

Residential Building Contract – Level 2

Residential Building Contract - Level 2

(RBC-L2) (07/2018.1)

SCHEDULE

BETWEEN

ITEM 1 - OWNER			
Name 1	Mr Tim Cousins	Name 2	Mrs Sarah Cousins
Address	23 Fake Lane Cairns QLD 4870		
Phone 1	0411111111	Phone 2	
Email address			
Facsimile number			
Is the Owner a Resident Owner ? (see definitions)		☒ Yes ☐ No	

NOTE: The **Owner** may have a right to withdraw from this **Contract** during the 'Cooling-Off' Period under schedule section 35 of the **Act** (see Clause 4 of the General Conditions).

AND

ITEM 2 - CONTRACTOR			
Name (as it appears on the QBCC licence)	Resilient Homes Pty Ltd		
Trading as			
Address	18 Happy Valley Road Cairns QLD 4870		
ABN	10 101 101 101	QBCC licence number	141526
Phone 1	0412121212	Phone 2	
Email address	admin@resilient.com.au		
Facsimile number			

ITEM 3 - CONTRACT PRICE (GST inclusive)

NOTE: The **Contract Price** does not include amounts payable directly by the **Owner** to a third party.

WARNING: This **Contract Price** is subject to change in accordance with Clauses 7.3, 7.7, 9.4, 9.5, 11.9, 12, 13.2, 13.3, 14, 18, 24 and 27.2 of the General Conditions.

The effect of the operation (if applicable) of:

- Clauses 9.4 and 18 may be to reduce;
- Clauses 12, 13.3 and 14 may be to reduce or increase; and
- Clauses 7.3, 7.7, 9.5, 11.9, 13.2, 24 and 27.2 may be to increase,

the total amount payable by the **Owner** under this **Contract**.

(a) Fixed Price Component (GST inclusive)(includes Deposit in Item 4)	\$620,000.00
(b) Prime Cost Items (GST inclusive)(see Part A of the Appendix)	\$20,000.00
(c) Provisional Sums (GST inclusive)(see Part B of the Appendix)	\$25,000.00
Contract Price (a + b + c)(GST inclusive)	\$665,000.00

ITEM 4 - DEPOSIT (Clause 11.5)

NOTE: Deposit not to exceed 5% 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%.

Deposit (percentage of Contract Price)	5%	\$33,250.00
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ITEM 5 - DESCRIPTION OF WORKS

New low set single skin masonry residential dwelling with glazed clay tiles, contrast metal fascia and gutters and colour/rendered finish. Contract to include kidney shaped 9m x 6m in ground swimming pool, landscaping, gardens and lawns.

ITEM 6 - LAND (Clause 7)

Address	1 Makebelieve Street Cairns QLD 4870		
Lot no.	52	Plan type (e.g. RP)	SP100100
Local government	Cairns Regional Council		

ITEM 7 - SUPPLIER OF DOCUMENTS

(a) Plans (see Part C of the Appendix)	Prepared by	Mr & Mrs Cousins Draftsman
Supplied by ☐ Contractor ☒ Owner	No. of pages	10

(b) Specifications (see Part C of the Appendix)	Prepared by	Resilient Homes Pty Ltd
Supplied by ☒ Contractor ☐ Owner	No. of pages	10

(c) Foundations Data	Prepared by	Mr & Mrs Cousins Engineer
Supplied by ☐ Contractor ☒ Owner	No. of pages	2

NOTE: The **Foundations Data** must be obtained before entering into this **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.

If a detailed footings or slab design is required, it should be based on the **Foundations Data** and included in the **Plans** prior to the parties signing this **Contract**.

ITEM 8 - CONSTRUCTION PERIOD

(a) Allowance for working Days	115 Days
(b) Delay as a result of inclement weather allowance	10 Days
(c) Allowance for non-working Days (Saturdays, Sundays, Public Holidays)	46 Days
Construction Period (in Days) (a+b+c)	171 Days

ITEM 9 - DATE FOR COMMENCEMENT (Clause 8)

Date for Commencement	
OR ☒ (tick) to be determined under Clause 8.1(b)	

ITEM 10 - DATE FOR PRACTICAL COMPLETION

Date for Practical Completion	
OR ☒ (tick) date that is the last Day of the Construction Period (see Item 8) from the Date for Commencement	

ITEM 11 - FINANCE (Clause 11.14)

Is this Contract conditional on the Owner obtaining loan approval from a financial institution?		☒ Yes ☐ No
Lender	Commonwealth Bank	
Loan amount	\$390,000.00	
Loan approval date	13/08/2020	

ITEM 12 - SECURITY ACCOUNT DETAILS (Clause 11.17)

Security Account Money (the part of the Contract Price that is <u>not</u> to be funded by way of loan from a financial institution)		
Financial Institution or Holding Account	Resilient Homes Bank Account #12 123 123	
Amount to be deposited	\$275,000.00	

ITEM 13 - ACCESS TO THE SITE (Clause 7)

Party responsible for Site access	☐ Contractor ☒ Owner
Date for providing free and uninterrupted occupation of the Site	

ITEM 14 - BUILDING APPROVAL (Clause 5)

Party responsible for obtaining building approval	☐ Contractor ☒ Owner
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NOTE: The **Owner** is responsible for obtaining all development approvals if applicable to the **Works**.

ITEM 15 - LATENT CONDITIONS (Clause 14)

The **Owner** is responsible for any **Latent Condition**.

ITEM 16 - AUTHORISED AGENT/REPRESENTATIVE

The Contractor's Representative is (if applicable)	
The Owner's Agent (if applicable) (see Clause 29.11 & 29.13)	

ITEM 17 - DELAY COSTS (Clause 24)

Delay costs rate	\$50.00 per Day
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ITEM 18 - LIQUIDATED DAMAGES (Clause 18)

Liquidated damages rate	\$50.00 per Day
(if nothing stated, \$50 per Day)	

ITEM 19 - INTEREST (Clause 11.9(a))

Interest rate	10%
(if nothing stated 10% per annum, calculated on daily rests)	

ITEM 20 - PAYMENT PERIOD (Clause 11.7)

Time for payment of a progress claim after the date on which the Owner receives the claim	5 Business Days
(if nothing stated, 5 Business Days)	

ITEM 21 - PROGRESS CLAIMS (Clause 11.6)

Method selected by the parties for claiming progress payments

(Note: Part D of the **Appendix** must be completed)

☒ Method A ☐ Method B ☐ Method C

ITEM 22 - FIXTURES AND FITTINGS

Are there fixtures and fittings shown on the **Plans** and **Specifications** but not included in the **Contract Price**?

☒ Yes ☐ No

(If yes, complete Part E of the **Appendix**)

ITEM 23 - OWNER SUPPLIED ITEMS (Clause 11.10)

Is the **Owner** to supply some materials?

