

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

THEORY EXAM INSTRUCTIONS

- This exam will occur under standard assessment conditions.
 - An oral examination may be allowed under certain circumstances. Answers will be documented and FT003 (Oral examination declaration form) must be completed.
- Participants must provide enough detail in their responses to demonstrate their knowledge and skills.
- Please fill in the details below, providing your name, signature and date of assessment.
 - Your signature acknowledges that this is your own work.
- If a participant initially answers a question incorrectly but modifies their response, they must follow the instructions below:
 - If a participant changes their response in writing, they must put their initials next to the written change.
 - If a participant changes their response verbally, this must be noted on the exam paper by the assessor.

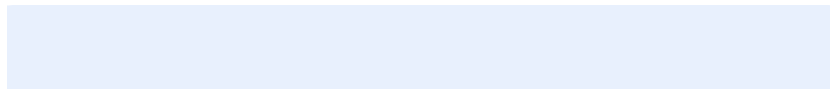
Participant name Barbra McCandlish

Participant signature



Assessor name _____

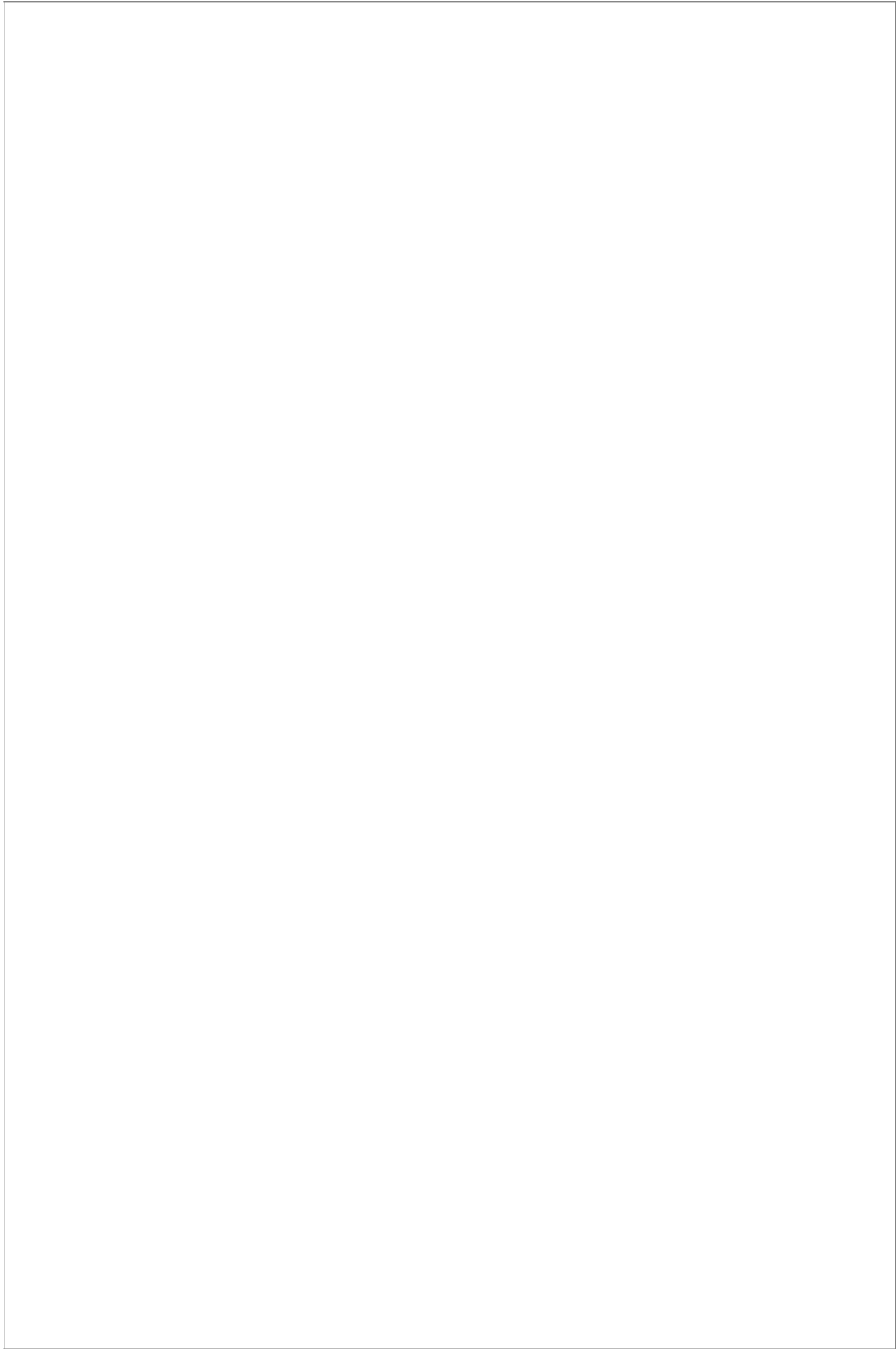
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Date 30/01/2019

