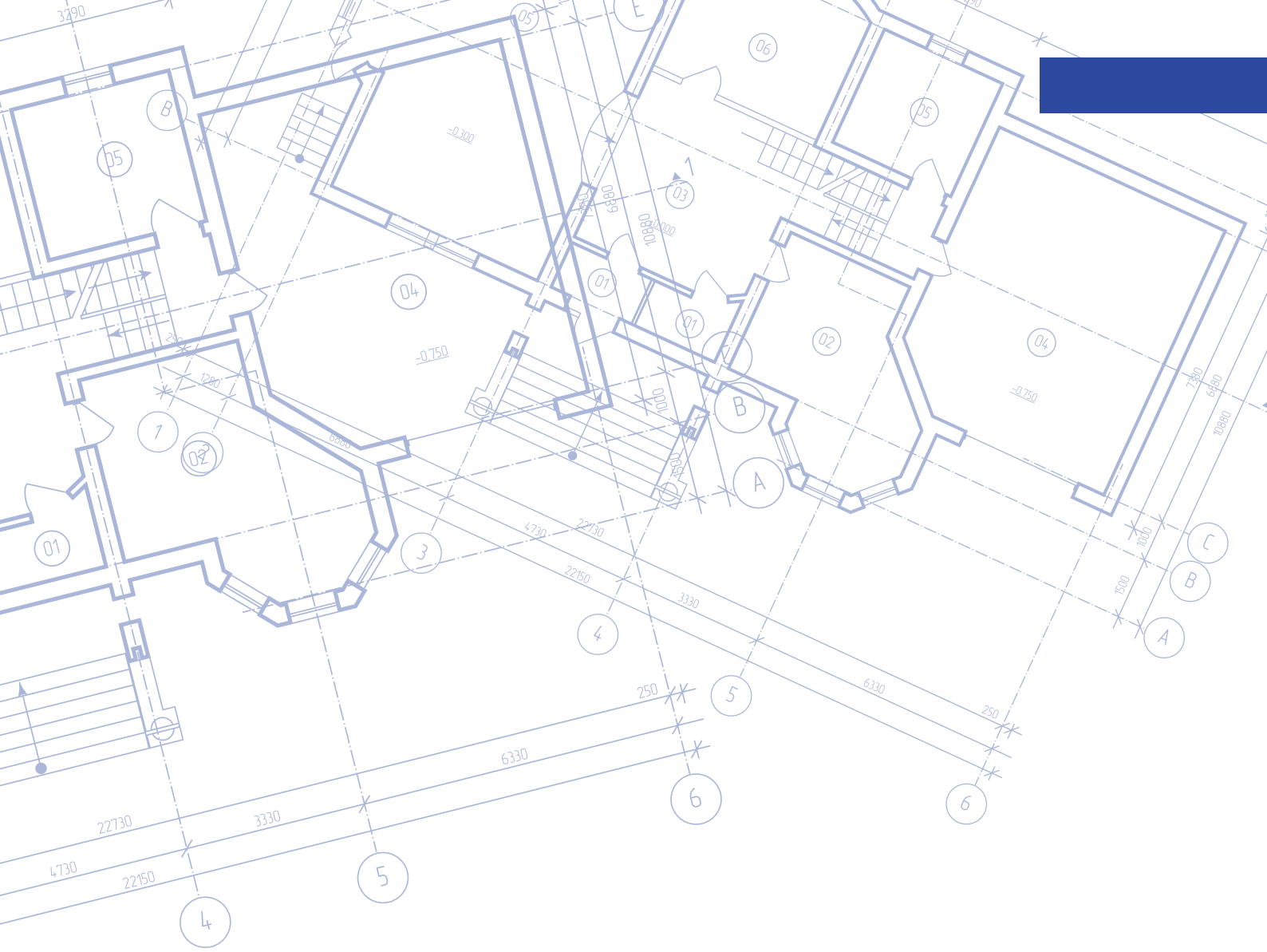


MASTER BUILDERS QUEENSLAND

The home of building

Residential Building Contract - Level 2

FOR RESIDENTIAL BUILDING WORK IN **QUEENSLAND**

Residential Building Contract - Level 2

(RBC-L2) (07/2020)

SCHEDULE

BETWEEN

ITEM 1 - OWNER (Clause **1**)	
Name 1	[redacted]
Name 2	[redacted]
Is the **Owner** a **Resident Owner**? (see Clause **1**)	◉ Yes ○ No

*NOTE: The **Owner** may have a right to withdraw from the **Contract** during the Cooling-Off Period under section 35 of Schedule 1B of the **Act** (see Clause **6** of the **Contract**).*

AND

ITEM 2 - CONTRACTOR (Clause **1**)			
Name	T&T Corporation Pty Ltd		
Trading as	Townsend Building Services		
ABN	98 103 883 558	QBCC licence number	1028031
Is the **Contractor** a member of Master Builders Queensland?			◉ Yes ○ No

ITEM 3 - CONTRACT PRICE (GST inclusive) (Clause **1**)

*NOTE: The **Contract Price** does not include amounts payable directly by the **Owner** to a third party but does include the **Deposit** and allowances for **Prime Cost Items** and **Provisional Sum Items**.*

*NOTE: QBCC Home Warranty Insurance Premium paid on the **Owner's** behalf is not a taxable supply for the **Contractor**.*

***WARNING**: The **Contract Price** is subject to change in accordance with Clauses **5.4**, **8.4**, **8.5**, **9**, **10.2**, **10.3**, **10.5**, **16.2**, **16.7**, **20**, **21**, **24**, **25.7** and **31.2** of the **Contract**.*
The effect of the operation (if applicable) of:
*a. Clauses that may reduce: **8.4** and **21**;*
*b. Clauses that may reduce or increase: **5.4**, **9**, **10.3** and **24**; and*
*c. Clauses that may increase: **8.5**, **10.2**, **10.5**, **16.2**, **16.7**, **20**, **25.7** and **31.2**,*
*the total amount payable by the **Owner** under the **Contract**.*

(a) Building works component (GST inclusive)	$113,574.21
(b) Total allowances for **Prime Cost Items** (GST inclusive)(see Part A of the **Appendix**)	$0.00
(c) Total allowances for **Provisional Sum Items** (GST inclusive)(see Part B of the **Appendix**)	$0.00
(d) QBCC Home Warranty Insurance Premium (where applicable)	$915.32
Contract Price ((a) + (b) + (c) + (d)) (GST inclusive)	$114,489.53

ITEM 4 - DEPOSIT (Clauses **1** and **13.5**)

*NOTE: **Deposit** not to exceed 5% of the **Contract Price** unless the value of off-site work is more than 50% of the **Contract Price**, in which case the **Deposit** is not to exceed 20% of the **Contract Price**.*

Deposit (percentage of **Contract Price**) (GST inclusive)	0%
	$0.00

ITEM 5 - DESCRIPTION OF WORKS (Clause **1**)

As per insurance repair scope of works dated 2nd June 2021

CM

ITEM 6 - LAND (Clauses 1 and 16)			
Address	[redacted]Morgans Road Windera QLD 4605		
Lot no.	101	Plan type (e.g. RP)	MZ532
Local government	South Burnett Region		

ITEM 7 - SUPPLIER OF DOCUMENTS (Clause 1)		
(a) **Drawings** (see Part C of the **Appendix**)	Supplied by	○ **Contractor** ○ **Owner**
(b) **Specifications** (see Part C of the **Appendix**)	Supplied by	○ **Contractor** ○ **Owner**
(c) **Foundations Data**	Supplied by	○ **Contractor** ○ **Owner**

*NOTE: Unless s31(3) of Schedule 1B of the **Act** applies, the **Foundations Data** must be obtained before entering into the **Contract**. If the **Contractor** is required to obtain such data, a copy must be given to the **Owner** on payment of the **Contractor's** costs incurred in obtaining the data.*

ITEM 8 - AUTHORISED AGENT/REPRESENTATIVE (Clause 1)			
Contractor's Representative (if applicable)			
Owner's Agent (if applicable)			
Phone		Email address	

ITEM 9 - CONTRACTOR'S MARGIN (Clause 1)	
Contractor's Margin (if nothing stated, 20%)	

ITEM 10 - DATE FOR COMMENCEMENT (Clauses 1 and 17.1)	
Date for Commencement	*not selected*
To be determined under Clause **17.1(b)**	☐ (tick if applicable)

ITEM 11 - CONSTRUCTION PERIOD (Clause 1)	
(a) Allowance for construction	**Days**
(b) Allowance for **Inclement Weather**	**Days**
(c) Allowance for non-working **Days** (Saturdays, Sundays, Public Holidays, **Christmas Shutdown**)	**Days**
Construction Period (in **Days**) ((a) + (b) + (c))	**Days**

ITEM 12 - DATE FOR PRACTICAL COMPLETION (Clauses 1 and 18.1)	
Date for Practical Completion	*not selected*
The date that is the last **Day** of the **Construction Period** from the **Date for Commencement**	☐ (tick if applicable)

ITEM 13 - FINANCE (Clause 3)	
Is the **Owner** seeking finance for the **Contract**?	○ Yes ◉ No
Lender	
Loan Amount	
Loan Approval Date	

CM

ITEM 14 - SECURITY ACCOUNT DETAILS (Clauses **1** and **4**)	
Is the **Owner** required to deposit **Security Account Money** into the **Security Account**?	○ Yes ◉ No
Security Account to be	
Amount to be deposited (**Security Account Money**)	

ITEM 15 - BUILDING APPROVAL (Clause **7**)	
Party responsible for obtaining building approval	◉ **Contractor** ○ **Owner**
	(if nothing stated, the **Contractor**)

*NOTE: The **Owner** is responsible for obtaining all development approvals if applicable to the **Works**.*

ITEM 16 - ACCESS TO THE SITE (Clauses **16.1** and **16.2**)	
Party responsible for **Site** access	○ **Contractor** ◉ **Owner**
Date for providing free and uninterrupted occupation of the **Site**	

ITEM 17 - DELAY COSTS (Clause **20**)	
Delay Costs rate	per **Day**

ITEM 18 - LIQUIDATED DAMAGES (Clause **21**)	
Liquidated Damages rate	per **Day**
	(if nothing stated, $50 per **Day**)

ITEM 19 - PROGRESS CLAIMS (Clauses **25.1** and **25.2**)	
Method selected by the parties for claiming progress payments *(Note: Part D of the **Appendix** must be completed)*	○ **Method A OR** ○ **Method B OR** ○ **Method C**

ITEM 20 - PAYMENT PERIOD (Clause **25.4**)	
Time for payment after the **Submission Date**	**Business Days**
	(if nothing stated, 5 **Business Days**)

ITEM 21 - INTEREST (Clause **25.7**)	
Interest rate	
	(if nothing stated 10% per annum, calculated on a daily basis)

ITEM 22 - SECOND HAND MATERIALS (Clause **12.4(b)**)	
Is the **Contractor** to install second hand materials in the **Works**?	○ Yes ◉ No
	(if yes, complete Part E of the **Appendix**)

ITEM 23 - OWNER SUPPLIED ITEMS (Clause **13.6**)	
Is the **Owner** to supply some materials?	○ Yes ◉ No
	(if yes, complete Part F of the **Appendix**)

CM

ITEM 24 - FIXTURES AND FITTINGS	
Are there fixtures and fittings shown on the **Drawings** and/or **Specifications** but not included in the **Contract Price**?	○ Yes ◉ No
(if yes, complete Part G of the **Appendix**)	

ITEM 25 - ADDITIONAL SERVICES	
Are there any additional services that are not **Domestic Building Works** to be carried out under the **Contract**?	○ Yes ◉ No
(if yes, complete Part H of the **Appendix**)	

ITEM 26 - CONSUMER BUILDING GUIDE	
Has the **Owner** received the **Consumer Building Guide**?	◉ Yes ○ No

ITEM 27 - SPECIAL CONDITIONS (Clause **36**)	
Are there any Special Conditions forming part of the **Contract**?	◉ Yes ○ No
(if yes, complete Part I of the **Appendix**)	

APPENDIX

APPENDIX

THE **APPENDIX** TO THE **SCHEDULE** MUST BE COMPLETED WHERE APPLICABLE.

PART A - ALLOWANCES FOR PRIME COST ITEMS (if applicable)

Description of each Prime Cost Item	Quantity	Allowance* per unit (GST inclusive)	Total allowance* for the Prime Cost Item (GST inclusive)
1. Example - Taps (internal sets)			$0.00
2.			$0.00
Total of allowances* for Prime Cost Items (GST inclusive)			**$0.00**

*The Allowance stated does not include the **Contractor's Margin** (This total has been transferred to Item 3(b) of the **Schedule**)

This is to be read in conjunction with Clause **8** of the **Contract**.

PART B - ALLOWANCES FOR PROVISIONAL SUM ITEMS (if applicable)

Description of each Provisional Sum Item	Total allowance* for the Provisional Sum Item (GST inclusive)
1. Example - Supply and installation of joinery	
2.	
Total of allowances* for Provisional Sum Items (GST inclusive)	**$0.00**

*The Allowance stated does not include the **Contractor's Margin** (This total has been transferred to Item 3(c) of the **Schedule**)

This is to be read in conjunction with Clause **8** of the **Contract**.