☒ Yes ☐ No

(If yes, complete Part F of the **Appendix**)

ITEM 24 - SECOND HAND MATERIALS (Clause 10.4(b))

Is the **Contractor** to install second hand materials in the **Works**?

☐ 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 this **Contract**?

☐ Yes ☒ No

(If yes, complete Part H of the **Appendix**)

ITEM 26 - SPECIAL CONDITIONS

Are there any special conditions forming part of this **Contract**?

☒ Yes ☐ No

(If yes, complete Part J of the **Appendix**)

ITEM 27 - CONSUMER BUILDING GUIDE

Has the **Owner** received the **Consumer Building Guide**?

☒ Yes ☐ No

APPENDIX

APPENDIX

THE APPENDIX TO THE SCHEDULE MUST BE COMPLETED WHERE APPLICABLE

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

This is to be read in conjunction with Clause 9 of the General Conditions.

Contractor's Margin on excess amount	20%
(if nothing stated, 20%)	

Description of each Prime Cost Item	Quantity	Allowance per unit (GST inclusive)	Total allowance for the Prime Cost Item (GST inclusive)
1. Hot water system	1	\$5,000.00	\$5,000.00
2. Ducted Airconditioning	1	\$15,000.00	\$15,000.00
Total of Prime Cost Items (GST inclusive)			\$20,000.00

PART B - ALLOWANCES FOR PROVISIONAL SUMS (if applicable)

This is to be read in conjunction with Clause 9 of the General Conditions.

Contractor's Margin on excess amount	20%
(if nothing stated, 20%)	

Description of each Provisional Sum	Total allowance for the Provisional Sum (GST inclusive)
1. Solar panels (18 panels on room)	\$15,000.00
2. Tiling to wet areas, alfresco area and living area tiling (bedrooms are carpets)	\$10,000.00
Total of Provisional Sums (GST inclusive)	\$25,000.00

PART C - PLANS AND SPECIFICATIONS (Item 7)

PLANS

Drawing No.	Issue	Prepared by	Brief description of drawing

SPECIFICATIONS

	Details
1.	Specifications have been supplied by Resilient Homes Pty Ltd and have been signed by both parties (Client & Builder)

PART D - PROGRESS CLAIMS (Item 21)

WARNING: A **Contractor** must not claim an amount under this **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 is more than 50% of the **Contract Price**, in which case the maximum **Deposit** cannot be more than 20%.

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 intended.

METHOD A - DESIGNATED STAGES - NEW DETACHED DWELLING

Stage	% of Contract Price	\$ Value (GST inclusive)
Deposit	5%	\$33,250.00
Base Stage	15%	\$99,750.00
Frame Stage	20%	\$133,000.00
Enclosed Stage	25%	\$166,250.00
Fixing Stage	20%	\$133,000.00
Practical Completion	15%	\$99,750.00
TOTAL	100%	\$665,000.00

METHOD B - DESIGNATED STAGES

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

Name of Stage and Description of Stage	% of Contract Price	\$ Value (GST inclusive)
Deposit (refer to note above)		
Practical Completion		
Total		

METHOD C - PERIODIC PROGRESS CLAIMS

Progress claims for progress payments to be submitted on the last Business Day of each	
Progress claims for progress payments to be submitted on the	Day of each Month

APPENDIX PART E - FIXTURES AND FITTINGS (Item 22)

The following fixtures and fittings are not included in the **Contract Price** but shown on the **Plans** and **Specifications**.

	Details
1.	Owners are supplying all glazing including all windows and showerscreens as per the Council Approved Plans.

APPENDIX PART F - OWNER SUPPLIED ITEMS (Item 23)

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.

	Details
1.	Owners are supplying all glazing including all windows and showerscreens as per the Council Approved Plans.

APPENDIX PART G - SECOND HAND MATERIALS (Item 24)

The following second hand materials are to be supplied by the **Contractor**, and installed in the **Works**.

	Details
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APPENDIX 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 this **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:

APPENDIX PART I - SERVICES AND FEES NOT INCLUDED IN THE CONTRACT PRICE

WARNING: This section relates to services being brought to the **Land**, NOT services connected from the boundary to the detached dwelling or home.

The **Owner** is responsible for (including for the cost of) the conveying, connection and installation of the services and facilities being brought to the **Land** and connected to the **Works**. These services and facilities include, for example: Gas, Sewerage, Storm Water, Water, Electricity, Telephone and National Broadband.

APPENDIX PART J - SPECIAL CONDITIONS (Item 25)

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

Special Condition No.	General Condition affected	Details
SC-1.		Three large trees to be removed prior to construction. The largest tree on block is to be wood chipped and the chipped bark retained onsite for the future gardens and landscaping.
SC-2.		5m x 3m Garden Shed slab to be approved by Council prior to work commencing on garden shed slab.
SC-3.		All selections to be finalised and signed off on by both parties prior to commencement. If fixtures and fittings nominated are unavailable, an equivalent in appearance and quality will be substituted.

AGREEMENT

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 this **Contract**, for the **Works** in accordance with the provisions of this **Contract**.

SIGNED - CONTRACTOR

Signed by, or for and on behalf of, the **Contractor**

Signature

Printed name

Date

 / /

SIGNED - OWNER

Signed by, or for and on behalf of, the **Owner**

Signature

Printed name

Date

 / /

WARNING - DO NOT SIGN IF:

- The **Owner** has not been provided with a **Consumer Building Guide**.
- **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 this Contract , certain words and phrases used throughout are defined, and are shown in bold when used (e.g. Owner)*	
In this Contract , except where the context otherwise requires:	
Act	means the <i>Queensland Building and Construction Commission Act 1991</i> ;
Appendix	means the Appendix to the Schedule of this Contract ;
Base Stage	- means that 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;
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 the general shutdown of activities within the building and construction industry throughout the following periods: 22 December to 31 December; and 1 January to 10 January;
Commission	means the Queensland Building and Construction Commission;
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 J of the Appendix , the Schedule , the Plans , the Specifications , and anything else annexed to, or incorporated by reference into, this Contract ;
Contract Works Policy	means a policy of insurance providing indemnity to the Contractor , the Owner and any lender (if so required by the Owner) against liability for physical loss, destruction or damage to the Works , or to materials and goods on or adjacent to the Land ;
Contract Price	means the amount stated in Item 3 of the Schedule , as adjusted under this 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 margins stated in Part A and Part B of the Appendix to be applied in accordance with Clause 9.5;
Contractor's Representative	means the person stated in Item 16 of the Schedule ;
Date for Commencement	means the date by which the Contractor must commence the Works on the Site as determined in accordance with Clause 8.1 of this Contract ;
Date for Practical Completion	means the date stated in, or otherwise determined in accordance with, Item 10 of the Schedule by which the Works are to be brought to Practical Completion , as adjusted under this Contract ;
Date of Practical Completion	means the date on which the Works reach Practical Completion ;
Days	means calendar days;
Defects Liability Period	means the period commencing on the Day following the Date of Practical Completion , and ending twelve (12) months after the Date of Practical Completion ;
Deposit	means the amount stated in Item 4 of the Schedule to be paid by the Owner to the Contractor under Clause 11.5 of this Contract ;
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 required under this Contract to be signed by an engineer (RPEQ), providing the design of any footings or slabs for the Works under this Contract ;
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 and built-in cupboards are fitted and fixed in position;
Foundations Data	means the information about the Land needed for the preparation of an appropriate footings design for the Land and, if appropriate, a 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 finished;
Holding Account	means any account maintained by Master Builders Queensland with a financial institution from time to time for the purpose of holding amounts in accordance with the provisions of contracts used by its members, and amounts in dispute pending resolution of such disputes;
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 7.1(b) 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 time of the formation of this Contract ;
Method	means the method for claiming progress payments which is stated in Item 21 of the Schedule , being Method A, Method B or Method C in Part D of the Appendix ;
Owner	means the person stated in Item 1 of the Schedule and includes the Owner's heirs, executors, administrators, permitted assignees and transferees;
Owner's Agent	means the person stated in Item 16 of the Schedule ;
Plans	means the plans, drawings and designs relating to the Works described in Part C of the Appendix ;
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 this Contract, including all Plans 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 time of the formation of this Contract , and the cost for the supply and delivery of which the Contractor has made a reasonable allowance in this Contract ;
Provisional Sum	means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under this Contract for which the

	Contractor , after having made all reasonable enquiries, could not state a definite amount at the time of the formation of this Contract ;
Resident Owner	means an Owner who is an individual and resides on the Land , or intends to reside in the building on completion of the Works or within six (6) months after the completion of the Works ;
Schedule	means the Schedule contained in this Contract ;
Security Account Money	means that part of the Contract Price which is to be funded by the Owner personally, and which is not to be provided by a financial institution by way of a loan to the Owner ;
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 21 of the Schedule is either Method A or Method B, the stages stated in the applicable Method in Part D of the Appendix ;
Substantial Breach	means a party's failure or refusal to perform a substantial obligation under this 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 <i>Queensland Civil and Administrative Tribunal Act 2009</i> ; and
Works	means the whole of the work to be carried out by the Contractor under this Contract , a description of which is contained in Item 5 of the Schedule , and includes variations to the Works .

2 INTERPRETATION

In this **Contract**:

- a) headings and explanatory notes do not form part of this **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) words importing a gender include every gender;
- d) references to a person include an individual, firm or body incorporated or unincorporated;
- e) if the time for making any payment or doing any other act required or permitted by this **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**; and
- f) no provision of this **Contract** is to be construed to the disadvantage of a party merely because that party was responsible for the preparation of this **Contract** or the inclusion of the provision in this **Contract**.

3 DISCREPANCIES AND AMBIGUITIES

3.1 *Parties to consult if discrepancy or ambiguity found*

If either party finds any discrepancy or ambiguity in this **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 Clause 3.3, or if that Clause should not resolve the discrepancy or ambiguity, then in accordance with Clause 28.

3.2 *Entire agreement*

The parties acknowledge that the terms of their contract are fully set out in this **Contract**, and may not be altered, varied, deleted or otherwise affected by reference to any prior representations, conditions or agreements, whether written or verbal.

3.3 *Order of precedence of documents*

Subject to Clause 3.1, any discrepancy or ambiguity in or between any documents comprising this **Contract** is to be resolved by adopting the following order of precedence:

- a) any special conditions set out in Part J of the **Appendix**;
- b) these general conditions;
- c) the **Specifications**;
- d) the **Plans**; and
- e) any other contract documents.

3.4 *Figured dimensions prevail over scaled dimensions*

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

4 COOLING-OFF PERIOD

4.1 *Owner may withdraw from this Contract during cooling-off period*

Subject to Clauses 4.2 and 4.3, the **Owner** may withdraw from this **Contract**:

- a) within five (5) **Business Days** after receiving a signed copy of this **Contract** and the **Consumer Building Guide**; or
- b) if five (5) **Business Days** have elapsed from the date of the formation of this **Contract** and the **Owner** has not

received from the **Contractor** a signed copy of this **Contract** or the **Consumer Building Guide** or both.

4.2 Requirements for Owner to withdraw

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

4.3 Limitations on right to withdraw

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

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

4.4 Consequences of withdrawal

If the **Owner** withdraws from this **Contract** in accordance with this Clause 4, the **Contractor** must refund the **Deposit** to the **Owner** less \$100 and any out-of-pocket expenses reasonably incurred by the **Contractor** under this **Contract** to the date the **Contractor** received the **Owner's** notice. If the **Owner** has not paid the **Deposit**, the amount of \$100 plus the **Contractor's** out-of-pocket expenses will, on written demand by the **Contractor** for such amounts, be deemed to be a debt due and payable by the **Owner** to the **Contractor**.

5 APPROVAL TO COMMENCE BUILDING WORK

5.1 Reasonable steps to be taken to obtain building approval

The party stated in Item 14 of the **Schedule** must promptly take all reasonable steps, and pay any relevant fee, to obtain the necessary building approval to commence the **Works** on the **Land**.

5.2 A party may terminate this Contract if necessary approvals 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 this **Contract**, either party may give written notice to the other party terminating this **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 this **Contract** to the date this **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**.

5.3 Consequences of terminating this Contract under Clause 5.2

If the **Contractor** has received the **Deposit** from the **Owner** and that amount is in excess of the amount payable to the **Contractor** under Clause 5.2, the **Contractor** must refund the excess to the **Owner** within five (5) **Business Days** of the termination.

6 INSURANCE

6.1 Statutory insurance obligations

The **Contractor** must effect and maintain all policies of insurance, including, for example, WorkCover in respect of its workers, required to be effected by the **Contractor** under any statute or other law or legal requirement.

6.2 Contract Works Policy to be provided by Contractor

The **Contractor** must effect and maintain a **Contract Works Policy** for the full insurable value of the **Works** in the names of the **Owner**, the **Contractor** and any lender (if so required by the **Owner**) from the **Date for Commencement** until the **Date of Practical Completion** or the date the **Owner** takes **Possession** of the **Works**, whichever is earlier.

6.3 Public liability insurance to be provided by Contractor

The **Contractor** must effect and maintain from the **Date for Commencement** until the expiry of the **Defects Liability Period**, a public liability insurance policy covering liabilities to third parties in respect of personal injury, death, and loss or damage to property, except the **Works**, arising out of, or in connection with, the **Works**.