Number of questions	Number of questions answered correctly	Satisfactory?	
51		Yes	No
		☐	☐

ASSESSOR COMMENTS



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

Answer

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

☐

2. **When would an offer be considered to have lapsed?**

Answer

When the time for acceptance lapses. If it is withdrawn prior to acceptance.
After a reasonable time under the circumstances (the larger the value, the longer the life of the offer)

☐

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

Answer

The contract is regarded as a counter offer, which can be rejected or accepted.

☐

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

Answer

One party promises to do something in return for a promise by another party.
What each party gives to the other as the agreed price for the others promises.
Payment of money.

☐

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

Answer

Senile
Mentally unfit

☐

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

Answer

Consent is implied in every agreement and is an act of reason and deliberation.
Apparent consent can be negated because of a mistake, fraud, duress, undue influence, innocent representation – All have a defence

☐

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

Answer

Qld Building and Construction Commission Act (QBCC)
Its role is to regulate the building industry, and maintain proper standards, support builders and provide remedies and advice. They achieve balance between builders and consumers.
They assist with Licencing and education.

☐

8. Under what laws are domestic building contracts regulated?

Answer

Building and Construction Industry payments Act 2004

☐

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

Answer Domestic works over \$3,300

☐

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

Answer Building and Construction Industry payments Act 2004
Must be over \$3,300

☐

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

Answer The QBCC Act Schedule 1B, Section 15 advises it should be given within 5 business days.

☐

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

Answer This avoids any disputes between any of the relevant parties.
It clearly defines what is the intended scope of works.

☐

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

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

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

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

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

Answer	☒	True	☐
	☐	False	

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

Answer

Contract name	Description
New Home Construction Contracts	For the construction of an entire home
Small Building Projects (domestic)	For domestic building projects not exceeding \$3,300
Commercial Building Contracts	A lump sum contract to be used for the construction only of a commercial building (with or without an agent)
Commercial Cost Plus Contract	A cost plus contract for the use on commercial building projects where a lump sum price cannot be established. However a fair and reasonable estimate is given.



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

Answer

Commercial minor works contract. Lump Sum Contract.



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

Answer

Basic works contract, level 1 or 2 where the max value is \$80k



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

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

Answer

Topics	Definition
Builder's Licence	You should only deal with a QBCC licences Contractor or your building may not be covered. Always check licence history via QBCC online search.
Contract price	This must be stated on the first page of the schedule. It must also contain warnings about potential contract price changes (ie. items not fixed). These must all be stated in the contract.
Building approvals and inspections	These are the responsibility of the building certifier. Mandatory inspections will be required at certain stages. You can check licences on the QBCC online search tool.
Practical completion and handover	You are not required to pay the final payment until all work has been completed as per the contract. If there are defects, then need to complete a defects document listing any agreed matters. This must be done at handover. Check all contracts.
Implied warranties	A range of warranties are deemed to be part of all regulated domestic building contracts. The warranty period is six years for structural, and one year for any/all other items.