PART C - DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS (Item 7)

DRAWINGS

Drawing No.	Version	Date	Prepared by	Brief description of drawing

SPECIFICATIONS

Specifications

OTHER DOCUMENTS

Other Documents

PART D - PROGRESS CLAIMS (Clause 25) (Item 19)

***WARNING**: The **Contractor** must not claim an amount under the **Contract** unless it directly relates to the progress of the **Works** at the **Site**, and is proportionate to the value of the work that relates to the claim.*

*NOTE: The maximum **Deposit** cannot be more than 5% of the **Contract Price** unless the value of off-site work is more than 50% of the **Contract Price**, in which case the maximum **Deposit** cannot be more than 20% of the **Contract Price**.*

*NOTE: The percentages provided for the **Stages** below are a guide only, and the **Contractor** should satisfy itself that these percentages are suitable for the construction method intended.*

METHOD A - DESIGNATED STAGES

Stage	% of Contract Price	$ Value (GST inclusive)
Deposit: QBCC Home Warranty Insurance Premium (where applicable)		
Balance of **Deposit** (i.e. **Deposit** less QBCC HWI where applicable)		
Base Stage		
Frame Stage		
Enclosed Stage		
Fixing Stage		
Practical Completion		
TOTAL		

METHOD B - DESIGNATED STAGES

Name of Stage and Description of Stage	% of Contract Price	$ Value (GST inclusive)
Deposit: QBCC Home Warranty Insurance Premium (where applicable)		
Balance of **Deposit** (i.e. **Deposit** less QBCC HWI where applicable)		
Practical Completion		
TOTAL		

*NOTE: The **Contractor** must provide a description of the **Stages**, and the percentage of the **Contract Price** for each **Stage**.*

METHOD C - PERIODIC PROGRESS CLAIMS

Progress Claims for progress payments to be submitted	

PART E - SECOND HAND MATERIALS (Clause 12.4(b)) (Item 22)

	DETAILS
.	

Second hand materials listed above are to be supplied by the **Contractor**, and installed in the **Works**.

PART F - OWNER SUPPLIED ITEMS (Clause 13.6) (Item 23)

	DETAILS
.	

Materials to be supplied by the **Owner** are to be stated in this table. No warranties are given by the **Contractor**, either expressly or impliedly, with respect to the suitability and quality of the materials stated in this table.

PART G - FIXTURES AND FITTINGS (Item 24)

	DETAILS
.	

Fixtures and fittings listed above are not included in the **Contract Price** but are shown on the **Drawings** and **Specifications**.

PART H - ADDITIONAL SERVICES (Item 25)

The following relates to any additional services that are not **Domestic Building Works** but are to be carried out under the **Contract** (if any); for example, work in relation to a farm building that is not a home, or only to accommodate animals, or a building intended to be used only for business purposes.

Description of these additional services:

Amount or proportion of the **Contract Price** related to these additional services:

PART I - SPECIAL CONDITIONS (Clause 36) (Item 27)

Special Condition No.	General Condition affected	Details
1	Payment	The building contract relates to an approved insurance claim as per the owner's Insurance Company Claim No. EG0068304. The balance of the contract price or part thereof, excluding insurance claim excess (if applicable), is payable directly to the contractor on the owner's behalf by the Insurance Company underwriting the claim. Where this is not the case (additional and/or subsequent private works), the owner is responsible for the balance of the contract price. This amount will be payable within 5 business days of receipt of written notice from the contractor.
2	Payment Schedule	Deposit 5% = $5,724.48 Progress Payment - Install of Edge Protection & Materials Onsite 45% = $51,520.28 Practical Completion 40% = $45,795.81 Final Completion 10% = $11,448.95 Total = $114,489.52

Any Special Conditions in addition to, or in amendment of, the General Conditions must be set out above.
(Number each Special Condition for example, SC1, SC2, or if applicable, refer to the specific Clause in the General Conditions affected).

AGREEMENT

The **Contractor** and the **Owner** agree that the **Contractor** is to carry out and complete the **Works**, and the **Owner** is to pay the **Contractor** the **Contract Price**, as adjusted under the **Contract**, for the **Works** in accordance with the provisions of the **Contract**.

Signed by, or for and on behalf of, the OWNER			
Name 1	[redacted]	Name 2	[redacted]
Address	[redacted]lorgans Road Windera QLD 4605		
ABN/ACN			
Phone 1	07 4168 6028	Phone 2	
Email address		Facsimile number	

Signature 1 | Printed name [redacted]

Date / /

Signature 2 | Printed name [redacted]

Date / /

Signed by, or for and on behalf of, the CONTRACTOR			
Name	T&T Corporation Pty Ltd		
Trading as	Townsend Building Services		
Address	2/85 W Burleigh Rd Burleigh Heads QLD 4220		
ABN	98 103 883 558	QBCC Licence number	1028031
Phone 1	(07) 3376 3030	Phone 2	
Email address	brisbane@tbs.com.au	Facsimile number	1300 827 329

Signature | Printed name **T&T CORPORATION PTY LTD**

Date 14 / 06 / 2021

WARNING - DO NOT SIGN IF:

- *The **Owner** has not been provided with a **Consumer Building Guide** if the **Contract Price** is $20,000 incl GST.*
- ***Foundations Data** has not been obtained (if applicable).*
- *The **Owner** has not been provided with the General Conditions.*

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General Conditions - Residential Building Contract - Level 2

1	DEFINITIONS	
	*NOTE: In the **Contract**, certain words and phrases used throughout are defined, and are shown in bold when used (e.g. **Owner**).* In the **Contract**, except where the context otherwise requires:	
	Act	means the *Queensland Building and Construction Commission Act 1991*;
	Appendix	means the Appendix to the **Schedule**;
	Base Stage	means the stage of the **Works** when, apart from minor defects or minor omissions: • for a home with a timber floor with base brickwork, the concrete footings for the floor are poured and the base brickwork is built to floor level and the bearers and joists are installed; • for a home with a timber floor without base brickwork, the stumps, piers or columns are finished, and the bearers and joists are installed; • for a home with a suspended concrete slab floor, the concrete footings are poured and the formwork and reinforcing for the suspended slab are installed; or • for a home with a concrete floor, other than a suspended concrete slab floor, the floor is finished;
	Building Product	means any material or other thing associated with, or that could be associated with, a building;
	Business Day	means a **Day** that is not: • a Saturday or Sunday; or • a public holiday in the place in which any relevant act is to be or may be done;
	Christmas Shutdown	means any **Day** occurring within the period 22 December to 10 January (inclusive);
	Commission	means the Queensland Building and Construction Commission;
	Construction Period	means the period stated in Item 11 of the **Schedule**;
	Construction Works Policy	means a policy of insurance providing indemnity to the **Contractor**, the **Owner**, any lender (if so required by the **Owner**), and the **Contractor's** subcontractors against liability for physical loss, destruction or damage to the **Works**, or to materials and goods on or adjacent to the **Land**;
	Consumer Building Guide	means the Consumer Building Guide published from time to time by the **Commission**;
	Contract	means these general conditions, any special conditions set out in Part I of the **Appendix**, the **Schedule**, the **Drawings**, the **Specifications**, and anything else annexed to, or incorporated by reference into the **Contract**;
	Contract Price	means the amount stated in Item 3 of the **Schedule**, as adjusted from time to time under the **Contract**;
	Contractor	means the person stated in Item 2 of the **Schedule** and includes the **Contractor's** permitted assignees and transferees;
	Contractor's Margin	means the margin stated in Item 9 of the **Schedule** to be applied in accordance with Clauses **8.5**, **10.5**, **16.2** and **16.7**;
	Contractor's Representative	means the person stated in Item 8 of the **Schedule**;
	Date for Commencement	means the date stated in, or otherwise determined in accordance with, Item 10 of the **Schedule** by which the **Contractor** must commence the **Works** at the **Site**;
	Date for Practical Completion	means the date stated in or otherwise determined in accordance with Item 12 of the **Schedule**, by which the **Works** are to be brought to **Practical Completion**, as adjusted from time to time under the **Contract**;
	Date of Practical Completion	means the date on which the **Works** reach **Practical Completion**;
	Days	means calendar days;

Defects Document	means a document that: • lists any minor defects and minor omissions that the **Contractor** and the **Owner** agree exist; • states when the **Contractor** is to remedy the listed agreed minor defects and minor omissions; • lists any minor defects or minor omissions that the **Owner** claims exist, but that the **Contractor** does not agree exist; and • is signed by or on behalf of the **Contractor**;
Defects Liability Period	means the period commencing on the **Day** following the **Date of Practical Completion**, and ending on the **Day** twelve (12) months after the **Date of Practical Completion**;
Delay Costs	means the cost calculated in accordance with Clause **20**;
Deposit	means the amount stated in Item 4 of the **Schedule** to be paid by the **Owner** to the **Contractor** in accordance with Clause **13.5**;
Direction	includes, but is not limited to, any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
Domestic Building Works	has the same meaning as that term is given in Schedule 1B of the **Act**;
Drawings	means the plans (including, but not limited to, elevations, sections and details) and designs relating to the **Works**, described in Part C of the **Appendix**;

Enclosed Stage	means that stage of the **Works** when, apart from minor defects or minor omissions:
	• the external wall cladding is fixed;
	• the roof covering is fixed, but without:
	  • soffit linings necessarily having been fixed;
	  • for a tile roof, pointing necessarily having been done; or
	  • for a metal roof, scribing and final screwing off having necessarily been done;
	• the structural flooring is laid;
	• the external doors are fixed (even if only temporarily), but, if a lockable door separating a 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);

Engineer Specification and Confirmation	is a document, published by Master Builders Queensland and purchased by the **Contractor**, required under the **Contract** to be signed by the Registered Professional Engineer of Queensland providing the design of any footings or slabs for the **Works**;
Final Claim	means a claim for payment made in accordance with Clause **25.3**;
Fixing Stage	means that stage of the **Works** when, apart from minor defects or minor omissions, all the internal linings, architraves, cornices, skirtings, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets (including doors, drawers, benchtops) and built-in cupboards (including doors and drawers) are fitted and fixed in position;
Foundations Data	means the information about the **Land** a building contractor exercising reasonable care and skill needs for the preparation of an appropriate footings design for the **Land** and, if appropriate, a concrete slab design for the **Land**, and an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab;
Frame Stage	means that stage of the **Works** when, apart from minor defects or minor omissions, the building's frame is constructed;
Holding Account	means any account maintained by Master Builders Queensland with a financial institution for the purpose of holding amounts in accordance with the Master Builders Holding Account Conditions as amended from time to time;
Inclement Weather	means the existence of weather conditions, including, but not limited to, rain, wind, heat, cold, humidity, hail, snow, sleet, dew, fog, storm, dust, or flood, and their after-effects which have an adverse impact on the diligent, usual or safe carrying out of the **Works** by the **Contractor** or the **Contractor's** subcontractors;
Information System	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;
Land	means the land described in Item 6 of the **Schedule** on which the **Works** are to be carried out;
Land Owner	means a registered owner of the **Land** as stated on the relevant Certificate of Title;

Land Owner's Consent	means the written consent obtained by the **Owner** (if required) under Clause **16.4** from all **Land Owners** consenting to the carrying out of the **Works** by the **Contractor** on the **Land**;
Latent Condition	means any physical condition, including artificial things, on or around the **Land**, including surface and subsurface conditions, which differ materially from the physical conditions reasonably expected by the **Contractor** at the date of the formation of the **Contract**;
Lender	means the lender stated in Item 13 of the **Schedule**;
Liquidated Damages	means the liquidated damages calculated in accordance with Clause **21.1**;
Loan Amount	means the amount stated in Item 13 of the **Schedule**;
Loan Approval Date	means the date stated in Item 13 of the **Schedule**;
Method	means the method for claiming progress payments which is stated in Item 19 of the **Schedule**, being Method A, Method B or Method C in Part D of the **Appendix**;

Non-Conforming Building Product	means a **Building Product** if:
	• 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
	• 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;

Owner	means the person stated in Item 1 of the **Schedule** and includes the **Owner's** permitted assignees and transferees;
Owner's Agent	means the person stated in Item 8 of the **Schedule**;
Possession	means when the **Works**, or any part of the **Works**, are taken over, occupied or used by the **Owner** or the **Owner's** employees, other contractors or agents;
Practical Completion	means that stage of the **Works** when: • the **Works** are completed in compliance with the **Contract**, including all **Drawings** and **Specifications**, and all statutory requirements applying to the **Works**, without any defects or omissions other than minor defects or minor omissions that will not unreasonably affect occupation; and • if the **Owner** claims there are minor defects or minor omissions, the **Contractor** gives the **Owner** a **Defects Document** for the minor defects or minor omissions;
Prime Cost Item	means an item (for example, a fixture or fitting) that either has not been selected, or the price of which is not known, at the date of the formation of the **Contract**, and for the cost of supply and delivery of which the **Contractor** has made a reasonable allowance in the **Contract**;
Progress Claim	means a claim for payment made in accordance with Clause **25.1** or Clause **25.2**, as applicable;
Provisional Sum	means an estimate of the cost of carrying out a **Provisional Sum Item**;
Provisional Sum Item	means particular work (including supplying any materials needed for the work) under the **Contract** for which the **Contractor**, after having made all reasonable enquiries, could not state a definite amount at the date of the formation of the **Contract**;

Required Information	means information about a **Building Product** that:
	• for each intended use of the **Building Product**, states or otherwise communicates the following:
	  • the suitability of the **Building Product** for the intended use and, if the **Building Product** is suitable for the intended use only in particular circumstances or subject to particular conditions, the particular circumstances or conditions;
	  • instructions about how the **Building Product** must be associated with a building to ensure it is not a **Non-Conforming Building Product** for the intended use;
	  • instructions about how the **Building Product** must be used to ensure it is not a **Non-Conforming Building Product** for the intended use; and
	• complies with the requirements for the information, if any, prescribed by a **Statutory Requirement**;

Resident Owner	means an **Owner** who is an individual and intends to reside in the building on completion of the **Works** or within six (6) months after completion of the **Works**;