6.4 Requirements for public liability insurance policy

The policy referred to in Clause 6.3 must:

- a) indemnify the **Owner** as principal in respect of any occurrence insured by the policy and arising out of the negligence of the **Contractor** in the performance of the **Works**; and
- b) provide cover for an amount which is not less than \$10million for any one occurrence.

6.5 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** employees or 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**.

6.6 Evidence of policies to be provided on written request

The **Contractor** must, on written request from the **Owner**, provide evidence of any insurance policies required to be

effected by the **Contractor** under this **Contract** within five (5) **Business Days**.

6.7 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 effect and maintain an insurance policy for the duration of this **Contract** which provides cover for the full replacement value of any existing building affected by the **Works**, and any contents thereof, against any loss or damage, and must provide a copy of the policy to the **Contractor** if the **Contractor** makes a request in writing.

7 THE LAND

7.1 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 this **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 **Site**, 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**.

7.2 Contractor to have free and uninterrupted access to Site and existing buildings

As soon as practicable after the date of the formation of this **Contract**, and by the time stated in Item 13 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**.

7.3 Access to the Site

- a) The party nominated in Item 13 of the **Schedule** is responsible for providing and maintaining access to the **Site** for any persons, vehicles or machinery reasonably necessary for the carrying out of the **Works**.
- b) If the **Owner** is responsible for providing access and the **Site** becomes inaccessible due to any reason beyond the control of the **Contractor**, any costs incurred by the **Contractor** in obtaining sufficient access to the **Site** is to be added to the **Contract Price** and included in the next progress claim.

7.4 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 workplace 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.

7.5 Identification of the Land to be provided by Owner

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

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

The **Owner** must, within five (5) **Business Days** after the formation of this **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.

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

If the **Owner** fails to comply with Clause 7.5 or 7.6, 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 15% of that cost for overhead and profit, is to be added to the **Contract Price** and included in the next progress claim.

8 COMMENCEMENT AND COMPLETION

8.1 Date for Commencement

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

- a) if a date is stated in Item 9 of the **Schedule** as the **Date for Commencement**, on or before that date; or
- b) if the **Date for Commencement** is stated in Item 9 of the **Schedule** to be determined under this Clause 8.1(b), then within ten (10) **Business Days** of the **Contractor** receiving all of the following:
 - i) all information, evidence and consents required to be given by the **Owner** under Clause 7;
 - ii) satisfactory evidence of the **Owner's** capacity to pay the **Contract Price** pursuant to Clause 11.1;
 - iii) the building approval required pursuant to Clause 5.1;
 - iv) if a financial institution is providing loan money to the **Owner**, a notice from the lender to the **Contractor** that the **Works** may commence; and
 - v) a signed copy of the **Engineer Specification and Confirmation** if required under Clause 11.11(d).

8.2 **Contractor to give commencement notice to Owner**

Within ten (10) **Business Days** of starting the **Works**, 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**.

8.3 **Time for Practical Completion**

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

8.4 **Parties to provide reasonable assistance**

Each party must take all reasonable steps and provide all reasonable assistance to the other to ensure the matters stated in Clause 8.1(b) are satisfied as soon as reasonably practicable.

9 **PRIME COST ITEMS AND PROVISIONAL SUMS**

9.1 **Owner to provide directions relating to Prime Cost Items or Provisional Sums**

If this **Contract** includes any **Prime Cost Items** or **Provisional Sums** 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** within five (5) **Business Days**.

9.2 **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.

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

If the **Owner** fails to comply with Clause 9.2, the **Contractor** may select and supply an alternative **Prime Cost Item** as near as reasonably possible in quality to the originally selected **Prime Cost Item**.

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

If the actual cost of a **Prime Cost Item**, or the actual cost of the work in respect of a **Provisional Sum**, is less than the total amount allowed for that item or work in Part A or Part B of the **Appendix**, the difference is to be deducted from the **Contract Price**.

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

If the actual cost of a **Prime Cost Item**, or the actual cost of the work in respect of a **Provisional Sum**, exceeds the total amount allowed for that item or work in Part A or Part B of the **Appendix**, the excess amount plus the applicable **Contractor's Margin** stated in Part A or Part B of the **Appendix** is to be added to the **Contract Price**.

10 **CONTRACTOR'S WARRANTIES**

10.1 **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 **Plans** 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*.

10.2 **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.

10.3 **Warranty relating to prime cost items and provisional sums**

The **Contractor** warrants that any **Prime Cost Item** or **Provisional Sum** provided for in this **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 this **Contract**).

10.4 **Warranties relating to suitability of materials**

Subject to Clause 10.5, 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 and construction 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 to be used; and
- b) unless expressly stated otherwise elsewhere in this **Contract**, will be new.

10.5 **Applicability of Clause 10.4**

Clause 10.4 does not apply if:

- a) an architect is the **Owner's Agent**, or this **Contract** is to be administered by an architect engaged by the **Owner**, and the **Contractor** is subject to the direction of the architect for 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**.

11 OWNER'S OBLIGATIONS

11.1 Evidence of capacity to pay the Contract Price

The **Owner** must, within five (5) **Business Days** of the **Owner** signing this **Contract**, provide evidence satisfactory to the **Contractor** that the **Owner** has the financial capacity to pay the **Contract Price**.

11.2 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**.

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

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

11.4 Owner's obligation to pay the Contract Price

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

11.5 Owner's obligation to pay Deposit

The **Owner** must pay the **Deposit** to the **Contractor** on signing this **Contract**.

11.6 Contractor to make progress claims

The **Contractor** is entitled to claim payment of the **Contract Price** progressively, at the following times:

- a) if Method A or Method B is stated in Item 21 of the **Schedule**, on completion of the **Stages** set out in the applicable **Method** in Part D of the **Appendix**, and for the following amounts:
 - i) the amount stated for the relevant Stage in Part D of the **Appendix**;
 - ii) any unpaid adjustment to the **Contract Price** under this **Contract**; and
 - iii) any other amount due and payable by the **Owner** to the **Contractor** under this **Contract** or otherwise; or
- b) if Method C is stated in Item 21 of the **Schedule**, on or after:
 - i) the **Day** in each period stated in Method C in Part D of the **Appendix**; and
 - ii) the **Date of Practical Completion**,
 and for the unpaid value of that part of the **Works** carried out up to, and including, that **Day**, any unpaid adjustment to the **Contract Price** under this **Contract**, and any other amount due and payable by the **Owner** to the **Contractor** under this **Contract** or otherwise.

11.7 Owner to make progress payments

If the **Contractor** gives to the **Owner** a progress claim for a progress payment under Clause 11.6, the **Owner** must pay the **Contractor** the claimed progress payment within the period stated in Item 20 of the **Schedule**.

