



QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

Build better.

GENERAL CONDITIONS

of

QBCC New Home Construction Contract

*To be read in conjunction with the other contract documents, especially
the Contract Schedule and the Consumer Building Guide*

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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) **"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.
 - (d) **"Completion Period"** means the Completion Period stated in Schedule Item 6.
 - (e) **"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, as adjusted under this Contract.
 - (f) **"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.
 - (g) **"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.
 - (h) **"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.
 - (i) **"Date of Practical Completion"** means the date certified in the QBCC Form 7 - *Certificate of Practical Completion* in accordance with Condition 28.
 - (j) **"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).
 - (k) **"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.
 - (l) **"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.
 - (m) **"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.
 - (n) **"Foundations Data"** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
 - (o) **"Frame Stage"** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
 - (p) **"GST"** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
 - (q) **"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
 - (r) **"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.
 - (s) **"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.
 - (t) **"Practical Completion Stage"** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
 - (u) **"Prime Cost Item"** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Conditions 4 and 19.
 - (v) **"Provisional Sum"** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Conditions 4 and 19.

- (w) **"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.
- (x) **"Site"** means the Site described in Schedule Item 4 of this Contract.
- (y) **"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.
- (z) **"Substantial breach by the Contractor"** has the meaning given in Condition 26.4.
- (aa) **"Substantial breach by the Owner"** has the meaning given in Condition 26.3.
- (bb) **"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.
- (cc) **"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 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 the amount of \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract. 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 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**.
- 3.3 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** Items 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 10% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must 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 amounts 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 *Prime Cost Items Schedule* or *Provisional Sums Schedule* which lists and details these allowances in accordance with the requirements of this Condition.
- 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. The *Prime Cost Items Schedule* must set out the Contractor's best estimate, as at the date of this Contract, of the cost of each such item and any margin the Contractor proposes to recover in providing the item for the purposes of the **work under this Contract**.
- 4.5 The Contractor warrants that each such estimate in the *Prime Cost Items Schedule*:
- (a) has been prepared with reasonable skill and care; and
 - (b) represents the reasonable cost of supplying and delivering each such item, including the Contractor's margin.
- 4.6 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, supply and fix the relevant item.
- 4.7 If the actual cost of a **Prime Cost Item** 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*) on the increase for the Contractor's overheads and profits.
- 4.8 If the actual cost of a **Prime Cost Item** is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.9 Prior to or when making a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost of the item to the Contractor under the Contract. The Contractor cannot seek payment for the item until the progress claim following the incorporation of the item in the **Works**.

- 4.10 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.
- 4.11 The *Provisional Sums Schedule* must also set out the rates or prices applicable to each such item of work and the Contractor's best estimate, as at that date, of the price of each such item. The Contractor warrants that each such estimate:
- (a) has been prepared with reasonable skill and care; and
 - (b) represents the reasonable cost of providing the item of work.
- 4.12 The Contractor warrants that each such estimate in the *Provisional Sums Schedule* has been given having regard to:
- (a) the information the Contractor had, or reasonably should have had, when the Contract was entered into, including the results of any contour surveys, soil testing or other geotechnical information; and
 - (b) the nature and location of the **Site**, including all those aspects of the **Site** which would be apparent upon an inspection of the **Site** by a reasonably competent Contractor.
- 4.13 If the actual cost for a **Provisional Sum** Item is more than the Contractor's estimate, the Owner must pay the Contractor for the increased cost of the work in accordance with the rates or prices (including the Contractor's margin) stated in the *Provisional Sums Schedule*. If the actual cost for a **Provisional Sum** Item is less than the Contractor's estimate in the *Provisional Sums Schedule*, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.14 As soon as practicable after the Contractor becomes aware that the actual cost of any **Provisional Sum** Item will be more than 10% above the Contractor's estimate for that item 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 **Provisional Sum**;
 - (b) states the cost to the Contractor of the **Provisional Sum** Item together with the Contractor's margin, and the amount by which this amount exceeds the total allowance for that item in the *Provisional Sums Schedule*; and
 - (c) identifies the Progress Payment stage under this Contract at which payment for the **Provisional Sum** will be required.
- 4.15 Prior to or when making a progress claim relating to the cost to the Contractor of work completed for a **Provisional Sum** Item, the Contractor must provide the Owner with a copy of any invoice, receipt or other document substantiating the cost to the Contractor

of the completed work. The Contractor cannot seek payment for the item until the progress claim following the completion of the work the subject of the **Provisional Sum**.