Schedule	means the Schedule contained in the **Contract**;
Security Account	means the **Holding Account** if stated in Item 14 of the **Schedule**, or a bank account at the financial institution stated in Item 14 of the **Schedule**, in the joint names of the **Contractor** and the **Owner**, if stated in Item 14 of the **Schedule**, as applicable;
Security Account Money	means the amount stated in Item 14 of the **Schedule** to be deposited into the **Security Account**;
Site	means that part of the **Land** necessary to be occupied and used by the **Contractor** for the construction of the **Works**;
Specifications	means the specifications relating to the **Works** described in Part C of the **Appendix**;
Stage	means, if the **Method** stated in Item 19 of the **Schedule** is either Method A or Method B, the stages stated in the applicable **Method** in Part D of the **Appendix**;
Statutory Requirements	includes, but is not limited to, any legislation, delegated (including, but not limited to, subordinate) legislation, permit, approval, or other law or legal requirement, and any **Direction** from, or requirement of, a local government or other entity (including, but not limited to, a building certifier and the **Commission**) having jurisdiction over the carrying out of the **Works**;
Submission Date	means the date on which the **Contractor** submits (as the case may be) a **Progress Claim** or the **Final Claim** to the **Owner**;
Substantial Breach	means a party's failure or refusal to perform a substantial obligation under the **Contract** (such as, for example, the **Owner's** failure to make payment on time);
Tribunal	means the Queensland Civil and Administrative Tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009*;
Variation	means to vary the **Works** by agreement as set out in Clause **24.3** or as deemed or otherwise provided under the **Contract**;

Variation Document	means a document that is:
	• readily legible;
	• describes the **Variation** and sets out the details of the scope of work which is the subject of the **Variation**;
	• states the date of the request for the **Variation**;
	• states the **Contractor's** estimate of any period of delay to the progress of the **Works** as a result of the **Variation**;
	• states any adjustment to the **Contract Price** because of the **Variation**, or the method for calculating the adjustment; and
	• states when any adjustment to the **Contract Price** because of the **Variation** is to be:
	  • accounted for, if the **Variation** results in a decrease to the **Contract Price**; or
	  • paid, if the **Variation** results in an increase to the **Contract Price**;

WHS Act	means (separately and together) the *Work Health and Safety Act 2011* (Qld) as amended from time to time and includes related Acts and Regulations;
WHS Management Plan	means a document prepared by the **Contractor** in respect of the **Works** which sets out the way in which the **Works** are to be carried out in order to comply with the **WHS Act**; and
Works	means the whole of the work to be carried out by the **Contractor** under the **Contract**, a description of which is contained in Item 5 of the **Schedule** and includes: • supply and installation of **Prime Cost Items** (if applicable); • carrying out **Provisional Sum Items** (if applicable); • **Variations** (if any); • supply and installation of second hand materials (if applicable) listed in Part E of the **Appendix**; • installation of **Owner** supplied items (if applicable) listed in Part F of the **Appendix**; and • carrying out of additional services (if applicable) listed in Part H of the **Appendix**, but excludes the supply and installation of fixtures and fittings (if applicable) listed in Part G of the **Appendix**.

2 INTERPRETATION

In the **Contract**:

a) headings and explanatory notes do not form part of the **Contract**, and cannot be used in its interpretation;

b) words in the singular include the plural and vice versa, according to the requirements of the context;

c) references to a person include an individual, firm or body corporate or unincorporated; and

d) if the time for making any payment or doing any other act required or permitted by the **Contract** falls on a **Day** which is not a **Business Day**, then the time for making the payment or doing the act is deemed to be the next **Business Day**.

3 FINANCE

3.1 ***Applicability of Clause 3***

This Clause **3** only applies if Item 13 of the **Schedule** states that the **Owner** is seeking finance for the **Contract**.

3.2 ***Owner seeking finance***

The **Owner** must:

a) apply to the **Lender** for approval for a loan not less than the **Loan Amount** within five (5) **Business Days** after the date of the formation of the **Contract**; and

b) give the **Contractor** a written notice within three (3) **Business Days** after the **Loan Approval Date** stating whether the **Owner** has obtained the loan approval and provide evidence satisfactory to the **Contractor** that the **Owner** has applied to the **Lender** for the loan approval.

3.3 ***Right to terminate Contract if loan approval rejected***

If the **Owner** has not obtained the loan approval by the **Loan Approval Date**, then, provided the **Owner** provides evidence satisfactory to the **Contractor** that the **Lender** has assessed and rejected the **Owner's** loan application, within five (5) **Business Days** after the **Loan Approval Date**, the **Owner** may notify the **Contractor** in writing that the **Contract** is terminated for failure to obtain the loan approval.

3.4 ***Consequence of failure to notify under Clause 3.3***

a) If no notice under Clause **3.3** is given by the **Owner** to the **Contractor** within five (5) **Business Days** after the **Loan Approval Date**, then the **Contractor** may terminate the **Contract** by giving a written notice of termination to the **Owner** within ten (10) **Business Days** after the **Loan Approval Date**.

b) If no notice under Clause **3.3** is given by the **Owner** to the **Contractor**, the **Owner** does not have the right to terminate the **Contract** for failure to obtain the loan approval.

3.5 ***Termination of the Contract***

If the **Contract** is terminated by the **Owner** under Clause **3.3** or is terminated by the **Contractor** under Clause **3.4(a)**, the **Contractor** must refund to the **Owner** the **Deposit** (if received) less any costs reasonably incurred by the **Contractor** up to the date of termination of the **Contract**.

3.6 ***Termination of the Contract for failure to give notice that Owner applied for loan approval***

If the **Owner** has not provided evidence satisfactory to the **Contractor** that the **Owner** has applied to the **Lender** for the loan approval within five (5) **Business Days** after the **Loan Approval Date**, whether or not the **Owner** has in fact applied for the loan approval, the **Owner** shall be in **Substantial Breach** and, without prejudice to any other rights the **Contractor** may have, the **Contractor** may terminate the **Contract** by giving written notice of termination of the **Contract** to the **Owner**. If the **Contractor** terminates the **Contract** pursuant to this Clause **3.6**, the **Contractor's** rights shall be the same as if the **Contractor** had terminated the **Contract** in accordance with Clause **27.2**.

4 SECURITY ACCOUNT MONEY

4.1 ***Applicability of Clause 4***

This Clause **4** only applies if Item 14 of the **Schedule** requires the **Owner** to deposit **Security Account Money** into the **Security Account**.

4.2 ***Owner to deposit money into the Security Account***

Unless the parties otherwise agree:

a) the **Owner** is to deposit the **Security Account Money** into the **Security Account** before the **Date for Commencement**;

b) withdrawals from the **Security Account** must be used to make progress payments to the **Contractor** in accordance with Clause **25** before loan monies, the subject of the loan approval under Clause **3** (if applicable), are used to pay the **Contractor**; and

c) withdrawals from the **Security Account** must require the signatures of both the **Contractor** and the **Owner**.

4.3 ***Contractor's entitlement to money in the Security Account***

If the **Owner** fails to pay any amount due to the **Contractor** under the **Contract**, or if the **Contract** is terminated or otherwise comes to an end, the **Contractor** is entitled to the money in the **Security Account** to the extent of any amounts owing to the **Contractor** under the **Contract**.

4.4 ***Owner's entitlement to money in the Security Account***

If the **Contract** is terminated or otherwise comes to an end, the **Owner** is entitled to the money in the **Security Account**, plus any interest earned on the money (if any), only after the **Contractor** has received from the **Owner** all amounts owing to the **Contractor** under the **Contract**.

4.5 ***Disputes relating to money in the Security Account***

Should there be any dispute between the parties as to their entitlement to the money in the **Security Account**, it must be dealt with in accordance with any order or direction of the **Tribunal** or a Court, and the parties must use their best endeavours, and take whatever steps are necessary, to ensure any such order or direction is complied with.

4.6 ***Interest on Holding Account***

Notwithstanding any other Clause to the contrary, the parties acknowledge that any and all interest earned on **Security Account Money** that is held in the **Holding Account** is retained by Master Builders Queensland and neither party is entitled to any of that interest.

5 DISCREPANCIES AND AMBIGUITIES

5.1 ***Parties to consult if discrepancy or ambiguity found***

If either party finds any discrepancy or ambiguity in the **Contract**, that party must notify the other party in writing. The parties agree to consult with each other in an attempt to resolve the discrepancy or ambiguity. Failing resolution, the discrepancy or ambiguity is to be resolved in accordance with Clauses **5.2** and **5.3**, or if those Clauses do not resolve the discrepancy or ambiguity, then in accordance with Clause **32**.

5.2 ***Order of precedence of documents***

Subject to Clause **5.1**, any discrepancy or ambiguity in or between any documents comprising the **Contract** is to be resolved by adopting the following order of precedence:

a) any special conditions set out in Part I of the **Appendix**;
b) these general conditions;
c) the **Specifications**;
d) the **Drawings**; and
e) any other documents comprising the **Contract**.

5.3 ***Figured dimensions prevail over scaled dimensions***

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions prevail.

5.4 ***Contractor's costs to overcome Owner caused discrepancy***

If the **Owner** provides the **Drawings**, **Specifications** or other design documents and if the resolution of the discrepancy or ambiguity in the **Drawings**, **Specifications** or other design documents causes the **Contractor** to incur more or less cost than the **Contractor** could reasonably have anticipated at the date of the formation of the **Contract**, the difference is deemed to be a **Variation** and the **Contractor** is to comply with Clause **24.4**.

6 COOLING-OFF PERIOD

6.1 ***Owner may withdraw from the Contract during Cooling-Off Period***

Subject to Clauses **6.2** and **6.3**, the **Owner** may withdraw from the **Contract**:

a) within five (5) **Business Days** after receiving a copy of the signed **Contract** and the **Consumer Building Guide**; or
b) within five (5) **Business Days** after receiving the **Consumer Building Guide** if the **Owner** did not receive the **Consumer Building Guide** prior to receiving a copy of the signed **Contract**; or
c) if five (5) **Business Days** have elapsed from the date of the formation of the **Contract** and the **Owner** has not received from the **Contractor** a copy of the signed **Contract** or the **Consumer Building Guide** or both.

6.2 ***Requirements for Owner to withdraw***

In order to withdraw from the **Contract** under Clause **6.1** or section 35 of Schedule 1B of the **Act**, the **Owner** must give a signed written notice to the **Contractor** stating that the **Owner** withdraws from the **Contract**, and the section of Clause **6.1** or Schedule 1B of the **Act**, as applicable, under which the withdrawal is made, within the time allowed under that section for the withdrawal.

6.3 ***Limitations on right to withdraw***

The **Owner** may not withdraw from the **Contract** if:

a) the **Owner** and the **Contractor** have previously entered into a contract relating to the same detached dwelling, home or **Land** on substantially the same terms as the **Contract**; or
b) the **Owner** has received *formal legal advice* about the **Contract** before entering into the **Contract**; or
c) on, or after, the date of the formation of the **Contract**, the **Owner** tells the **Contractor** that the **Owner** received *formal legal advice* about the **Contract** before entering into the **Contract**.

6.4 ***Consequences of withdrawal***

a) The following provisions of Clause **6.4** only apply if the **Owner** withdraws from the **Contract** in accordance with this Clause **6** or section 35 of Schedule 1B of the **Act**.

b) The **Owner** must pay the **Contractor** an amount of $100 plus any out-of-pocket expenses reasonably incurred by the **Contractor** under the **Contract** before the **Owner** withdrew from the **Contract**. If the **Owner** has paid the **Contractor** more than that amount under the **Contract** before the **Owner** withdrew from the **Contract**, the **Contractor** must refund the excess to the **Owner**.

c) Any amounts due under this Clause **6.4** must be paid on written demand for such amounts and will be deemed to be a debt due and payable to the party entitled to that amount by the other party.

6.5 ***Terms used in this Clause***

In this Clause, *formal legal advice* means independent advice given by a lawyer authorised under a law of Queensland to practise as a lawyer for purposes including the giving, for reward, of advice, including, for example, advice about domestic building contracts, and for the giving of which an amount is paid, or is payable, to such a lawyer by the **Owner**.

7 APPROVAL TO COMMENCE BUILDING WORK

7.1 ***Reasonable steps to be taken to obtain building approval***

The party stated in Item 15 of the **Schedule** must promptly take all reasonable steps, and pay any relevant fee, to obtain the necessary building approval to commence the **Works**.

7.2 ***A party may terminate the Contract if necessary approvals are not obtained within 55 Business Days***

If any necessary building and/or development approval is not obtained within fifty-five (55) **Business Days** after the date of the formation of the **Contract**, either party may give written notice to the other party terminating the **Contract** without liability to that other party, except only that the **Contractor** is entitled to be paid a reasonable remuneration, including a reasonable allowance for supervision, overheads and profit, for work carried out under the **Contract** to the date the **Contract** was terminated. On written demand by the **Contractor** for such remuneration, the amount demanded is deemed to be a debt due and payable by the **Owner** to the **Contractor**.

7.3 ***Materials ordered and unable to be returned***

The reasonable remuneration referred to in Clause **7.2** includes the costs incurred for materials ordered by the **Contractor** under the **Contract** and unable to be returned. The **Owner** may collect from the **Contractor** any such materials and ownership passes to the **Owner** only after payment has been received by the **Contractor** from the **Owner** for such materials.

7.4 ***Consequences of terminating the Contract under Clause 7.2***

If the **Contractor** has received an amount under the **Contract** from the **Owner** and that amount is in excess of the amount payable to the **Contractor** under Clause **7.2**, the **Contractor** must refund the excess to the **Owner** within five (5) **Business Days** of the termination of the **Contract**.

8 PRIME COST ITEMS AND PROVISIONAL SUM ITEMS

8.1 ***Owner to provide directions relating to Prime Cost Items or Provisional Sum Items***

If the **Contract** includes any **Prime Cost Items** or **Provisional Sum Items** in Part A or Part B of the **Appendix**, the **Owner** must give to the **Contractor** all necessary written and signed **Directions** requested by the **Contractor** regarding the selection or supply of the item or work represented by a **Prime Cost Item** or **Provisional Sum Item** within five (5) **Business Days** of the **Contractor's** request.

8.2 ***Contractor to provide notice to Owner where a Prime Cost Item is unavailable***

If any **Prime Cost Item** selected by the **Owner** is unavailable or will, in the opinion of the **Contractor**, unduly delay the progress of the **Works**, the **Owner** must specify in writing to the **Contractor** an alternative item within five (5) **Business Days** of the **Contractor's** request to do so.