11.8 No set-off

The **Owner** acknowledges that, subject to Clause 18, the **Owner** has no right of set-off under this **Contract** or otherwise; that is, to deduct any amount from a progress payment due to the **Contractor** under Clause 11.7.

11.9 Outstanding payments

If the **Owner** fails to make any payment to the **Contractor** within the times for payment under this **Contract**:

- a) the **Contractor** is entitled to interest on the outstanding amount at the rate stated in Item 19 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.

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

Unless expressly stated otherwise elsewhere in this **Contract**, if the **Owner** is to supply materials for use in the **Works**, the **Owner** must supply materials which are new, good and suitable for the purposes for which they are to be used and comply with any relevant Australian Standards or Codes, and where requested by the **Contractor**, provide written

evidence of the materials' compliance.

11.11 **Documents supplied by Owner**

If the **Owner** supplies any documents or **Foundations Data** 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, appropriate in all respects for the **Land** (including the **Site**), and that it is, or will be, reasonable for the **Contractor** to rely on the documents or data;
- b) acknowledges that it is, or will be, reasonable for the **Contractor** to rely on the documents or data;
- c) 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 this **Contract**; and
- d) must have the **Owner's** engineer (RPEQ) sign the **Engineer Specification and Confirmation** on entering into this **Contract**, if applicable.

11.12 **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 authorised by 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 workplace health and safety at the **Site**;
 - ii) not wilfully or recklessly interfere with or misuse anything provided for workplace health and safety at the workplace;
 - iii) not wilfully place at risk the health and safety of any person at the workplace;
 - iv) not wilfully injure oneself; and
 - v) only attend the designated construction areas at the **Site** whilst supervised by the **Contractor** or the **Contractor's Representative**.

11.13 **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.

11.14 **Contract subject to loan approval**

If stated in Item 11 of the **Schedule** that this **Contract** is conditional on the **Owner** obtaining from the lender stated in that Item, on or before the loan approval date stated in that Item, approval for a loan not less than the loan amount stated in that Item, the **Owner** must:

- a) apply to the lender for the loan approval within five (5) **Business Days** after the date of the formation of this **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.

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

If the **Owner** has not obtained the loan approval by the loan approval date stated in Item 11 of the **Schedule**, then, within five (5) **Business Days** after the loan approval date, the **Owner** may notify the **Contractor** in writing that this **Contract** is terminated for failure to obtain loan approval, and provide evidence satisfactory to the **Contractor** that the lender has assessed and rejected the **Owner's** loan application. If this **Contract** is terminated under this Clause, the **Contractor** must refund to the **Owner** the **Deposit** less any costs incurred by the **Contractor** in performing the **Works**.

11.16 **Consequence of failure to notify under Clause 11.15**

If no notice under Clause 11.15 is given by the **Owner** to the **Contractor** within five (5) **Business Days** after the loan approval date stated in Item 11 of the **Schedule**, then this **Contract** will no longer be conditional on the **Owner** obtaining approval for a loan from the lender stated in that Item.

11.17 **Owner to deposit money into security account**

Unless the parties otherwise agree:

- a) the **Owner** is to deposit the **Security Account Money** into the **Holding Account** or an account, in the joint names of the **Contractor** and the **Owner**, with a financial institution selected by the **Owner** and approved by the **Contractor**;
- b) withdrawals from the account are to be made by the parties to pay progress payments to the **Contractor** in accordance with this **Contract** before loan monies (if any) are used to pay the balance of the **Contract Price**;
- c) the **Owner** must deposit the **Security Account Money** before the **Works** are started at the **Site**; and

d) withdrawals from the account must require the signatures of both the **Contractor** and the **Owner**.

11.18 Contractor's entitlement to Security Account Money

If the **Owner** fails to pay any amount due to the **Contractor**, or if the **Contractor** terminates this **Contract**, the **Contractor** is entitled to the **Security Account Money** to the extent of any amount due and payable to the **Contractor** under this **Contract**.

11.19 Owner's entitlement to Security Account Money

The **Owner** is entitled to the balance of the **Security Account Money**, and any interest earned on the account, after the **Contractor** has received from the **Owner** full payment of the **Contract Price**.

11.20 Disputes relating to Security Account Money

Should there be any dispute between the parties as to their entitlement to the **Security Account Money**, it must be dealt with in accordance with any order or direction of the **Tribunal**. The parties must authorise the relevant financial institution to pay any **Security Account Money** in accordance with any such order or direction, and acknowledge that the relevant financial institution is under no liability to either party on account of any such payment.

12 VARIATIONS BY AGREEMENT

12.1 Request for a variation

Either party may request a variation of the **Works**.

12.2 Contractor not obliged to perform variation

The **Contractor** may, at its discretion, agree to any variation requested by the **Owner**.

12.3 Agreement to vary the Works

The parties may agree to vary the **Works** by adding work to, or omitting work from, the **Works**. The **Contractor** must ensure that any agreement to vary the **Works** is put in writing in a variation document, and a copy given to the **Owner**, within five (5) **Business Days** from the date of agreement, and before any work the subject of the variation is started.

12.4 Variation document

Any variation document to be provided by the **Contractor** under this **Contract** must:

- a) be readily legible;
- b) describe the variation;
- c) state the date of the request for the variation;
- d) state the **Contractor's** estimate of any period of delay to the progress of the **Works** as a result of the variation;
- e) state any adjustment to the **Contract Price** because of the variation, or the method for calculating the adjustment; and
- f) state when any adjustment to the **Contract Price** because of the variation is to be:
 - i) if the variation results in a decrease in the **Contract Price**, accounted for; or
 - ii) if the variation results in an increase in the **Contract Price**, paid (which must not be before any work the subject of the variation is started).

12.5 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 12.3.

12.6 No work before receipt of Owner's notice

The **Contractor** must not start to carry out any **Work** the subject of a variation until the **Contractor** receives the written notice from the **Owner** under Clause 12.5 agreeing to the variation.

12.7 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.

12.8 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 variation until such time as the **Owner** produces satisfactory evidence to the **Contractor** that the **Owner** has the financial capacity to pay for the variation.

13 STATUTORY REQUIREMENTS

13.1 Compliance with statutory requirements

The **Contractor** must:

- a) comply with all statutory requirements relating to the **Works**; and
- b) give any notice or report, and pay any fee, in order to comply with Clause 13.1(a).

13.2 Increased cost of compliance

If the cost to the **Contractor**:

- a) in complying with any statute, other law or any requirement of a local government, private certifier or other body having jurisdiction over the **Works**, increases after the date of the formation of this **Contract**; or
- b) in carrying out the **Works**, increases after the date of the formation of this **Contract** as a result of the

introduction or increase of any fee, tax, duty, charge, levy or regulation, the amount of the increase is to be added to the **Contract Price**.