GOODS AND SERVICES TAX

- 4.16 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 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

- 7.1 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 Contractor's only entitlement to payment from the Owner is for the reasonable value of any work properly carried out by the Contractor prior to that termination which has not been the subject of previous payment.

11. Contractor's indemnity in favour of the owner

- 11.1 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 the neglect or default of the Owner.
- 11.2 The Contractor must indemnify the Owner in respect of damage to the property or person of the Owner arising out of the **work under this Contract** except to the extent that such damage results from or is contributed to by the neglect of the Owner.

12. Contractor to effect insurances

- 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) all insurances required to comply with the *Queensland Building and Construction Commission Act 1991*; and
 - (c) Contract Works and Public Liability Insurances with a reputable and financially sound insurer which names or includes as an insured the Owner and the Contractor for their respective rights and interests upon usual and reasonable terms.
- 12.2 Contract Works Insurance must be for the full insurable value of the **Works** and must extend until 4.00 pm on the **Date of Practical Completion**.
- 12.3 Public Liability Insurance must be for at least the amount of 5 million dollars and must cover the liabilities of the Contractor and the Owner to third parties in respect of personal injury, death or damage to property arising out of or in connection with the **work under this Contract**.
- 12.4 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.
- 12.5 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 that work 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 imposed on the Contractor 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;
 - (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;
 - (c) discharge the duties of a person who conducts a business or undertaking under the Regulation;
 - (d) if a notifiable incident occurs at the **Site**:
 - (i) immediately notify the regulator and the Owner; and

- (ii) take all reasonable steps to secure the area where the notifiable incident occurred until an inspector arrives;
 - (e) if dangerous goods, including material which might contain asbestos, are discovered at the **Site**:
 - (i) immediately notify the Owner and any relevant authority; and
 - (ii) comply with all applicable obligations and restrictions imposed by the Act, the Regulation or any other regulation in connection with health and safety; and
 - (f) immediately comply with any valid direction in respect to **Site** safety issued by the regulator or any other relevant authority.
- 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

- 16.1 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.
- 16.2 The Owner is not entitled to rely on any statements made or representations given by the Contractor's employees or subcontractors other than those made or given by the **Contractor's Authorised Representative**.
- 16.3 All written communications between the Owner and the Contractor must be in the English language and must be clearly legible.

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 has commenced 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 rate set out in Schedule Item 11 or at the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the payment becomes overdue plus 5% per annum (the 'default rate'), whichever is the lesser rate. 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, the details of the variation are put in writing in a Variation Document signed by both parties and initialled as necessary by the Owner.
- 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, signed by both parties and initialled as necessary by the Owner.
- 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 is started.
- 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.

- 21.6 If the Contractor has requested the variation, the Contractor is only entitled to additional payment if the variation was necessary because of circumstances that could not have been reasonably foreseen by the Contractor when the Contract was entered into.

VARIATIONS REQUIRED BY LAW

- 21.7 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

- 21.8 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.
- 21.9 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.
- 21.10 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

- 22.1 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; and
 - (b) the delay is not reasonably foreseeable and is beyond the reasonable control of the Contractor; and
 - (c) 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
 - (d) 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
 - (e) 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 for 5 **business days**; 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 perform the **work under this Contract** competently;
- (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; and
- (f) failing to hold the current, active and appropriate licence required to perform the **Works**.

27. Termination for insolvency

- 27.1 Notwithstanding Condition 26, if a party to this Contract:
- (a) becomes insolvent or unable to pay their debts; or
 - (b) commits an act of bankruptcy; or
 - (c) is made bankrupt; or
 - (d) assigns assets for the benefit of creditors generally; or
 - (e) makes a composition or other arrangement with creditors; or
 - (f) being a company goes into liquidation or receivership,
- then the other party may forthwith, or as soon thereafter as that other party thinks fit, 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.

28. Practical Completion

- 28.1 The Contractor must give to the Owner 3 **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 but no later than 12 months after the **Date of Practical Completion**; give the Contractor written notice to make good such defects or omissions and must 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.

WARNING TO OWNER

QBCC is only able to direct contractors to rectify non-structural defects for a period of 12 months from the **Date of Practical Completion**. QBCC therefore recommends that you carefully check the contracted work, and notify the contractor in writing of any non-structural defects you identify, well before the expiry of this 12 month period.

- (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.

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 to the address noted in the Schedule; or
- (c) sent by facsimile to the facsimile number noted in the Schedule; or
- (d) sent by email to the email address noted in the Schedule.

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

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

	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:	  