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

Answer

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

☐

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

Answer

Prime cost item schedule:

This is an amount noted in the contract to cover the minimum contract, to cover the minimum item. It gives the client the option of upgrading the item and paying the difference (example \$200 for a toilet)

Provisional Sum

This is an amount of money allowed for items which may not automatically be needed (example. rocks found upon excavation that were not expected). If it is not required, you can charge the client the relevant portion up to the nominated amount.

☐

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

Answer

Rise and Fall

Fluctuating building costs

Alterations to the plans/upgrades

☐

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

Answer

☒	True
☐	False

☐

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

Answer

Submit in writing as early as possible using a standard variation form. Once accepted, and signed by all parties, they must be kept on site at all times. Addressed as written variations to the contract (to be read separately)



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

Answer Fair Trading Act 1989 Qld. Applies to consumers, builders and contractors.



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

Answer They must make reasonable inquiries about your financial situation and take steps to verify your financial situation. Assess whether you can meet the financial obligations of the credit contract and if it meets the needs. They must determine the the contract is suited to you.



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

Answer It enables consumers to cancel the contract if they are not satisfied. Refer schedule 1B of the QBCC Act. It provides a cooling off period, giving the option to withdraw from contract within five days of receiving the signed contract.



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

Answer QBCC sets out maximum deposits. If the domestic contract for work is \$20k or more, the max deposit is 5%. If the contract works is over \$3,300.00 but under \$20,000.00 then the deposit is maxed at 10%



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

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

Answer As per QBCC
Deposit 5%
Frame Stage 15%
Enclosed Stage 25%
Fixing Stage 20%
Practical Completion 15%



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

Answer We would need to decline the offer, as the QBCC Act has deposits capped(maximums), and we may be liable for legal action if caught accepting more than \$27,500.00 deposit



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

Answer

Breach	Explanation
Breach of condition under contract	Forms part of the contract, it is essential and if breached, the nature of the contract is drastically changed. Can elect to discharge and sue for damages.
Breach of warranty under contract	This term is not the same as a guarantee, and if the warranty is not fulfilled, the nature of the contract is not drastically changed. You cannot terminate the contract. You can only seek damages.

☐

32. **What does repudiation of a contract mean?**

Answer

It occurs when a party is unwilling to fulfil their obligations, by acknowledging or by inconsistent action of their contract. It means 'rejection of proposal'.

☐

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

Answer

☒	True
☐	False

☐

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

Answer If it is deemed not to be a repudiation, the injured party may be liable to pay damages for breaching contract.



35. **What does 'abandonment of contract' mean?**

Answer Both parties have conducted themselves in a way that the original construction is no longer valid. Both parties mutually agreeing.
Or if a contractor fails to perform work in a reasonable timeframe without any legal excuse.



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

Answer Cause is when one party stop work because of a deficiency in performance by the other party. The party with poor performance is the terminated party with little recourse.
Convenience is when the owner stops work for reasons other than deficiency in performance by contractor. Because it is not the result of poor performance, the law can provide the aggrieved contractor with rights against the breaching owner.



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

Answer

☒	Yes
☐	No

☐

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

Answer

The notice must specify what exactly must occur to perform the contract.
A reasonable timeframe to complete.
A statement of consequences of not performing in accordance with the notice.

☐

39. **True or False (Tick your response): Where the notice given (as per Q39.) is deemed invalid, the innocent party must either serve another notice or prove repudiation by the defaulting party, in order to terminate the contract.**

Answer

☒	True
☐	False

☐

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

Answer

When all of the contracted work has been completed in accordance with the contract (minor omissions/defects should be accepted if they do not affect occupation). There must be a defect document stating when the defects will be rectified by, and agreed to between you and the contractor.