13.3 Variation due to compliance with statutory requirements

If the **Contractor's** compliance with a statutory requirement requires a variation of the **Works**, the **Owner** must, within five (5) **Business Days** after receiving a variation document provided by the **Contractor** that complies with the requirements set out in Clause 12.4, 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**.

13.4 Owner's failure to agree to variation

If the **Owner** fails to agree to a variation required to comply with a statutory requirement in writing, then the dispute arising as a result is to be resolved in accordance with Clause 28.

14 LATENT CONDITIONS

14.1 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 required to overcome the **Latent Condition**, and the **Contractor's** estimate of the time required to overcome the **Latent Condition**.

14.2 Variation due to Latent Condition

Subject to Clause 14.3, the **Contractor** must vary the **Works** to overcome any notified **Latent Condition** that affects the **Contractor's** performance of the **Works** in accordance with this **Contract**.

14.3 Owner's written notice agreeing to variation

Within five (5) **Business Days** after receiving a variation document provided by the **Contractor** that complies with the requirements set out in Clause 12.4, the **Owner** must give to the **Contractor** a written notice agreeing to the variation of the **Works** 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 14.5 or the extent of the work to be added to, or omitted from, the **Works**.

14.4 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 28.

14.5 Limitation on Contractor's right to recover for variation

Except where the **Owner** supplied the **Foundations Data**, 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 this **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 this **Contract**, and the need for that amount could reasonably have been established, and the amount calculated from, the **Foundations Data**.

15 DELAYS AND EXTENSION OF TIME CLAIMS

15.1 Contractor's claim for an extension of time

If the progress of the **Works** is delayed as a result of any of the following causes:

- a) a variation of the **Works** under this **Contract**;
- 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 12.5, 13.3 or 14.3;
- 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 stated in Item 11 of the **Schedule**;
- d) a **Latent Condition**;
- e) a breach of this **Contract** by the **Owner**;
- f) a lawful suspension of the **Works**;
- g) proceedings being taken, or threatened by, or disputes with, adjoining neighbouring owners or residents;
- h) an act of prevention by the **Owner** not otherwise covered by this Clause;
- i) inclement weather, or any conditions arising as a result of inclement weather;
- j) a **Christmas Shutdown**;
- 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 this **Contract**, and beyond the reasonable control of the **Contractor**,

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.

15.2 Extension for delays which have been allowed

Where a cause of delay (such as, for example, inclement weather) has been allowed for by the **Contractor** in Item 8 of the **Schedule**, 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 in the construction period has been fully exhausted.

15.3 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) rejecting the whole or any part of the claimed extension of the **Date for Practical Completion**, and setting out the **Owner's** reasons for the rejection.

15.4 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 15.3, 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**.

15.5 Consequence of Owner's rejection or failure to accept

If the **Owner** fails to give written notice in accordance with Clause 15.3, 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 28.

16 SUSPENSION OF THE WORKS

16.1 Contractor's entitlement to suspend the Works

The **Contractor** may, without prejudice to any of the **Contractor's** other rights or remedies under this **Contract** or at law, suspend performance of the **Works** where the **Owner** is in **Substantial Breach** of this **Contract**.

16.2 Written notice to suspend the Works

The **Contractor** must immediately notify the **Owner** in writing of the suspension and the grounds for the suspension (including the **Substantial Breach** or **Breaches** by the **Owner**).

16.3 Owner to remedy Substantial Breach within 10 Business Days

The **Owner** must remedy the **Substantial Breach** or **Breaches** set out in the suspension notice given to the **Owner** in accordance with Clause 16.2 within ten (10) **Business Days** after receiving the notice from the **Contractor**.

16.4 Contractor must recommence the Works within 10 Business Days of Owner remedying breach

The **Contractor** must recommence the carrying out of the **Works** within ten (10) **Business Days** of the **Substantial Breach** or **Breaches** set out in the suspension notice being remedied by the **Owner**.

17 PRACTICAL COMPLETION

17.1 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.

17.2 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 17.1, 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** set out in the **Contractor's** notice given in accordance with Clause 17.1.

17.3 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 17.1, or as otherwise arranged in accordance with Clause 17.2.

17.4 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 17.3, the **Owner** is deemed to have accepted that:

- a) there are no defects in the **Works**; and
- b) the **Works** are complete.

17.5 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 that:

- a) lists any minor defects and minor omissions that the **Contractor** and the **Owner** agree exist;
- b) states when the **Contractor** is to remedy the listed agreed minor defects and minor omissions;
- c) lists any minor defects or minor omissions that the **Owner** claims exist, but that the **Contractor** does not agree exist; and
- d) is signed by or on behalf of the **Contractor**.

17.6 Contractor must remedy agreed minor defects and minor omissions

The **Contractor** must remedy any agreed minor defects and minor omissions in any defects document within the times stated in the defects document or, if necessary materials or labour are unavailable, within a reasonable period.

17.7 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 to the **Works**, prior to making full payment to the **Contractor** of the **Contract Price**.

17.8 Contractor to hand over Works on payment

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

17.9 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 Master Builders Queensland's **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**. On receiving the receipt and payment (if any), the **Contractor** is to hand over the **Works**, including the keys to the **Works**, to the **Owner** or the **Owner's Agent**.
- b) Master Builders Queensland must ensure that any money received into the **Holding Account** under this Clause is released in accordance with, or in satisfaction of:
 - i) written instructions signed by the **Contractor** and the **Owner**;
 - ii) an order of the **Tribunal**;
 - iii) an order of a Court; or
 - iv) a written adjudication decision of an adjudicator.

17.10 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 this **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.

18 LIQUIDATED DAMAGES

18.1 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 this **Contract** is terminated, whichever is earlier.

18.2 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 18.1 within twenty-eight (28) **Days** after the **Date of Practical Completion**.

18.3 Contractor's obligations on receipt of claim for liquidated damages

Subject to Clauses 18.1 and 18.2, 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 28.1, 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.

19 DEFECTS LIABILITY PERIOD

19.1 Defects Liability Period

The **Contractor** must rectify defects in, and omissions from, the **Works** which become apparent and are notified in writing to the **Contractor** during the **Defects Liability Period**.

19.2 **No retention money**

To avoid doubt, no part of the **Contract Price** is to be retained by the **Owner** during the **Defects Liability Period**.

19.3 **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 expiry of the **Defects Liability Period**, rectify any defects in, and omissions from, the **Works** notified to the **Contractor** in accordance with Clause 19.1, 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**.