8.3 ***If Owner fails to specify alternative Prime Cost Item***

If the **Owner** fails to comply with Clause **8.2**, the **Contractor** may select and supply a reasonable alternative item to the originally selected **Prime Cost Item** in terms of quality.

8.4 ***Contract Price adjustment where cost is less than allowance***

If the actual cost of a **Prime Cost Item** or of a **Provisional Sum Item** is less than the total amount allowed for that item in Part A or Part B of the **Appendix**, the difference between the two amounts is to be deducted from the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

8.5 ***Contract Price adjustment where cost exceeds allowance***

If the actual cost of a **Prime Cost Item** or of a **Provisional Sum Item** exceeds the total amount allowed for that item in Part A or Part B of the **Appendix**, the excess amount plus the **Contractor's Margin** on that excess is to be added to the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

9 LATENT CONDITIONS

9.1 ***Contractor to notify Owner of Latent Condition***

The **Contractor** must, on becoming aware of a **Latent Condition**, promptly give to the **Owner** a written notice describing the **Latent Condition**, the **Contractor's** estimate of the work and its costs required to overcome the **Latent Condition**, and the **Contractor's** estimate of the time required to overcome the **Latent Condition**.

9.2 ***Variation due to Latent Condition***

Subject to Clause **9.3**, the **Contractor** must vary the **Works** and issue a **Variation Document** to overcome any notified **Latent Condition** that affects the **Contractor's** performance of the **Works**.

9.3 ***Owner's written notice agreeing to Variation***

Within five (5) **Business Days** after receiving a **Variation Document**, the **Owner** must give to the **Contractor** a written notice agreeing to the **Variation** required to overcome the **Latent Condition** unless any stated adjustment to the **Contract Price**, or method for calculating the adjustment to the **Contract Price**, because of the **Latent Condition** is unreasonable having regard to Clause **9.5** or the extent of the work to be added to, or omitted from, the **Works**.

9.4 ***Owner's failure to agree to Variation***

If the **Owner** fails to agree to a **Variation** required to overcome a **Latent Condition** in writing, then the dispute arising as a result is to be resolved in accordance with Clause **32**.

9.5 ***Limitation on Contractor's right to recover for Variation***

Unless exempt under section 31 of Schedule 1B of the **Act**, the **Contractor** cannot seek from the **Owner** payment of an amount for a **Variation** in respect of a **Latent Condition** if:

a) the **Contractor** failed to obtain the **Foundations Data** before entering into the **Contract** and, had the **Contractor** obtained the **Foundations Data**, the need for that amount could reasonably have been established and the amount calculated; or

b) the **Contractor** obtained the **Foundations Data** before entering into the **Contract**, and the need for that amount could reasonably have been established, and the amount calculated from, the **Foundations Data**.

10 STATUTORY REQUIREMENTS

10.1 ***Compliance with Statutory Requirements***

a) Unless agreed otherwise elsewhere in the **Contract**, the **Contractor** must:

i) comply with all **Statutory Requirements** relating to the **Works**;

ii) obtain any consent, approval and permit that are expressly required to be obtained and paid for by the **Contractor** under the **Contract**; and

iii) give any notice or report, and pay any fee, in order to comply with Clause **10.1(a)(ii)**.

b) Except as set out in Clause **10.1(a)**, the **Owner** must obtain any consent, approval and permit and give any notice or report, and pay any fee, including so that this Clause can be complied with.

10.2 ***Increased cost of compliance***

If the cost to the **Contractor**:

a) in complying with all **Statutory Requirements**, increases after the date that is two (2) weeks prior to the date of the formation of the **Contract**; or

b) in carrying out the **Works**, increases after the date that is two (2) weeks prior to the date of the formation of the **Contract** as a result of the introduction or increase of any fee, tax, duty, charge, levy, other impost or regulation,

the amount of the increase is to be added to the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

10.3 ***Variation due to compliance with Statutory Requirements***

If the **Contractor's** compliance with a **Statutory Requirement** requires a **Variation**, the **Owner** must, within five (5) **Business Days** after receiving a **Variation Document**, give to the **Contractor** a written notice agreeing to the **Variation** unless the stated adjustment to the **Contract Price**, or method for calculating the adjustment to the **Contract Price**, because of the **Variation** is unreasonable having regard to the extent of the work to be added to, or omitted from, the **Works**.

10.4 ***Owner's failure to agree to Variation***

If the **Owner** fails to agree in writing to a **Variation** submitted pursuant to Clause **10.3**, then the dispute arising as a result is to be resolved in accordance with Clause **32**.

10.5 ***Owner's request for additional statutory inspections***

If:

a) section 143B of the *Building Act 1975* applies;

b) the party stated at Item 15 of the **Schedule** is the **Contractor**; and

c) the **Owner** directs the **Contractor** to request the building certifier to carry out additional inspections under the agreement between the builder certifier and the **Contractor** in relation to the **Works**,

any cost incurred by the **Contractor** for those additional inspections, together with the **Contractor's Margin** applied to those costs, is to be added to the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

11 INSURANCE

11.1 ***Statutory insurance obligations***

The **Contractor** must take out and maintain all policies of insurance, including, for example, WorkCover in respect of its workers, required to be taken out and maintained by the **Contractor** by a **Statutory Requirement** relating to the **Works**.

11.2 ***Construction Works Policy to be provided by Contractor***

The **Contractor** must take out and maintain a **Construction Works Policy** for the full insurable value of the **Works** from the **Date for Commencement** until the **Date of Practical Completion** or the date the **Owner** takes **Possession** of the **Works**, whichever is earlier. The **Construction Works Policy** must note the **Contractor** as an 'Insured', and the **Owner** and any **Lender** (if requested by the **Owner**) as 'Insureds' or 'Interested Parties', under the policy.

11.3 ***Public liability insurance to be provided by Contractor***

The **Contractor** must take out and maintain a public liability insurance policy for an amount not less than $10 million for any one occurrence from the **Date for Commencement** until the expiration of the **Defects Liability Period**. The public liability insurance policy must cover the **Contractor** and the **Owner** for their liabilities to third parties and each other in respect of personal injury to, or death of, any person (other than liability which is required by law to be insured under a workers' compensation policy of insurance), and loss or damage to property except the **Works**, arising out of, or in connection with, the **Works**. The public liability policy must note the **Contractor** and the **Owner** as 'Insureds' under the policy.

11.4 ***Responsibility if loss caused by Owner***

To the maximum extent permitted by law, the **Contractor** is not liable, and does not provide any indemnity, to the **Owner**, the **Owner's Agent**, the **Owner's** employees or other agents, or any other person for whom the **Owner** is responsible for any injury or death to any person, or loss or damage to any property, which arises as a result of any act or omission by the **Owner**, or any person for whom the **Owner** is responsible, and in respect of such claims the **Owner** must indemnify the **Contractor**.

11.5 ***Evidence of policies to be provided on written request***

The **Contractor**, where required to take out and maintain a policy of insurance under this Clause **11**, must:

a) take out and maintain the policy of insurance with a reputable insurer; and

b) if the **Owner** gives a written notice requesting to view the policy of insurance, make available for the **Owner** to view the current policy of insurance within five (5) **Business Days** after the giving of the notice.

11.6 ***Owner's responsibility for insurance***

a) The **Owner** must insure the **Works** from the **Date of Practical Completion** or the date the **Owner** takes **Possession** of the **Works**, whichever is earlier.

b) If the **Works** involve the alteration, addition to, or repair of an existing building, then the **Owner** must take out and maintain an insurance policy for the duration of the **Contract** which provides cover for the full replacement value of any existing building, and the contents of such building, against any loss or damage. If the **Contractor** gives a written notice requesting to view the policy of insurance, the **Owner** must make available for the **Contractor** to view the current policy of insurance within five (5) **Business Days** after the giving of the notice.

c) If the **Works** do not involve the alteration, addition to, or repair of an existing building, but existing buildings are on the **Land**, then the **Owner** must take out and maintain an insurance policy for the duration of the **Contract** which provides cover for the full replacement value of any existing building, and the contents of such building, against any loss or damage. If the **Contractor** gives a written notice requesting to view the policy of insurance, the **Owner** must make available for the **Contractor** to view the current policy of insurance within five (5) **Business Days** after the giving of the notice.

12 CONTRACTOR'S WARRANTIES

12.1 ***Warranties relating to the carrying out of the Works***

The **Contractor** warrants that the **Contractor** will carry out the **Works**:

a) in an appropriate and skilful way;
b) with reasonable care and skill;
c) in accordance with the **Drawings** and the **Specifications**;
d) with reasonable diligence; and
e) in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975* and the National Construction Code.

12.2 ***Warranty relating to suitability of premises for occupation***

If the **Works**:

a) consist of the erection or construction of a detached dwelling; or
b) are intended to renovate, alter, extend, improve or repair a home,

to a stage suitable for occupation, the **Contractor** warrants that the detached dwelling or home will be suitable for occupation when the **Works** are finished.

12.3 ***Warranty relating to Prime Cost Items and Provisional Sums***

The **Contractor** warrants that any estimate for the cost of a **Prime Cost Item** or **Provisional Sum** provided for in the **Contract** has been calculated with reasonable care and skill having regard to all the information, including information about the nature and location of the **Land**, reasonably available at the date of the formation of the **Contract**.

12.4 ***Warranties relating to suitability of materials***

Subject to Clause **12.5**, the **Contractor** warrants that all materials to be supplied by the **Contractor** for use in the **Works**:

a) will be good and, having regard to generally accepted practices or standards applied in the building industry for the materials, or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, suitable for the purpose for which they are used; and
b) unless expressly stated otherwise elsewhere in the **Contract** including in Item 22 of the **Schedule** or the parties have agreed in writing otherwise, will be new.

12.5 ***Applicability of Clause 12.4***

Clause **12.4** does not apply for materials if:

a) an architect is the **Owner's Agent**, or the **Contract** is being administered by an architect engaged by the **Owner**, and the **Contractor** is subject to the **Direction** of the architect for supplying the materials that are to be supplied by the **Contractor**; or
b) the **Owner** is responsible for specifically nominating the materials to be supplied by the **Contractor** for use in the **Works** without any recommendation, representation, suggestion or other approach having been made to the **Owner** by the **Contractor**:
   i) supporting, or approving, the use of the materials; or
   ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the **Owner** are to be used,

   and there are no reasonable grounds for not using the materials or, if there are reasonable grounds for not using the materials, the **Owner** insists on the materials being used despite written advice to the contrary given to the **Owner** by the **Contractor**.

13 OWNER'S OBLIGATIONS

13.1 ***Evidence of capacity to pay the Contract Price***

The **Owner** must, within five (5) **Business Days** of the date of the formation of the **Contract**, but no later than two (2) **Business Days** prior to the date stated in Item 16 of the **Schedule**, provide evidence satisfactory to the **Contractor** that the **Owner** has the financial capacity to pay the **Contract Price**.

13.2 ***Contractor may request evidence of capacity to pay***

The **Contractor** may, at any time prior to the **Works** reaching **Practical Completion**, request that the **Owner** provide satisfactory evidence of its capacity to pay the unpaid balance of the **Contract Price**, or the price of any **Variation**, and the **Owner** must, within five (5) **Business Days** of the request, provide such evidence to the **Contractor**.

13.3 ***Owner's obligation if capacity to pay is reduced or ceases***

The **Owner** must immediately notify the **Contractor** if at any time during the **Contract**, the **Owner's** capacity to pay the unpaid balance of the **Contract Price** (including the price of any **Variation**) is in any way reduced or ceases.

13.4 ***Owner's obligation to pay the Contract Price***

The **Owner** must pay the **Contractor** the **Contract Price** in accordance with the **Contract**.

13.5 ***Owner's obligation to pay Deposit***

The **Owner** must pay the **Deposit** to the **Contractor** on the date of the formation of the **Contract**.

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13.6 ***Materials supplied by Owner to be new, good and suitable for their purposes***

Unless expressly stated otherwise elsewhere in the **Contract**, if Item 23 of the **Schedule** provides that the **Owner** is to supply materials or **Building Products** for use in the **Works**, or the **Owner** supplies materials or **Building Products** that it requests the **Contractor** to use in the **Works**, the **Owner** must:

a) supply materials or **Building Products** which are new, good and suitable for the purposes for which they are to be used and comply with any relevant Australian Standards, Codes, **Statutory Requirements** and, where requested by the **Contractor**, provide written evidence of the materials' compliance;

b) ensure that any **Building Products** are not a **Non-Conforming Building Product** for its intended use; and

c) provide to the **Contractor** on request all **Required Information** for the **Building Product**.

13.7 ***Documents supplied by Owner***

If the **Owner** supplies any documents, **Foundations Data**, or **Required Information** to the **Contractor**, the **Owner**:

a) warrants that the documents or data are, or will be, accurate, suitable for the purposes for which they will be used and appropriate in all respects for the **Land** (including the **Site**);

b) warrants that the documents or data comply with all **Statutory Requirements** relating to the **Works**;

c) warrants that all consents, approvals and permits necessary for the lawful commencement of, and the carrying out of, the **Works** have been obtained, and all related fees and charges have been paid, except to that extent which any such necessary consent, approval or permit is expressly required to be obtained and paid for by the **Contractor** under the **Contract**;

d) warrants that it is, and will continue to be, reasonable for the **Contractor** to rely on the documents or data;

e) must supply a sufficient number of copies to enable the **Contractor** to perform the **Works**, and to obtain necessary approvals if the **Contractor** is required to do so under the **Contract**; and

f) must have the **Owner's** engineer (who must be a Registered Professional Engineer of Queensland) sign the **Engineer Specification and Confirmation** on the date of the formation of the **Contract**, if applicable.

