSA technical representative may meet you and your contractor on-site and inspect the work. Prior to the site inspection, you and your contractor will have a further opportunity to resolve the dispute.

The BSA, at the site inspection, will:

- (a) make a determination as to who is responsible for defects;
- (b) where appropriate, direct your contractor to rectify any defects or complete the works. If your contractor is directed to rectify defects you should allow reasonable access.

The BSA can be contacted by calling 3225 2800 (or your regional BSA office) or writing to PMB 84 Coopers, Brisbane, Qld, 4151.

• Apply to the Queensland Building Tribunal

Contractors and consumers are all entitled to take any domestic building disputes to the QBT. More information on the QBT's procedures can be obtained by calling 3247 3333, or writing to QBT, GPO Box 2469, Brisbane, Qld 4001.

In addition to the dispute resolution alternatives outlined above, you may have a right to pursue your concerns in the Court or arbitration system. Expert advice should be obtained before commencing proceedings or taking any other action under the contract, eg pursuing liquidated damages or terminating the contract.

PART FOUR: AFTER MOVING IN

Warranties

• Manufacturer's Warranties

Obtain copies of the manufacturer's warranties (commonly of 12 months duration) for each of your new household appliances from your contractor.

• Statutory Warranties

The Act implies certain warranties into regulated contracts. These warranties must be stated in the contract and are set out below.

Warranty	Comment
All materials will be good and suitable for the purpose for which they are used and unless otherwise stated in the contract, all materials used in the work will be new.	Only applies where the contractor is responsible for supplying the materials. The warranty does not apply where: (a) you have engaged an architect to select the materials and the contractor is subject to the direction of the architect for supplying the materials; or (b) the contract states that you are responsible for supplying the materials and, without any recommendation, suggestion, criticism or other approach being made to you by the contractor, you specifically nominate certain materials and either: i) there are no reasonable grounds for not using those materials; or ii) there are reasonable grounds for not using those materials but the contractor has given written advice to you not to use them and despite that advice you have insisted on those materials being used. As the suitability of materials regard must be laid to generally accepted practices or standards applied in the building industry or the specifications, instructions or recommendations of manufacturers or suppliers of the materials.
The contractor will comply with all relevant laws.	
The work will be carried out in an appropriate and skilful way and with reasonable care and skill.	
The work will be carried out in accordance with the plans and specifications.	
The finished dwelling or house will be suitable for occupation when the work is finished.	Applies if the contract is for work that: a) consists of the erection or construction of a detached dwelling; or b) is intended to renovate, alter, extend, improve or repair a house. to a stage suitable for occupation.
The work will be carried out with reasonable diligence.	Applies only to contracts if the contract is a sole-plan contract and it does not have a stated completion date or period.
Provisional sums will be allocated with reasonable care and skill.	Reasonable care and skill requires consultation by the contractor of all information reasonably available when the contract is entered into (including information about the nature and location of the building site).

Footings Foundations and Terrace Systems

You should be aware that you have obligations to maintain the foundations and footings of the completed work and also the termite management system.

L/We have received CSIRO Information Sheet No. 10/91 and CORAL HOMES information letter termite prevention

Owner's Signature

Date

29.5.03

Owner's Signature

Date

29.5.03

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To: jandgveldink@bigpond.com
Subject: Residential home – 7 Cassim Place
From: tess@coralhomes.com.au

Hi Gabrielle,

Of course we can. Below is an email from our legal representative to help you understand the elements in depth.

Rise and fall amounts

The rise and fall clause in the contract ensures that the risk of fluctuating building costs are shared with the client and builder. The clause ensure that the builder (Coral Homes) can pass on costs that either increase or decrease and that changes in prices can be adjusted or passed on to the client according to the agreement formula stated in the contract (to be added). See the current formula used.

NCAP2 Rise and fall formulae:

$$\text{Effective value} \times \text{proportional value} \times \frac{\text{Current index no.} - \text{base index no.}}{\text{Base index no.}}$$

Progress payments

Progress payments are made at the end of each construction stage. Coral Home will present the client with an invoice that must match the works carried out. If an invoice is submitted and the works aren't completed the client has a right to hold or knock back the whole invoice value or part of the invoice. This same procedure will happen for Coral Homes subcontractors.

Here is a table of the stages and percentages of progress payments.

Stage	% of total contract
Deposit	5%
Base stage	15%
Frame stage	20%
Enclosed stage	25%
Fixing stage	20%
Practical completion	15%

Extension of time

If the builder or subcontractors requires extra time to complete works they are to complete an extension of time variation. The variation must be in writing and contain a specific reason as to why the subcontractor wants the extension. In the contract there will be a General Contract Conditions that will outline what time extensions you are entitled to over the contract period.

Hope this information helps you; please let us know if you need any more information. The legal team is happy to call you to discuss

Thanks,

Tess Dunning
Contract Administrator

To: tess@coralhomes.com.au
Subject: Residential home – 7 Cassim Place
From: jandgveldink@bigpond.com

Hi Tess,

Please find attached an signed copy of the house contract.