20 **OWNER'S RIGHTS TO TERMINATE CONTRACT**

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

If the **Contractor**:

- a) fails to proceed with the **Works** with due diligence or in a competent manner;
- 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 effect or maintain any insurance policy required by this **Contract**; or
- f) is otherwise in **Substantial Breach** of this **Contract**,

the **Owner** may give a written notice to the **Contractor** by hand, registered post or facsimile transmission:

- g) describing each alleged **Substantial Breach** of this **Contract** by the **Contractor**; and
- h) stating the **Owner's** intention to terminate this **Contract** unless the **Contractor** remedies the alleged **Substantial Breach** or **Breaches** within ten (10) **Business Days** after receiving the **Owner's** notice.

20.2 **If Contractor fails to remedy Substantial Breach, Owner may terminate Contract**

If the **Contractor** fails to remedy the **Substantial Breach** or **Breaches** set out in a notice given to it by the **Owner** in accordance with Clause 20.1 within the time stated in that notice, the **Owner** may, without prejudice to any other rights or remedies, terminate this **Contract** by further written notice to the **Contractor** provided that such a notice of termination must not be given unreasonably or vexatiously and, if so given, then such purported notice of termination is void, and of no force and effect.

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

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

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

If the **Owner** terminates this **Contract** in accordance with Clause 20.2, the **Owner** may engage another contractor to complete the **Works**.

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

If this **Contract** is terminated in accordance with Clause 20.2, the **Contractor** is entitled to a reasonable remuneration for the unpaid value of that part of the **Works** it carried out under this **Contract** to, and including, the **Day** on which this **Contract** is terminated.

21 **CONTRACTOR'S RIGHTS TO TERMINATE CONTRACT**

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

If the **Owner**:

- a) fails to comply with any of its obligations under Clause 7;
- b) fails to comply with any of its obligations under Clause 11;
- c) fails to provide the **Contractor** with any direction or other information requested by the **Contractor** under Clause 9;
- d) fails to give to the **Contractor** a written notice agreeing to a variation in accordance with Clause 12.5, 13.3 or 14.3 within five (5) **Business Days** after receiving a variation document provided by the **Contractor**;
- e) fails to remedy any **Substantial Breach** of this **Contract** set out in a suspension notice given in accordance with Clause 16.2 within ten (10) **Business Days** after receiving that notice; or
- f) is otherwise in **Substantial Breach** of this **Contract**,

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

- g) describing the relevant breach or breaches of this **Contract** by the **Owner**; and
- h) stating the **Contractor's** intention to terminate this **Contract** unless the **Owner** remedies the breach or breaches within ten (10) **Business Days** after receiving the **Contractor's** notice.

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

If the **Owner** fails to remedy the **Owner's** breach or breaches of this **Contract** set out in a notice given to the **Owner** by the **Contractor** in accordance with Clause 21.1 within the time stated in that notice, the **Contractor** may, without

prejudice to any other rights or remedies, terminate this **Contract** by further written notice to the **Owner**.

21.3 Contractor's right to recover on termination

If this **Contract** is terminated in accordance with Clause 21.2, the **Contractor** is entitled to, without prejudice to any other rights or remedies, 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 this **Contract** at law, and the **Contractor** had accepted the repudiation and elected to terminate this **Contract**. The **Contractor** may also remove from the **Land**, and retain, all unfixed materials, goods, plant and equipment previously provided by the **Contractor**.

22 TERMINATION FOR INSOLVENCY

22.1 Either party may terminate Contract for insolvency

Subject to Clause 22.3, either the **Contractor** or the **Owner** may terminate this **Contract** immediately on giving written notice to the other party, if the other party:

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

22.2 Requirements of notice

A written notice under Clause 22.1 must set out the ground or grounds relied on by the relevant party for the termination.

22.3 Enforceability of Clause 22.1 if the other party is a company

If 'the other party' referred to in Clause 22.1 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 22.1 may be limited by the *Corporations Act 2001* (Cth).

23 NOTICES AND ELECTRONIC COMMUNICATIONS

23.1 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.

23.2 Methods for giving notices and other documents

Unless expressly stated otherwise elsewhere in this **Contract**, and subject to Clause 23.3, any written notice, or other document, to be given by a party under this **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 this **Contract**, or another address notified by the other party in writing, at 9.00am on the date that is two (2) **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 this **Contract**, or another facsimile number notified by the other party in writing, at the time set out in a written confirmation of the successful transmission of the facsimile; or
- e) if sent by email to the other party at the email address of the other party stated in this **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 whom, or on whose behalf, the email has been sent.

23.3 Notices given outside of usual business hours

If any written notice, or other document, is given at a time after 5.00pm on a **Business Day**, or during a **Day** that is not a **Business Day**, the notice, or other document, is deemed to have been given at 9.00am on the next **Business Day**.

23.4 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) The parties agree that any written notice, or other document, to be given by a party under this **Contract** may be given and received via facsimile transmission or email, or both.

24 DELAY COSTS

24.1 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 (h) (inclusive) of Clause 15.1, 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 24.1(b) applies, details of the reasonable costs incurred by the **Contractor**, by no later than the date that is thirty-five (35) **Days** after the **Date of Practical Completion**.

24.2 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 24.1:

- 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.

24.3 Right not subject to claim for extension of time

To avoid doubt, the **Contractor's** right to delay costs under Clause 24.1 is not subject to the **Contractor** claiming an extension of the **Date for Practical Completion** in accordance with Clause 15.1.

25 STATUTORY WARRANTIES

25.1 Statutory warranties under part 3, division 2 of Schedule 1B of the Act

The warranties mentioned in division 2 of part 3 of Schedule 1B of the **Act** form part of this **Contract**.

25.2 Statutory warranties under part 3, division 3 of Schedule 1B of the Act

A warranty mentioned in a section of division 3 of part 3 of Schedule 1B of the **Act** forms part of this **Contract** if this **Contract** is of the type to which the section applies.

25.3 Statement of warranties on website

A statement of each of the warranties mentioned in divisions 2 and 3 of part 3 of Schedule 1B of the **Act** is set out on the 'Part 3 Warranties' page of Master Builders Queensland's website at <https://mbqlld.com.au/qbccact-schedule1b>. To the extent to which a warranty stated on that page is applicable to this **Contract**, the warranty is incorporated into this **Contract**.

26 LIMITATION OF CONTRACTOR'S LIABILITY

26.1 Release of Contractor from certain liabilities after expiry 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**), 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 this **Contract**;
- b) any breach (including any **Substantial Breach**) of this **Contract** by the **Contractor**;
- c) any breach of a warranty (other than any warranty mentioned in Clause 25) by the **Contractor** under this **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 this **Contract**;
- e) any guarantee given to the **Owner** by the **Contractor** under this **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 this **Contract**,

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

- g) the **Owner** 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**.