13.8 ***Owner not to interfere with the carrying out of the Works***

a) The **Owner** must not obstruct, interfere with or hinder the carrying out of the **Works**. The **Owner** must take all reasonable steps to prevent all others from obstructing, interfering with or hindering the carrying out of the **Works**.

b) If the **Owner** or any person on **Site** at the request of or under instructions from the **Owner** obstructs, interferes with or hinders the carrying out of the **Works**, the **Owner** must indemnify the **Contractor** against the consequences of any delay, and any additional costs incurred by the **Contractor** as a result, if the **Contractor** gives to the **Owner** a written notice advising of the delay or the additional costs within ten (10) **Business Days** of the **Contractor** becoming aware of the obstruction, interference or hindrance.

c) The **Owner** must:

i) comply with the **Directions** of the **Contractor** given for work, health and safety at the **Site**;

ii) ensure that any person at the **Site** at the request of or under the instruction of the **Owner** complies with the **Directions** of the **Contractor** given for work, health and safety at the **Site**;

iii) not wilfully or recklessly interfere with or misuse anything provided for work, health and safety at the **Site**;

iv) not wilfully place at risk the health and safety of any person at the **Site**;

v) not wilfully injure oneself; and

vi) only attend the designated construction areas at the **Site** whilst supervised by the **Contractor** or the **Contractor's Representative**.

13.9 ***Communications between Owner and Contractor***

The **Owner** must not give **Directions** to the **Contractor's** employees or subcontractors. The **Owner** is not entitled to rely on any statements made or representations given by the **Contractor's** employees or subcontractors other than those personally made or given by the **Contractor** or the **Contractor's Representative** and later confirmed in writing.

13.10 ***Intellectual property rights warranty if Owner provides design***

The **Owner** warrants that:

a) any **Drawings** or **Specifications** supplied by the **Owner** or the **Owner's Agent**; or

b) any document which incorporates designs which were prepared:

i) under instruction, supervision or direction from the **Owner** or the **Owner's Agent**; or

ii) from sketches supplied by the **Owner** or the **Owner's Agent**,

do not infringe any copyright, moral right or other intellectual property right. Where such documents are supplied by the **Owner**, the **Owner** indemnifies the **Contractor** against all actions, proceedings, claims, demands, costs, losses and damages in respect of any actual or alleged infringement of any copyright, moral right or other intellectual property right by the **Contractor** as a result of the carrying out of the **Works**.

13.11 ***Services and Fees not included in the Contract Price***

The **Owner** is responsible for, including all costs associated with, the conveying, connection and installation of all services and facilities being brought to the **Land** for connection to the **Works**. These services and facilities include, but are not limited to, for example: gas, sewerage, storm water, water, electricity, telephone and National Broadband Network. Unless agreed otherwise elsewhere in the **Contract**, the **Contractor** is responsible for services connected from the boundary of the **Land** to the **Works**.

14 OWNER'S AGENT

14.1 ***Owner's Agent***

The person stated in Item 8 of the **Schedule** is to act as the **Owner's Agent**. Where no person is stated in Item 8 of the **Schedule**, the **Owner** may, with the prior written consent of the **Contractor** (which must not be unreasonably withheld), appoint a person to act as the **Owner's Agent**. The **Owner** authorises the **Owner's Agent** to act on the **Owner's** behalf with respect to the administration of the **Contract** and the performance of the **Owner's** obligations under the **Contract**.

14.2 ***Acts of Owner's Agent deemed to be those of the Owner***

Any act or omission by the **Owner's Agent** is deemed to be an act or omission of the **Owner** under the **Contract**. Any **Direction** given by the **Owner's Agent** in writing is deemed to be a **Direction** given by the **Owner**.

14.3 ***Architect as Owner's Agent***

Any architect engaged by the **Owner** may be appointed by the **Owner** as the **Owner's Agent** for the purposes of the **Contract**. In the absence of the architect being appointed as the **Owner's Agent**, the architect has no authority to issue a **Direction** under the **Contract** on the **Owner's** behalf.

14.4 ***Replacement of Owner's Agent***

The **Owner** may, with the prior written consent of the **Contractor** (which must not be unreasonably withheld), replace the **Owner's Agent**.

14.5 ***Direction of Owner's Agent***

Any **Direction** given by the **Owner's Agent** must be in writing and signed by the **Owner's Agent**. If the **Owner's Agent** gives the **Contractor** a **Direction** that is not in writing, the **Contractor** may, in the **Contractor's** absolute discretion, disregard the **Direction** (and to avoid doubt, the **Contractor** will not be obliged to comply with, or otherwise recognise, the **Direction**) until such time as the **Owner's Agent** or the **Owner** has confirmed the **Direction** to the **Contractor** in writing. If the **Contractor** elects to accept a **Direction** given by the **Owner's Agent** that is not in writing, the **Direction** will have the same effect as it would if it was in writing.

15 OWNER'S INDEMNITY

The **Owner** indemnifies, and will keep indemnified, the **Contractor** against any claim, demand, loss, damage, cost, expenses, or liability arising out of:

a) any negligent act or omission of the **Owner**, the **Owner's Agent**, the **Owner's** consultants, other agents or contractors, or authorised officers of the **Lender**;

b) any breach of the **Contract** or statutory duty by the **Owner**, the **Owner's Agent**, the **Owner's** consultants, other agents or contractors, or authorised officers of the **Lender**;

c) damage which is the unavoidable result of the construction of the **Works** in accordance with the **Contract**;

d) any claim in respect of the **Owner's** right to have the **Works** carried out;

e) any defect in the design of the **Works** provided by the **Owner**;

f) any claim in respect of a **Building Product** supplied by the **Owner**; and

g) any claim in respect of any occupier or subsequent owner or occupier of the **Land** or any part of it not covered by Clause **30.1**.

The **Contractor** must take reasonable steps to mitigate any loss or damage caused, or contributed to, by the causes listed in this Clause. The **Owner's** liability will be reduced proportionately to the extent that any negligent act, omission or default of the **Contractor** or any person other than the **Owner** for whom the **Contractor** is responsible may have contributed to such claim, demand, loss, damage, cost, expenses, or liability.

16 THE LAND

16.1 ***Contractor to have free and uninterrupted occupation of the Site and existing buildings***

By the date stated in Item 16 of the **Schedule**, the **Owner** must provide to the **Contractor** free and uninterrupted occupation of the **Site**, and all reasonably required access to any existing buildings on the **Land** necessary to carry out the **Works**, and at all times after providing it to the **Contractor**, the **Owner** must ensure that the **Contractor** continues to have such occupation and access.

16.2 ***Access to the Site***

a) The party stated in Item 16 of the **Schedule** is responsible for the **Site** being accessible by any persons, vehicles or machinery reasonably necessary for the carrying out of the **Works**.

b) If the **Site** becomes inaccessible or access is restricted due to any reason beyond the control of the **Contractor**, any costs incurred by the **Contractor** in obtaining sufficient access to the **Site**, together with the **Contractor's Margin** applied to those costs, is to be added to the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

16.3 ***Owner's right to inspect Works***

a) On written request by the **Owner**, the **Contractor** must give to the **Owner**, or a person authorised by the **Owner**:

i) reasonable supervised access to designated construction areas at the **Site**; and

ii) a reasonable opportunity to view any part of the **Works**,

provided that the **Contractor's** performance is not obstructed, and the **Owner** or authorised person complies with any reasonable **Direction** by the **Contractor** in respect of work, health and safety.

b) Access by the **Owner**, or a person authorised by the **Owner**, under this Clause is to be by prior arrangement with the **Contractor** and must be during usual business hours or other times as agreed.

16.4 ***Evidence of title or Land Owner's consent to carry out the Works***

The **Owner** must provide to the **Contractor** within five (5) **Business Days** after the date of the formation of the **Contract**, either:

a) satisfactory written evidence of the **Owner's** title to the **Land**, together with full details of any easements, restrictions or covenants which may affect the performance of the **Works**; or

b) if the **Owner** is not the **Land Owner**, written consent from all **Land Owners** consenting to the carrying out of the **Works** by the **Contractor** on the **Land**, together with satisfactory written evidence of their title to the **Land** and full details of any easements, restrictions or covenants which may affect the performance of the **Works**.

16.5 ***Identification of the Land to be provided by Owner***

The **Owner** must clearly and accurately identify the **Land** to the satisfaction of the **Contractor**.

16.6 ***Evidence of boundaries or position of the Land to be provided by Owner***

The **Owner** must, within five (5) **Business Days** after the date of the formation of the **Contract**, give to the **Contractor** satisfactory written evidence of the boundaries or position of the **Land**, and the **Owner** warrants that such evidence will be accurate.

16.7 ***Owner's failure to provide evidence of boundaries or position of the Land***

If the **Owner** fails to comply with Clause **16.5** or **16.6**, the **Contractor** may, in writing, request the **Owner** to obtain a survey of the **Land**. If the **Owner** fails to obtain a survey within five (5) **Business Days** after the date of the **Contractor's** request, the **Contractor** may arrange for a survey of the **Land** and the cost of the survey, plus the **Contractor's Margin** applied to those costs, is to be added to the **Contract Price** and included in the next or any later **Progress Claim** or the **Final Claim**.

17 COMMENCEMENT

17.1 ***Date for Commencement***

The **Contractor** must commence the **Works** at the **Site**:

a) if a date is stated in Item 10 of the **Schedule** as the **Date for Commencement**, on or before that date; or

b) if the **Date for Commencement** is stated in Item 10 of the **Schedule** to be determined under this Clause **17.1(b)**, then within ten (10) **Business Days** of the **Contractor** receiving all of the following:

i) the building approval required pursuant to Clause **7.1**;

ii) satisfactory evidence of the **Owner's** capacity to pay the **Contract Price** pursuant to Clause **13.1**;

iii) a signed copy of the **Engineering Specification and Confirmation** if required under Clause **13.7(f)**;

iv) all information, evidence and consents required to be given by the **Owner** under Clause **16**; and

v) if a **Lender** is providing loan money to the **Owner**, a notice from the **Lender** to the **Contractor** that the **Works** may commence.

17.2 ***Contractor to give Commencement Notice to Owner***

Within ten (10) **Business Days** of starting the **Works** at the **Site**, the **Contractor** must give a commencement notice, signed by the **Contractor**, to the **Owner** stating:

a) the date the **Contractor** started the **Works** at the **Site**; and

b) the **Date for Practical Completion**.

17.3 ***Parties to provide reasonable assistance***

Whether Clause **17.1(a)** or **17.1(b)** applies, each party must take all reasonable steps and provide all reasonable assistance to the other to ensure the matters stated in Clause **17.1(b)(i)** to **(v)** are satisfied as soon as reasonably practicable. A failure by the **Owner** to comply with this Clause **17.3** will be a **Substantial Breach** of the **Contract**.

18 PRACTICAL COMPLETION

18.1 ***Date for Practical Completion***

The **Contractor** must bring the **Works** to **Practical Completion** by the **Date for Practical Completion**.

18.2 ***Contractor's notice of anticipated Practical Completion***

Not less than five (5) **Business Days** before the **Day** on which the **Contractor** anticipates bringing the **Works** to **Practical Completion**, the **Contractor** must give to the **Owner** written notice of:

a) the **Day** on which the **Contractor** anticipates bringing the **Works** to **Practical Completion**; and

b) a final inspection of the **Works** between the **Owner**, or the **Owner's Agent**, and the **Contractor** at a time on that **Day** set out in the notice.

18.3 ***Owner must notify Contractor if unable to attend final inspection***

If the **Owner**, or the **Owner's Agent**, is unable to attend the final inspection of the **Works** at the time and **Day** set out in the **Contractor's** notice given in accordance with Clause **18.2**, the **Owner** must:

a) immediately notify the **Contractor** in writing; and

b) arrange with the **Contractor** a final inspection of the **Works** at a mutually agreeable time, during usual business hours, on a **Day** before, or on, the **Day** on which the **Contractor** anticipates bringing the **Works** to **Practical Completion** as set out in the **Contractor's** notice given in accordance with Clause **18.2**.

18.4 ***Parties to attend final inspection***

The **Owner**, or the **Owner's Agent**, and the **Contractor** must attend the final inspection of the **Works** at the time and **Day** set out in the **Contractor's** notice given in accordance with Clause **18.2**, or as otherwise arranged in accordance with Clause **18.3**.

18.5 ***Owner's failure to attend the final inspection***

If the **Owner**, or the **Owner's Agent**, does not attend the final inspection of the **Works** in accordance with Clause **18.4**, the **Owner** is deemed to have accepted that:

a) there are no defects or omissions in the **Works**; and

b) the **Works** have reached **Practical Completion**.

18.6 ***Contractor to give signed Defects Document to Owner in certain circumstances***

If, at the final inspection of the **Works**, the **Owner** claims that there are minor defects in, or minor omissions from, the **Works**, the **Contractor** must give to the **Owner**, at that inspection, a **Defects Document**.

18.7 ***Contractor must remedy agreed minor defects and minor omissions***

The **Contractor** must remedy any agreed minor defects and minor omissions set out in any **Defects Document** within the times stated in the **Defects Document** or within a reasonable period if necessary materials or labour are unavailable or the **Contractor** has a reasonable excuse.

18.8 ***No Possession of the Works before payment***

Unless the **Owner** has obtained the **Contractor's** prior written consent, the **Owner** must not take **Possession** of the **Works**, nor is the **Owner** entitled to the keys or other access codes to the **Works**, prior to making full payment to the **Contractor** of the **Contract Price**.

18.9 ***Contractor to hand over Works on payment***

On full payment by the **Owner** of the **Contract Price** to the **Contractor**, the **Contractor** must hand over the **Works**, including the keys or other access codes to the **Works**, to the **Owner** or the **Owner's Agent**.

18.10 ***Payment of disputed amount into Holding Account***

a) If the **Owner** wishes to take **Possession** of the **Works** but disputes any part of the **Contract Price** claimed by the **Contractor**, and the **Contractor** is a member of Master Builders Queensland, the **Owner** may pay the disputed amount into the **Holding Account**. The **Owner** is to then give the **Contractor** a receipt showing the disputed amount has been deposited into the **Holding Account** and pay any undisputed amount to the **Contractor**. Upon receiving the receipt and payment (if any), the **Contractor** is to hand over the **Works**, including the keys and access codes to the **Works**, to the **Owner** or the **Owner's Agent**.

b) The **Owner** agrees to take any steps that will enable Master Builders Queensland to release money received into the **Holding Account** under this Clause in accordance with the Master Builders Holding Account Conditions applicable at the time of the deposit.