When is our next meeting to go over the final contract breakdown?

Thanks,

Gabrielle Veldink

To: jandgveldink@bigpond.com
Subject: Residential home – 7 Cassim Place
From: tess@coralhomes.com.au

Hi Gabrielle & Jeff.

The breakdown of the contract will be next Monday at 9am at our office in Morningside.
Coral Homes will be taking the meeting minutes and provide you with a copy.

Please let us know if this doesn't suit.

Thanks,

Tess Dunning
Contract Administrator

To: jandgveldink@bigpond.com
Subject: Residential home – 7 Cassim Place
From: tess@coralhomes.com.au

Hi Gabrielle,

Please find attached the agreed meeting minutes from yesterday. These minutes are a breakdown/definition of the HIA contract clauses, terms and conditions.

Please let us know if you have any questions.

CONFIDENTIAL
MEETING MINUTES
CORAL HOMES and GABRIELLE & JEFF VELDINK (CLIENT)

Contract Topics	Actioned By	Action Date
Rights, Liabilities & Potential penalties		
Rights - As a client you have the right to ensure the following elements are included in the contract. Timeframes, budget, payment method, materials, dispute resolution, payment penalties. If not, you have the right to request the elements be included in the contract or not go ahead with the contract. You also have rights under the agreement and also have rights under the legislation in relation to the agreement.	ALL	NOTED
Penalties & Liabilities – Here are some proactive tips to take to try and reduce your liabilities. Contractor’s will always issues an extension of time for practical completion; carry thorough records of all discussions if there is any damages or loss throughout the project. And ensure a detailed formula is provided on how liquidated damages will be calculated. Ensuring that all parties have copies of the applicable and current insurances to provide cover for the duration of the project.	ALL	NOTED
Definitions		
Practical completion/final certificate – This is the point when all scope of works has been completed in accordance to the contract and the building is ready for the client. Before the final certificate is issued building certifiers must approve the works and write an overall summary of the building conditions. As the client you will receive copies of the certificate once they have been issues to the builder.	ALL	NOTED
Defects liability & Completion – There are certain timelines in which builders are meant to respond to rectify defects. Rectification obligations include, a well-drafted contract with a clear definition of a ‘defect’. The builder must notify the client in accordance with the general condition of a contract, then the contractor is to make a justified decision. Poor works being carried out or the weather may have also caused the defects. If the builder believes they didn’t cause the defect, they can claim not responsible to fix the works.	ALL	NOTED
Effects of ousting the contractor – Both parties must be careful when applying the dismissal procedure exactly as stated in the contract. There is little likelihood that applying for this will actually result in involuntary removal with clear evidence.	ALL	NOTED
Provisional Sum & Prime Cost Allowance – These two allowances are in a standard building contract. Prime Cost is an amount of money included in a contract sum to purchase a specific item such as GPO’s and down lights. Coral Homes will estimate the costs or a reasonable cost of the items. Provisional Sum is an amount of money included in a contract to cover site works/materials that aren’t details in a contract. These costs are usually unforeseen events during the build.	ALL	NOTED

Contract anomalies & variations – A variation of a contract may be additions to or deductions from the works in the contract. Variations are to be approved prior to their execution. As usual variations must be in writing and agreed upon both parties (client and Coral Homes). Both parties should agree on extra costs before alterations are made to the contract. The builder should also provide an extension of time and payments with the time stated on the variation. If the variation procedure isn't followed and not documented to the original contract it can cause disputes from the client.		
Breach of Contract		
Unreasonable/vexatious notice – One party might fail to perform duties in a reasonable timeframe. The 'injured' party may terminate only after serving the defaulting party with notice; including a reasonable timeframe, a statement of the consequences and what's to occur to perform the works of a contract. If the notice fails to include these elements it may be deemed unreasonable.	ALL	NOTED
Abandonment of a contract – This can have two different meanings. One is when the trades have conducted in a way that the original contract is no longer valid; both parties may mutually agree to do this. The second type is when contractor fails to perform the works by not starting in a reasonable time, not completing the works or failing to resume works without legal excuse.	ALL	NOTED
Methods for resolving contractual disputes – All parties should always refer to the contract, which outlines all contractual details; responsibility for defects, directing the contractor to rectify defects or complete works. At Coral Homes this is how we deal with complaints; 1. Deal with the complaint immediately 1. Stay calm deal with the complaint immediately 2. Stay calm 3. Identify the problem 4. Decide what can be done 5. Arrange a second opinion to confirm your view 6. Keep records 7. Fix the problem	ALL	NOTED
Cooling off period		
As the client of a residential build you have the right to a 'cooling off' period, which enables you to cancel the contract if you aren't satisfied with it.	ALL	NOTED

Thanks,

Tess Dunning
Contract Administrator