26.2 No entitlement to start a proceeding after expiry 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 26.1.

26.3 No limitation for certain statutory warranties and guarantees

To avoid doubt, Clauses 26.1 and 26.2 do not apply to:

- a) any warranty mentioned in Clause 25 that is incorporated into, and forms part of, this **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).

27 LODGING OF A CAVEAT BY THE CONTRACTOR

27.1 No lodging of caveat if Resident Owner

A **Contractor** cannot lodge a caveat claiming an interest in the **Land** where the **Owner** is a **Resident Owner**.

27.2 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, this **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.

28 RESOLUTION OF DISPUTES

28.1 Notice of dispute

If a dispute arises out of, or in connection with, this **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.

28.2 Dispute may be referred to Master Builders Queensland

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

28.3 Referral of dispute to other relevant bodies

If the dispute set out in the notice of dispute is not wholly resolved within ten (10) **Business Days** after the giving of the notice of dispute, then either party may refer the dispute to:

- a) a dispute resolution process administered by the **Commission**;
- b) the **Tribunal**; or
- c) a Court.

29 MISCELLANEOUS

29.1 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 this **Contract**.

29.2 No adjustment to Contract Price for different dimensions

All dimensions in this **Contract** are approximate to the extent that they are based on dimensions estimated from any existing building on the **Land**.

29.3 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 this **Contract** or the **Act**.

29.4 Parties rights to assign Contract

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

29.5 Intellectual property rights warranty if Owner provides design

If the **Contractor** is required to carry out the **Works** in accordance with:

- a) any **Plans** 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**,

then the **Owner**:

- c) warrants that the use of such **Plans, Specifications** or document do not infringe any copyright, moral right or other intellectual property right; and
- d) must indemnify 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**.

29.6 Copyright if Contractor provides design

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

- a) the **Contractor** has copyright in those **Plans, 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 **Plans, Specifications** or other design documents, and all amounts due to the **Contractor** for the **Works**, the **Owner** has a licence to use those **Plans, Specifications** or other design documents only for the purpose of completing and maintaining the **Works** on the **Land**.

29.7 No waiver

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

29.8 Governing law

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

29.9 Severance

If any provision of this **Contract** is void, voidable, 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 this **Contract** without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue to have effect.

29.10 Joint and several liability

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

29.11 Owner's Agent

The person stated in Item 16 of the **Schedule** is to act as the **Owner's Agent**. Where no person is stated in Item 16, 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's Agent** is to act on the **Owner's** behalf with respect to the administration of this **Contract** and the performance of the **Owner's** obligations under this **Contract**.

29.12 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 this **Contract**. Any direction or instruction given by the **Owner's Agent** in writing is deemed to be a direction or instruction given by the **Owner**.

29.13 Architect as Owner's Agent

Any architect engaged by the **Owner** must be appointed by the **Owner** as the **Owner's Agent** for the purposes of this **Contract**.

29.14 Architect's instructions

- a) Any direction or instruction which may be given by an architect acting as the **Owner's Agent** must be in writing, and signed by the architect.
- b) Any agreement to a variation of the **Works** by an architect acting as the **Owner's Agent** must be notified to the **Contractor** in writing.

29.15 Replacement of Owner's Agent

The **Owner** may, with the prior written consent of the **Contractor**, replace the **Owner's Agent**.

29.16 Contractor to act as principal contractor

The **Contractor** is to act as principal contractor for the purposes of the *Work Health and Safety Regulation 2011*, and may exclude or remove from the **Land** any person who, in the opinion of the **Contractor**, fails to comply with the *Work Health and Safety Act 2011* and that Regulation.

29.17 Exchange of Contract

- a) This Contract may be executed in counterparts.
- b) A counterpart may be a copy of this Contract printed from a facsimile or email transmission.
- c) All counterparts together are taken to constitute one instrument and will not be binding until executed counterparts are exchanged.

- d) A copy of this 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 this Contract executed by the party.

30 SPECIAL CONDITIONS

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

DRAFT



Consumer Building Guide

Your building contractor must give you this guide before you sign the contract.

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

Cooling-off period

You may withdraw from the contract within five business days of receiving copies of 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 also advise the contractor in writing.

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. Always check the contractor's licence and licence history via QBCC's Online Licence Search.

QLD Home Warranty insurance

Residential construction work valued at more than \$3,300 is covered by the Queensland Home Warranty Scheme. It 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. After the contract has been signed, the contractor must pay the insurance premium to QBCC, and you should receive a Certificate of Insurance and Policy Booklet within two weeks.

Cost Plus and Construction Management contracts

QBCC recommends home owners obtain formal legal advice before signing either of these types of contracts which reduce your Home Warranty insurance protection and often result in disputes and cost overruns. Visit the QBCC website for more details on the risks associated with these contracts.

Commencement Notice

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

Contract price

The total contract price must be stated on the first page of the contract schedule, along with a warning about any provisions that may cause the price to change. If the total contract price includes any allowances (items or services for which the price is not fixed at the time the contract is signed), these allowances must be stated in the contract schedule.

Deposits and progress payments

The maximum deposit allowed is:

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

Owners and contractors are free to determine the number and timing of progress payments (if any) for their particular project, provided these payments are proportionate to the value of work performed on site (e.g. don't pay more than 50% before half of the work has been completed).

Building approvals and inspections

Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction. You can check the certifier's licence via QBCC's Online Licence Search.

Variations

Any change to the materials used or the scope of the 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 detailed in writing and copied to the owner by the contractor within five business days after they are agreed to, and before any of the variation work commences.

Dispute prevention

To reduce the risk of a dispute, carefully read and understand the contract. Also check any associated plans and specifications before signing. Discuss any questions with your contractor and seek legal advice if you still have concerns.

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. It's critical that you engage a practising solicitor before terminating the contract. Incorrect termination may have serious legal and financial consequences and reduce your Home Warranty protection.

Extensions Of Time (EOTs)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined (e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could have been anticipated).

The contractor must give you a written EOT claim that 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'.

Practical completion and handover

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract, 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.

Implied warranties

Under the Act, a range of warranties are deemed to be part of all regulated domestic building contracts. The warranty period is six years for structural defects and one year for all other defects.

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

- ☐ I have read this Consumer Building Guide
- ☐ I have read and checked all contract documents, including the schedule, general conditions and special conditions (if any) and all plans and specifications
- ☐ I have checked the contractor's licence and licence history on the QBCC Online Licence Search at qbcc.qld.gov.au
- ☐ I note and understand my cooling-off rights (including how and when I may withdraw if I choose to)
- ☐ I have checked the total price (including what proportion is comprised of allowances) and I understand the deposit and progress payments set out in the contract
- ☐ 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.

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 with the contract.

NAME: _____ DATE: _____

SIGNATURE: _____