18.11 ***Consequences of Owner taking Possession of the Works when not entitled to do so***

If the **Owner** takes **Possession** of the **Works** when not entitled to do so under the **Contract**, the **Works** are deemed to have reached **Practical Completion** without any defects or omissions on the **Day** that the **Owner** takes **Possession**, and the **Owner** is liable to the **Contractor** for any loss or damage that the **Contractor** may incur or suffer as a result.

19 DELAYS AND EXTENSION OF TIME CLAIMS

19.1 ***Contractor's claim for an extension of time***

Subject to Clause **19.2**, the **Contractor** is entitled to an extension of the **Date for Practical Completion** if the progress of the **Works** is delayed as a result of any of the following causes:

a) a **Variation**;
b) a failure by the **Owner**, or the **Owner's Agent**, to give to the **Contractor** a written notice agreeing to a **Variation** in accordance with Clause **9.2**, **10.3** or **24.5**;
c) an act or omission of the **Owner**, the **Owner's Agent**, the **Owner's** consultants, other agents or other contractors, or authorised representatives of the **Lender**;
d) a **Latent Condition**;
e) a breach of the **Contract** by the **Owner**;
f) a lawful suspension of the **Works** (including a suspension under Clause **22**);
g) claims or proceedings being taken, or threatened to be taken, by a third party that did not arise as a result of any breach by the **Contractor** of the **Contract**;
h) proceedings being taken, or threatened by, or disputes with, adjoining neighbouring owner or occupier that did not arise as a result of any breach by the **Contractor** of the **Contract**;
i) an act of prevention by the **Owner** not otherwise covered by this Clause;
j) **Inclement Weather**, or any conditions arising as a direct or indirect consequence resulting from **Inclement Weather** (subject to Clause **19.3**);
k) industrial action or civil commotion affecting the **Works**, any persons employed in respect of the **Works**, or the manufacture or supply of materials for the **Works**;
l) the unavailability of any labour (whether under a subcontract or a contract of employment) necessary for the **Contractor** to carry out the **Works** with reasonable diligence;
m) the unavailability of any materials necessary to carry out the **Works**; or
n) any other cause not reasonably foreseeable at the date of the formation of the **Contract**, and beyond the reasonable control of the **Contractor**.

19.2 ***Notice of extension of time***

If, at any time prior to the **Works** reaching **Practical Completion**, the **Contractor** believes that the progress of the **Works** was, or will be, delayed as a result of a cause set out in Clause **19.1** and the delay causing the need for the extension of the **Date for Practical Completion** was:

a) not reasonably foreseeable and beyond the reasonable control of the **Contractor**; or
b) caused by the **Owner**; or
c) caused by a **Variation** complying with Clause **24**,

the **Contractor** must, within ten (10) **Business Days** of the **Contractor** becoming, or ought reasonably to have become, aware of the cause and extent of the delay, give to the **Owner** a written claim, signed by or on behalf of the **Contractor**, for a reasonable extension of the **Date for Practical Completion** that sets out the cause and consequences of the delay.

19.3 ***Extension for delays involving Inclement Weather***

With respect to a cause of delay referred to in Clause **19.1(j)**, the **Contractor** is not entitled to an extension of the **Date for Practical Completion** for any delays resulting from that cause until the allowance for that cause stated in Item 11(b) of the **Schedule** has been fully exhausted.

19.4 ***Owner's assessment of claim***

Within ten (10) **Business Days** after receiving the **Contractor's** written claim for an extension of the **Date for Practical Completion**, the **Owner** must assess the claim and give written notice to the **Contractor**:

a) accepting the claimed extension of the **Date for Practical Completion**; or
b) if the **Owner** disputes the **Contractor's** entitlement to all or any part of the claimed extension of the **Date for Practical Completion**, give the **Contractor** a written notice:
    i) stating that the **Owner** disputes the claimed extension of the **Date for Practical Completion**;
    ii) setting out full details of the **Owner's** reasons for the dispute; and
    iii) granting any part of the claimed extension of the **Date for Practical Completion** that is not disputed by the **Owner**.

19.5 ***Copy of claim to be provided to the Owner where accepted***

If the **Owner** accepts the **Contractor's** claim for an extension of the **Date for Practical Completion**, in whole or in part, in accordance with Clause **19.4**, the **Contractor** must, within five (5) **Business Days** of the **Owner's** acceptance, give to the **Owner** a signed copy of the accepted claim for an extension of the **Date for Practical Completion**.

19.6 ***Consequence of Owner's rejection or failure to accept***

If the **Owner** fails to give written notice in accordance with Clause **19.4**, or gives notice rejecting the whole or any part of the **Contractor's** claim for an extension of the **Date for Practical Completion**, then the dispute arising as a result is to be resolved in accordance with Clause **32**.

20 DELAY COSTS

20.1 ***Entitlement to Delay Costs***

If the progress of the **Works** is delayed as a result of any of the causes set out in subparagraphs (a) to (i) (inclusive) and (n) of Clause **19.1**, the **Contractor** is entitled to:

a) if a rate is stated for delay costs in Item 17 of the **Schedule**, delay costs at that rate for each **Day** that the progress of the **Works** is delayed as a result of the relevant cause; or

b) if a rate is not stated for delay costs in Item 17 of the **Schedule**, the reasonable costs (including any additional administration, management or supervisory costs, and overhead) the **Contractor** incurs as a consequence of the delay resulting from the relevant cause,

provided that the **Contractor** gives to the **Owner**, or the **Owner's Agent**, a written claim for such delay costs, and which sets out the relevant cause of the delay, the time during which the progress of the **Works** was delayed as a result of that cause, and if Clause **20.1(b)** applies, details of the reasonable costs incurred by the **Contractor**, by no later than the date that is twenty-five (25) **Business Days** after the **Date of Practical Completion**.

20.2 ***Payment of Delay Costs***

If the **Contractor** gives to the **Owner**, or the **Owner's Agent**, a written claim for **Delay Costs** in accordance with Clause **20.1**:

a) the **Delay Costs** claimed are added to the **Contract Price**; and

b) the **Owner** must pay the **Contractor** the **Delay Costs** claimed within five (5) **Business Days** after receiving the written claim for **Delay Costs**.

20.3 ***Right not subject to claim for extension of time***

To avoid doubt, the **Contractor's** right to **Delay Costs** under Clause **20.1** is not subject to the **Contractor** claiming, or the **Owner** accepting a claim for, an extension of the **Date for Practical Completion** in accordance with Clause **19**.

21 LIQUIDATED DAMAGES

21.1 ***Owner's entitlement to Liquidated Damages***

If the **Contractor** fails to bring the **Works** to **Practical Completion** by the **Date for Practical Completion**, the **Owner** may, on **Practical Completion**, give to the **Contractor** a written claim for liquidated damages at the rate stated in Item 18 of the **Schedule** for each **Day** after the **Date for Practical Completion** until the **Date of Practical Completion**, or the **Day** on which the **Contract** is terminated, whichever is earlier.

21.2 ***Time for Liquidated Damages claim***

The **Owner** will not be entitled to **Liquidated Damages**, or any other monetary consideration (including damages for breach of contract), for any failure by the **Contractor** to bring the **Works** to **Practical Completion** by the **Date for Practical Completion** unless the **Owner** gives to the **Contractor** a written claim for **Liquidated Damages** in accordance with Clause **21.1** within twenty (20) **Business Days** after the **Date of Practical Completion**.

21.3 ***Contractor's obligations on receipt of claim for Liquidated Damages***

Subject to Clauses **21.1** and **21.2**, the **Contractor** must within ten (10) **Business Days** after receiving a written claim from the **Owner** for **Liquidated Damages**:

a) pay or allow to the **Owner** the **Liquidated Damages** claimed; or

b) give to the **Owner** a written notice of dispute in accordance with Clause **32.1**, that sets out:

i) the amount of the **Liquidated Damages** claimed by the **Owner** that the **Contractor** disputes; and

ii) the **Contractor's** reasons for disputing that amount of the **Liquidated Damages** claimed,

and pay or allow to the **Owner** any undisputed amount of the **Liquidated Damages** claimed.

22 SUSPENSION OF THE WORKS

22.1 ***Notice of suspension***

If, at any time prior to the **Works** reaching **Practical Completion**, the **Owner** is:

a) in **Substantial Breach** of the **Contract**; or

b) fails to comply with an order of a Court or Tribunal or a decision of an adjudicator under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) given in favour of the **Contractor** in relation to any issue arising out of, or in connection with, the **Contract**;

the **Contractor** may give a written notice to the **Owner**:

c) describing each alleged breach of the **Contract** by the **Owner** or the **Owner's** failure; and

d) stating the **Contractor's** intention to suspend the **Works** unless the **Owner** remedies the alleged breach or breaches or failure within ten (10) **Business Days** after receiving the **Contractor's** notice.

22.2 ***If Owner fails to remedy breach or failure, Contractor may suspend the Works***

If the **Owner** fails to remedy the breach or breaches or failure set out in a notice given to it by the **Contractor** in accordance with Clause **22.1** within the time stated in that notice, the **Contractor** may, without prejudice to any of the **Contractor's** other rights or remedies, suspend performance of the **Works** by further written notice to the **Owner**.

22.3	***Recommencement of the Works if remedied*** The **Contractor** must recommence the carrying out of the **Works** within ten (10) **Business Days** of the alleged breach or breaches or failure set out in the suspension notice being remedied by the **Owner**.
22.4	***Notice of suspension not an affirmation*** Any notice given, or suspension of the **Works**, under this Clause by the **Contractor** is without prejudice to any right of the **Contractor** to terminate the **Contract** for breach or repudiation of the **Contract** by the **Owner** and is not an affirmation of the **Contract**.
23	**DEFECTS LIABILITY PERIOD**
23.1	***Defects Liability Period*** If, after the **Works** have reached **Practical Completion** but prior to the expiration of the **Defects Liability Period**, the **Owner** becomes aware of any defects in, or omissions from, the **Works**, the **Owner** must give the **Contractor** a written notice setting out full details of the defects or omissions.
23.2	***Rectification Program*** Unless the parties agree otherwise or the defects notified by the **Owner** under Clause **23.1** require urgent rectification, the **Contractor** must use its reasonable endeavours to visit the **Site** by the dates that are approximately two (2) months, four (4) months, and six (6) months after the **Date of Practical Completion** and at the expiration of the **Defects Liability Period**, to rectify defects notified by the **Owner** under Clause **23.1** prior to that site visit.
23.3	***No retention money*** To avoid doubt, no part of the **Contract Price** is to be retained by the **Owner** during the **Defects Liability Period**.
23.4	***Contractor must rectify defects identified during the Defects Liability Period*** Subject to reasonable access being provided, the **Contractor** must, within the **Defects Liability Period** and, if reasonably required by the **Contractor**, a further period of twenty (20) **Business Days** after the expiration of the **Defects Liability Period**, rectify any defects in, and omissions from, the **Works** notified to the **Contractor** in accordance with Clause **23.1**, during usual business hours and at no cost to the **Owner**. The **Contractor** is not responsible for rectifying any alleged defects or omissions which arise from the fact that something is still to be supplied or done by the **Owner**, or which relate to the maintenance of an item which is still to be performed by the **Owner** or is the responsibility of the **Owner**.
24	**VARIATIONS**
24.1	***Request for a Variation*** Either party may request a **Variation**.
24.2	***Contractor not obliged to perform Variation*** The **Contractor** may, at its discretion, agree to any **Variation** requested by the **Owner** but it is not obliged to do so.
24.3	***Agreement to vary the Works*** The parties may agree to vary the **Works** so as to: a) increase, decrease or omit any part of the **Works**; b) change the nature, scope, character or quality of any material or work; c) change the levels, lines, positions or dimensions of any part of the **Works**; d) carry out additional work; e) change the manner or sequencing in which the **Contractor** is required to carry out the **Works**; f) demolish or remove material or work no longer required by the **Owner**; and/or g) overcome a discrepancy or ambiguity in **Owner** supplied documents comprising the **Contract**.
24.4	***Variation Document*** Within five (5) **Business Days** of the parties agreeing to a **Variation**, and before any work the subject of the **Variation** is started, the **Contractor** must provide the **Owner** with a **Variation Document**.
24.5	***Owner's written notice agreeing to Variation*** The **Owner** must give to the **Contractor** a written notice agreeing to the **Variation** within five (5) **Business Days** after receiving the **Variation Document** provided by the **Contractor** under Clause **24.4**.
24.6	***No work before receipt of Owner's notice*** The **Contractor** must not start to carry out any work which is the subject of a **Variation** until the **Contractor** receives the written notice from the **Owner** under Clause **24.5** agreeing to the **Variation**.
24.7	***Paying for Variations*** Where a **Variation** results in an increase to the **Contract Price**, the **Owner** must pay the **Contractor** the amount of the increase in accordance with the time stated in the **Variation Document**.
24.8	***Contractor under no obligation to commence any Variation until Owner provides evidence of capacity to pay*** The **Contractor** is under no obligation to start to carry out any work which is the subject of a **Variation** until such time as the **Owner** provides satisfactory evidence to the **Contractor**, if requested, that the **Owner** has the financial capacity to pay for the **Variation**.

24.9 ***Urgent Works***

Notwithstanding any other clause of the **Contract**, the **Contractor** is not required to give the **Owner** a copy of the **Variation Document** before starting the work which is the subject of the **Variation** if that work is required to be carried out urgently and it is not reasonably practicable, in the particular circumstances, to do so.

25 PAYMENT

25.1 ***Progress Claims – Method A or Method B***

a) This Clause applies if Method A or Method B is stated in Item 19 of the **Schedule**.

b) The **Contractor** may submit a **Progress Claim** to the **Owner** on the following reference dates:

i) on completion of the **Stages** set out in the applicable **Method** in Part D of the **Appendix**; and

ii) if, after the **Works** reach **Practical Completion** and prior to the expiration of the **Defects Liability Period**, the parties agree to a **Variation** to the **Works**, on the completion of the work which is the subject of the **Variation**.

c) The **Progress Claim** must set out:

i) details of:

A) the **Stage** that has been completed and/or the work that has been carried out by the **Contractor** to which the **Progress Claim** relates;

B) the amount that the **Contractor** claims for payment by the **Owner** for that work; and

C) any other amount arising out of, or in connection with, the **Contract** that the **Contractor** claims for payment by the **Owner**; and

ii) the total amount that the **Contractor** claims for payment by the **Owner**,

and be in the form of a tax invoice.

25.2 ***Progress Claims – Method C***

a) This Clause applies if Method C is stated in Item 19 of the **Schedule**.

b) The **Contractor** may submit a **Progress Claim** to the **Owner** on the following reference dates:

i) the times stated in Part D of the **Appendix** for Method C (or, if any time stated in Part D of the **Appendix** for Method C is not a **Business Day**, the next **Business Day**) until the expiration of the **Defects Liability Period**;

ii) on the **Works** reaching **Practical Completion**; and

iii) if, after the **Works** reach **Practical Completion** and prior to the expiration of the **Defects Liability Period**, the parties agree to a **Variation** to the **Works**, on the completion of the work which is the subject of the **Variation**.

c) The **Progress Claim** must set out:

i) details of:

A) the work carried out by the **Contractor** to which the **Progress Claim** relates;

B) the amount that the **Contractor** claims for payment by the **Owner** for that work; and

C) any other amount arising out of, or in connection with, the **Contract** that the **Contractor** claims for payment by the **Owner**; and

ii) the total amount that the **Contractor** claims for payment by the **Owner**,

and be in the form of a tax invoice.

25.3 ***Final Claim***

No later than fifteen (15) **Business Days** after the expiration of the **Defects Liability Period**, the **Contractor** may submit a **Final Claim** to the **Owner** that sets out:

a) the total amount of the **Progress Claims** submitted by the **Contractor** to the **Owner** under Clause **25.1** or Clause **25.2** as applicable;

b) the total amount of the payments made by the **Owner** to the **Contractor** under the **Contract** up to and including the date on which the **Contractor** submits the **Final Claim**;

c) details of:

i) any work carried out by the **Contractor** to which the **Final Claim** relates;

ii) any amount that the **Contractor** claims for payment by the **Owner** in respect of any such work; and

iii) any other amount arising out of, or in connection with, the **Contract** that the **Contractor** claims for payment by the **Owner**; and

d) the total amount that the **Contractor** claims for payment by the **Owner** in the **Final Claim**,

and be in the form of a tax invoice.

25.4 ***Payment by Owner***

Upon receipt of a **Progress Claim** or the **Final Claim**, the **Owner** must pay to the **Contractor** the total amount of the **Progress Claim** or the **Final Claim** by no later than the time stated in Item 20 of the **Schedule**, unless the **Owner** disputes the **Progress Claim** or the **Final Claim** in accordance with Clause **25.5**.

25.5 ***Dispute of Progress Claim or Final Claim***

If the **Owner** disputes all or any part of the total amount of a **Progress Claim** or the **Final Claim**, the **Owner** must:

a) give the **Contractor** a written notice of dispute in accordance with Clause **32.1** setting out the amount in dispute and details of the dispute by the time stated in Item 20 of the **Schedule** or the date ten (10) **Business Days** after the **Submission Date**, whichever is the earlier; and

b) pay to the **Contractor** the amount of the **Progress Claim** or the **Final Claim** that is not disputed by the **Owner** by the time stated in Item 20 of the **Schedule**.

25.6 ***Failure to issue notice under Clause 25.5***

a) In relation to a **Progress Claim**, if the **Owner** fails to give the **Contractor** a notice in accordance with Clause **25.5**, the **Owner** must pay to the **Contractor** the total amount of the **Progress Claim** without any deduction.

b) In relation to the **Final Claim**, if the **Owner** fails to give the **Contractor** a notice in accordance with Clause **25.5**:

i) the **Owner** must pay to the **Contractor** the total amount of the **Final Claim** without any deduction; and

ii) the **Final Claim** will be conclusive evidence that:

A) the **Contractor** has carried out and completed the **Works** in accordance with the **Contract**; and

B) the **Contractor** has otherwise discharged the **Contractor's** obligations in connection with, or arising out of, the **Contract** except where the **Contractor** has fraudulently, or otherwise deliberately, concealed from the **Owner** evidence within the **Contractor's** knowledge to the contrary.

25.7 ***Outstanding payments***

If the **Owner** fails to make any payment due to the **Contractor** under the **Contract** on or before the time stated in Item 20 of the **Schedule**:

a) the **Contractor** is entitled to interest on the outstanding amount at the rate stated in Item 21 of the **Schedule**, payable from the **Day** after the date that payment was due until the date of payment; and

b) the **Owner** must pay to the **Contractor** any debt collection costs, including any legal costs on a full indemnity basis, associated with recovering, or the attempted recovery of, the outstanding amount.

25.8 ***Payment on account only***

Payment, other than payment of the **Final Claim**, is payment on account only.

25.9 ***Deductions from Progress Claims or Final Claim***

Subject to Clause **21**, the **Owner** has no right to deduct any amount from moneys owing to the **Contractor** under Clause **25** including any moneys due to the **Owner** from the **Contractor** under the **Contract**.

25.10 ***Reference date on termination of Contract***

In the event that the **Contract** is terminated for any reason, a reference date for the purposes of a **Progress Claim** arises on the date of termination.

26 OWNER'S RIGHTS TO TERMINATE CONTRACT

26.1 ***Owner's right to give notice of intention to terminate Contract***

If the **Contractor**:

a) fails to proceed with the **Works** with reasonable diligence or with reasonable care and skill;

b) unlawfully suspends the carrying out of the **Works**;

c) refuses or persistently neglects to remove or remedy defective work or improper materials so that the progress of the **Works** is significantly, adversely affected;

d) is unable to complete the **Works**;

e) fails to take out or maintain any insurance policy required by the **Contract**;

f) has its licence issued by the **Commission** (if applicable) suspended or cancelled; or

g) is otherwise in **Substantial Breach** of the **Contract**,

the **Owner** may give a written notice to the **Contractor** by hand or registered "Priority" post:

h) describing each alleged breach of the **Contract** by the **Contractor**; and

i) stating the **Owner's** intention to terminate the **Contract** unless the **Contractor** remedies the alleged breach or breaches within ten (10) **Business Days** after receiving the **Owner's** notice.

26.2 ***If Contractor fails to remedy the breach, Owner may terminate Contract***

a) If the **Contractor** fails to remedy the breach or breaches set out in a notice given to it by the **Owner** in accordance with Clause **26.1** within the time stated in that notice, the **Owner** may, without prejudice to any other rights or remedies, terminate the **Contract** by further written notice to the **Contractor**.

b) If the **Contract** is terminated in accordance with Clause **26.2(a)**, the rights and liabilities of the parties are the same as they would have been at common law had the **Contractor** repudiated the **Contract** and the **Owner** elected to treat the **Contract** as at an end and recover damages.

26.3 ***Owner may not terminate Contract in certain circumstances***

The **Owner** may not terminate the **Contract** if the **Owner** is in **Substantial Breach** of the **Contract**.

26.4 ***Owner's right to engage another contractor to complete the Works***

If the **Owner** terminates the **Contract** in accordance with Clause **26.2**, the **Owner** may engage another contractor to complete the **Works**.

26.5 ***Contractor entitled to reasonable remuneration if Contract terminated***

If the **Contract** is terminated in accordance with Clause **26.2**, the **Contractor** is entitled to a reasonable remuneration for the unpaid value of that part of the **Works** it carried out under the **Contract** up to, and including, the **Day** on which the **Contract** is terminated.

27 CONTRACTOR'S RIGHTS TO TERMINATE CONTRACT

27.1 ***Contractor's right to give notice of intention to terminate the Contract***

If the **Owner**:

a) fails to provide the **Contractor** with any **Direction** or other information requested by the **Contractor** under Clause **8**;

b) fails to give the **Contractor** a written notice agreeing to a **Variation** in accordance with Clause **9.2**, **10.3** or **24.5** within five (5) **Business Days** after receiving a **Variation Document** provided by the **Contractor**;

c) fails to comply with any of its obligations under Clause **13**, **16** or **25**;

d) fails to remedy any **Substantial Breach** of the **Contract** set out in a suspension notice given in accordance with Clause **22.1** within ten (10) **Business Days** after receiving that notice; or

e) is otherwise in **Substantial Breach** of the **Contract**,

the **Contractor** may give a written notice to the **Owner**:

f) describing the relevant breach or breaches of the **Contract** by the **Owner**; and

g) stating the **Contractor's** intention to terminate the **Contract** unless the **Owner** remedies the breach or breaches within ten (10) **Business Days** after receiving the **Contractor's** notice.

27.2 ***If Owner fails to remedy the breach, Contractor may terminate the Contract***

If the **Owner** fails to remedy the breach or breaches of the **Contract** set out in a notice given to the **Owner** by the **Contractor** in accordance with Clause **27.1** within the time stated in that notice, the **Contractor** may, without prejudice to any other rights or remedies, terminate the **Contract** by further written notice to the **Owner**.

27.3 ***Contractor may not terminate Contract in certain circumstances***

The **Contractor** may not terminate the **Contract** if the **Contractor** is in **Substantial Breach** of the **Contract**.

27.4 ***Contractor's right to recover on termination***

If the **Contract** is terminated in accordance with Clause **27.2**, the **Contractor**, without prejudice to any other rights or remedies:

a) is entitled to recover from the **Owner** all losses, costs, expenses and damages it incurs or suffers as a result of, or otherwise in connection with, the **Owner's** breach or breaches, and the termination, as if the **Owner** had repudiated the **Contract** at law, and the **Contractor** had accepted the repudiation and elected to terminate the **Contract**;

b) will have an irrevocable licence (including which survives termination of the **Contract**) to remove from the **Land**, and retain, all unfixed materials, goods, plant and equipment previously provided by the **Contractor** provided such unfixed materials, goods, plant and equipment has not been paid for by the **Owner**; and

c) cancel all insurance policies maintained by the **Contractor** under Clauses **11.2** and **11.3**.

28 TERMINATION FOR INSOLVENCY

28.1 ***Owner's rights for insolvency of the Contractor***

If the **Contractor**:

a) commits an act of bankruptcy, or is made bankrupt;

b) makes a composition or other arrangement with creditors;

c) assigns assets for the benefit of creditors generally; or

d) being a company, becomes insolvent, enters into a deed of company arrangement, has a controller, administrator or receiver appointed, or is in liquidation;

the **Owner** may, subject to Clause **28.3**, immediately terminate the **Contract** on giving a written notice to the **Contractor** setting out the ground or grounds relied on by the **Owner** for the termination.

28.2 ***Contractor's rights for insolvency of the Owner***

If the **Owner**:

a) commits an act of bankruptcy, or is made bankrupt;

b) makes a composition or other arrangement with creditors;

c) assigns assets for the benefit of creditors generally; or

d) being a company, becomes insolvent, enters into a deed of company arrangement, has a controller, administrator or receiver appointed, or is in liquidation;

the **Contractor** may, subject to Clause **28.3**, immediately terminate the **Contract** on giving a written notice to the **Owner** setting out the ground or grounds relied on by the **Contractor** for the termination.

28.3 ***Enforceability if the Contractor or the Owner is a company***

If the **Contractor** or the **Owner** is a company and enters into certain arrangements for the purpose of avoiding being wound up in insolvency or appoints an administrator, then the right to terminate the **Contract** pursuant to Clause **28.1** or Clause **28.2** may be limited by the *Corporations Act 2001* (Cth).

29 NOTICES

29.1 ***Copies of notices to be provided by one party to the other***

The **Contractor** or the **Owner** must provide to the other party a copy of any:

a) report, notice, order or other document given in relation to the **Works** by any supplier of services (such as, for example, gas, electricity, telephone, water and sewerage); and

b) certificate of inspection of the **Works**,

as soon as practicable after receipt.

29.2 ***Methods for giving notices and other documents***

Unless expressly stated otherwise elsewhere in the **Contract**, any written notice, or other document, to be given by a party under the **Contract** is deemed to have been given and received:

a) if delivered by hand to the other party, at the time of delivery;

b) if the other party is a company and the notice is left at its registered office or a principal place of business, at the time that the notice is left at the registered office or principal place of business;

c) if sent by pre-paid or registered post to the other party at the address of the other party stated in the **Contract**, or another address notified by the other party in writing, at 9.00am on the date that is seven (7) **Business Days** after the date of posting;

d) if sent by facsimile transmission to the other party at the facsimile number of the other party stated in the **Contract**, or another facsimile number notified by the other party in writing, at the time set out in a written confirmation of the correct transmission of the facsimile; or

e) if sent by email to the other party at the email address of the other party stated in the **Contract**, or another email address notified by the other party in writing, at the time when the email leaves the **Information System** used by the party which sent the email.

29.3 ***Consent to electronic communications***

a) The parties agree that facsimile transmission and email communications from either party to the other constitute an 'electronic communication' as that term is defined in the *Electronic Transactions Act 1999* (Cth) and corresponding State legislation including the *Electronic Transactions (Queensland) Act 2001*.

b) Unless expressly stated otherwise elsewhere in the **Contract**, the parties agree that any written notice, or other document, to be given by a party under the **Contract** may be given and received via facsimile transmission or email, or both.

30 LIMITATION OF CONTRACTOR'S LIABILITY

30.1 ***Release of Contractor from certain liabilities after expiration of limitation period***

To the maximum extent permitted by law, the **Owner** agrees that the **Contractor** will not be liable to the **Owner** (including any person claiming through or under the **Owner** or any occupier or subsequent owner or occupier of the **Land** or any part of it), and will be deemed to be released and discharged by the **Owner** from all liability to the **Owner**, for:

a) any amount due to the **Owner** under the **Contract**;

b) any breach (including any **Substantial Breach**) of the **Contract** by the **Contractor**;

c) any breach of a warranty (other than any warranty mentioned in Part 3 of Schedule 1B of the **Act** that applies to the **Contract**) by the **Contractor** under the **Contract**, or under any statute or other law or legal requirement which permits the parties to exclude, restrict or modify liability for breach of the warranty;

d) any tort (including negligence) arising out of, or otherwise in connection with, any act or omission of the **Contractor** in respect of the **Works** or the **Contract**;

e) any guarantee given to the **Owner** by the **Contractor** under the **Contract**, or under any statute or other law or legal requirement which permits the parties to exclude, restrict or modify liability in respect of the guarantee; and

f) any equitable or statutory relief arising out of, or otherwise in connection with, any act or omission of the **Contractor** in respect of the **Works** or the **Contract**,

on the expiration of the period of eighteen (18) months after the **Date of Practical Completion** unless:

g) the **Owner** (or other person described in the first paragraph of this Clause **30.1**) has started a proceeding against the **Contractor** in the **Tribunal** or a Court in respect of any such liability, or alleged liability, before the expiration of the period of eighteen (18) months after the **Date of Practical Completion**;

h) any such liability cannot be excluded, restricted or modified under a relevant statute or other law or legal requirement; or

i) the **Contractor** fraudulently, or otherwise deliberately, concealed from the **Owner** facts, matters or circumstances within the **Contractor's** knowledge that gave rise to any such liability by the **Contractor** to the **Owner**, and as a result of the concealment, the **Owner** does not become aware of the facts, matters or circumstances that gave rise to such liability until after the expiration of the period of eighteen (18) months after the **Date of Practical Completion**.

30.2 ***No entitlement to start a proceeding after expiration of limitation period***

To the maximum extent permitted by law, the **Owner** agrees that on the expiration of the period of eighteen (18) months after the **Date of Practical Completion**, the **Owner** will not be entitled to start any proceeding against the **Contractor** in the **Tribunal** or a Court in respect of any liability for which the **Contractor** is deemed to be released and discharged by the **Owner** under Clause **30.1**.

30.3 ***No limitation for certain statutory warranties and guarantees***

To avoid doubt, Clauses **30.1** and **30.2** do not apply to:

a) any warranty that is incorporated into, and forms part of, the **Contract** in accordance with Part 3 of Schedule 1B of the **Act**; and

b) any guarantee, or other statutory requirement (including any prohibition), provided for under the Australian Consumer Law (Queensland).

31 LODGING OF A CAVEAT BY THE CONTRACTOR

31.1 ***No lodging of caveat if Resident Owner***

The **Contract** does not give the **Contractor** an interest in the **Land** if the **Owner** is a **Resident Owner**.

31.2 ***Contractor's interest in the Land if Non-Resident Owner***

If the **Owner** is not a **Resident Owner**, the **Owner**:

a) charges the **Owner's** interests in the **Land** with due payment to the **Contractor** of all amounts that may become due to the **Contractor** arising out of, or otherwise in connection with, the **Contract**;

b) must, if requested by the **Contractor**, promptly deliver an executed mortgage in registrable form to secure the charge;

c) consents to the **Contractor** lodging a caveat over all or any part of the **Land** to secure the **Contractor's** interest in the **Land**;

d) must, if requested by the **Contractor**, do all things and sign all documents necessary to enable the **Contractor** to lodge a caveat; and

e) must pay to the **Contractor**, on demand, all stamp duty and registration fees that are payable or paid on the lodgement, withdrawal or release of any caveat or mortgage under this Clause.

32 RESOLUTION OF DISPUTES

32.1 ***Notice of dispute***

If a dispute or difference (together referred to as a 'dispute') arises out of, or in connection with, the **Contract**, either party may give the other party a written notice of dispute setting out the details of the dispute, including any amount in dispute. Notwithstanding the giving of a notice of dispute, the parties must, subject to the **Contract**, continue to perform the **Contract**.

32.2 ***Without prejudice conference***

a) Within five (5) **Business Days** after receiving the notice of dispute, the parties must arrange, and participate in, a 'without prejudice' conference between them, or their authorised representatives, in an attempt to resolve the dispute.

b) By agreement between the parties, a dispute arising out of, or in connection with, the **Contract** may be referred to Master Builders Queensland for a 'without prejudice' conference at any time provided that the **Contractor** is a member of Master Builders Queensland.

32.3 ***Referral to the Commission***

If the parties fail to resolve all of the dispute during the 'without prejudice' conference, or if the party given the notice of dispute fails to participate in a 'without prejudice' conference in accordance with Clause **32.2**, then the parties may agree to refer all or any part of the dispute to a dispute resolution process administered by the **Commission**.

32.4 ***Legal proceedings***

If the parties fail to resolve the dispute through a 'without prejudice' conference referred to in Clause **32.2** or during any dispute resolution process referred to in Clause **32.3**, then either party may commence legal proceedings in the **Tribunal** or a Court in relation to any part of the dispute that is not resolved during a 'without prejudice' conference referred to in Clause **32.2** or during any dispute resolution process referred to in Clause **32.3**.

32.5 ***Precondition to legal proceedings***

Neither party may commence legal proceedings in relation to a dispute unless the parties have undertaken the processes set out in Clauses **32.1** to **32.3** and those processes have failed to resolve the dispute, or one of the parties attempted to follow those processes and the other party has failed to participate.

32.6 ***Summary Relief***

Nothing in this Clause **32** will prejudice the right of a party to institute legal proceedings to:

a) enforce payment under Clause **25**; or

b) for urgent injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the **Contract**.

33 GOODS AND SERVICES TAX

a) For the purposes of the **Contract**, the terms "ABN", "GST", "GST law", "registered", "tax invoice" and "taxable supply" have the meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

b) The **Contractor** warrants that the **Contractor** is:

i) the holder of any ABN stated in Item 2 of the **Schedule**; and

ii) registered and will continue to be registered until the expiration of the **Defects Liability Period**.

c) The **Contract Price** includes GST unless noted otherwise.

d) Where the **Works**, or any part of the **Works**, constitute a taxable supply, the **Contractor** must comply in every respect with GST law.

e) A **Progress Claim** and the **Final Claim** must be in the form of a tax invoice.

34 HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION

34.1 ***Principal contractor***

Unless otherwise agreed by the parties, the **Contractor** is engaged by the **Owner** to discharge, in respect of the **Works**, until the **Works** reach **Practical Completion**, or the **Contract** is terminated, the duties of a 'principal contractor' (as defined) under the **WHS Act**.

34.2 ***Contractor's obligations***

Without limiting the obligations of the **Contractor** pursuant to the **WHS Act**, the **Contractor**, in respect of the **Works**, must ensure that:

a) any person carrying out any part of the **Works** complies with all relevant **Statutory Requirements** in respect of:

i) work, health and safety; and

ii) environmental protection; and

b) relevant safety documentation (e.g. **WHS Management Plan**) is prepared in respect of the **Works**.

34.3 ***Exclusion from Site***

The **Contractor** may exclude or remove from the **Site** any person (including, but not limited to, the **Owner**, the **Owner's Agent**, the **Owner's** officers, employees, consultants, other agents and contractors, and authorised officers of the **Lender**) whose acts, omissions or other conduct in the **Contractor's** opinion does not meet the requirements of the **Contractor's** safety documentation or the **WHS Act**.

35 MISCELLANEOUS

35.1 ***Entire agreement***

The **Contract** constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether oral or in writing.

35.2 ***Unfixed and demolished materials***

All demolished materials, and unfixed building materials supplied by the **Contractor** and not paid for by the **Owner**, are the property of the **Contractor** unless otherwise expressly stated elsewhere in the **Contract**.

35.3 ***Contractor's right to subcontract***

The **Contractor** may subcontract any part of the **Works** but is not relieved in doing so from any obligation or liability under the **Contract** or the **Act** for the work that is the subject of any such subcontract.

35.4 ***Parties rights to assign Contract***

Neither party may assign the **Contract**, or any right, benefit, obligation, liability or interest under the **Contract**, without the prior written consent of the other party.

35.5 ***No waiver***

Unless expressly stated otherwise elsewhere in the **Contract**, none of the provisions of the **Contract**, or any entitlement, remedy, obligation or liability arising out of, or otherwise in connection with, the **Contract**, may be waived, discharged or released for any reason whatsoever except with the prior written consent of the parties.

35.6 ***Governing law***

The **Contract** is governed by, and is to be construed in accordance with, the laws of the State of Queensland in the Commonwealth of Australia.

35.7 ***Severance***

If any provision of the **Contract** is void, voidable, unenforceable or illegal, or has the effect of making another provision of the **Contract** void, unenforceable or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from the **Contract** without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue to have effect.

35.8 ***Joint and several liability***

If there is more than one person named as the **Owner** under the **Contract**, their obligations and liabilities are joint and several.

35.9 ***Construct only contract***

Unless expressly agreed otherwise elsewhere in the **Contract**, the **Contract** is a construct only contract (not a design and construct contract) and any design consultant is the design consultant of the **Owner** notwithstanding that the **Contractor** may pay the design consultant and regardless of whether or not the **Owner** reimburses the **Contractor** for any such payment made by the **Contractor**.

35.10 ***Copyright if Contractor provides design***

Where any **Drawings**, **Specifications** or other design documents are supplied or prepared by the **Contractor**, the **Owner** acknowledges that:

a) the **Contractor** has copyright in those **Drawings**, **Specifications** or other design documents; and

b) provided that the **Owner** has paid the **Contractor** all amounts claimed by the **Contractor** in respect of those **Drawings**, **Specifications** or other design documents, and all amounts due to the **Contractor** for the **Works**, the **Owner** has a licence to use those **Drawings**, **Specifications** or other design documents only for the purpose of completing and maintaining the **Works** on the **Land**.

35.11 ***No adjustment to Contract Price for different dimensions***

All dimensions in the **Contract** are approximate to the extent that they are based on dimensions estimated from any existing building on the **Land** and the **Contract Price** is not subject to adjustment in the event of any difference between an estimated dimension and the actual measured dimension.

35.12 ***Exchange of Contract***

The **Contract** may be executed in counterparts. A counterpart may be a copy of the **Contract** printed from a facsimile or email transmission. All counterparts together are taken to constitute one instrument and will not be binding until executed counterparts are exchanged. A copy of the **Contract** which has been executed by a party may be relied upon by a party to the same extent as if it was an original of the **Contract** executed by the party.

35.13 ***Christmas Shutdown***

The parties acknowledge that the period covered by the **Christmas Shutdown** are not working days for the **Contractor** unless otherwise agreed.

36 SPECIAL CONDITIONS

Any special conditions set out in Part I of the **Appendix** form part of the **Contract**. The special conditions prevail over these general conditions to the extent of any inconsistency.

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

VERSION 3 - EFFECTIVE FROM DECEMBER 2020

CONSUMER BUILDING GUIDE

YOUR CONTRACTOR MUST GIVE YOU THIS GUIDE BEFORE YOU SIGN A CONTRACT PRICED AT OR OVER $20,000

This guide has been developed by the QBCC in accordance with Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the Act') to assist home owners undertaking domestic building work with a contract price of $20,000 or more. **NOTE:** Unless otherwise stated, section references in this guide (e.g. s33) refer to provisions in Schedule 1B of the 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 QBCC Online Licence Search or by calling the QBCC.**

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.

CONTRACT PRICE (s2)

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.

COOLING-OFF PERIOD (ss35-39)

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.

QLD HOME WARRANTY SCHEME

Residential construction work valued at more than $3,300 is covered by the Qld 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 within 2 weeks of signing the contract.

DEPOSITS AND PROGRESS PAYMENTS (ss33,34)

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 contract price.

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 (e.g. You should not pay 50% until at least half of the work is completed on site).

COMMENCEMENT NOTICE (s16)

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.

BUILDING APPROVALS AND INSPECTIONS (ss124A, 143A, 143B of the *Building Act 1975*)

Building approvals and inspections are the responsibility of a building certifier who may be engaged by you or, more commonly, your builder. Mandatory building inspections may be required at certain stages of construction. If your contractor has engaged a building certifier for certain certification functions, you can ask the certifier (via a notice given to your contractor) to perform additional certifying functions which will be at your expense and must be carried out by the certifier within agreed timeframes.

The contractor must give you copies of any certificates of inspection as soon as practicable after they receive them from the certifier. You can also ask the certifier, by written notice, for copies of any inspection documentation and the certifier must provide the documents within 5 business days. You can check a certifier's licence via QBCC's OnLine Licence Search.

For more information on additional inspections, go to www.business.qld.gov.au search 'Form 18 Notice to owner' and read the Appendix to this form. .

VARIATIONS (ss40,41)

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. A QBCC letter advising the outcome of the QBCC dispute resolution process is required before you can commence a QCAT application. **QBCC recommends you obtain independent legal advice before terminating the contract.** WARNING: **Incorrect termination may have serious legal and financial consequences and reduce your protection under the Qld Home Warranty Scheme.**

EXTENSIONS OF TIME (EOTs) (s42)

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 cause a delay, 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 (PC) AND HANDOVER (See definitions of 'PC' & 'defects documents' - s1)

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 (ss19-29)

Schedule IB of the Act sets out statutory warranties which are 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 and ss124A, 143A and 143B of the *Building Act 1975*.

QUICK CHECKLIST (Ensure you are able to tick all relevant boxes below before signing the contract)

- ☐ I have read and **checked all contract documents**, including the contract schedule, general conditions and special conditions (if any) and any plans and specifications. **(DO NOT SIGN THE CONTRACT before receiving these documents)**
- ☐ 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 and when they must be paid
- ☐ 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. You should refer to it from time to time.

NAME(S): _____

SIGNATURE(S): _____ DATE: _____