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

Answer

The contractor must make good, defects or omissions in their work, under the contract. This should be within six months of the date of completion (PC). The owner must give written notice to make good, and must give reasonable access to the site to complete. Contractor must rectify within 28 days and during business hours.



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

Answer

Must be a licensed contractor, and refer to the QBCC for guidance on these matters.



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

Answer Your Lawyer.

☐

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

Answer Your Executed Contract.

☐

45. How should you handle a customer complaint?

Answer Deal with this promptly. Stay calm and identify the problem. Decide what can be done. Arrange a second opinion.
Keep clear and concise records (filing appropriately) and fix the problem as best you can.



46. How do you reduce the risk of dispute?

Answer Record everything. Act quickly to resolve issues. Do what you say you will do. Don't make unrealistic promises.



47. What is the process for dispute resolution?

Answer Request help from your building association, or from QBCC.
QCAT provides cost effective dispute resolution. The tribunal will hear any disagreement between you and the contractor. Phone QCAT 139 333.
Seek legal advice, especially if you intend on terminating the contract.



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

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

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

Answer

Good morning Sir/Madam,
Thank you for your email. I have looked into this further for you, so that the matter can be resolved quickly for you.
Please see attached, the specification sheet showing the model number of the bath we recently installed. I have also located on file our purchase order, to Reece Plumbing which shows the model number delivered. The current contract also specifies materials were ordered as specified.
I have attached a delivery note which also shows the matching model number. Therefore I confirm that we have installed the bath, according to our contract. We are more than happy to work with you, so if you would like to discuss a variation, and upgrade this bath, please let us know.
I trust that this information has assisted you today.
Kind Regards

Barbra McCandlish
Contract Administrator



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

Answer Liquidated damages. Check the formula. Maintain records explaining the loss/damage incurred if project fails. Always use Extensions of time, as it may be relevant later.



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

Answer Consult your company policy.
Arrange a pre-handover inspection to address any issues.
Organise the final payment at PC and not handover.
Provide the client with certificates, warranties, reports, and notices by utility providers. The defects report is to be completed during inspection and agreed by both parties.
The Contracts Administrator is responsible to arrange the final inspection certificate, and this is arranged through the building certifier. Refer to the Planning Act 2016.



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

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

Additional details:

- The land has been secured and paid for by the Clients.
- Proposed contract amount is \$580,000.00 plus \$85,000 for a kidney shaped 9m x 6m in-ground swimming pool, landscaping, gardens and lawns.
- Mr. and Mrs. Cousins have finance approval from the Commonwealth Bank for \$390,000.00 and the balance in cash. You have received written assurance from the Clients finance company and bank that their finances for the build are fully secured.
- Mr. and Mrs. Cousins want to pay you \$75,000.00 upon signing of the contract to get their build at the top of your priority list.
- The residential dwelling will be a low set single skin masonry structure with hip and valley roof using glazed clay tiles, contrast metal fascia and gutters and colour/rendered finish on a 1000m² level block upon which there are three large standing hardwood trees which will need to be fully removed.
- The Clients want the largest tree wood chipped and the chipped bark retained on site for the future gardens and landscaping.
- Mr. and Mrs. Cousins operate an aluminium window supply company and have advised they will supply all the windows and shower glass for the build.
- The dwelling has four bedrooms with built-ins. The master bedroom has ensuite with toilet, spa bath and double shower and walk-in robe and dressing area. There is an office, gourmet kitchen with stone bench tops and butler's pantry, media room, separate open plan dining adjacent to the kitchen plus slate tiled outdoor entertaining area adjacent to the pool, two living areas (formal and informal), two bedrooms share a bathroom with bath, shower, double vanity and toilet and the guest bedroom is ensuited with shower only, toilet and single vanity, there is a powder room (toilet and vanity only), three car garage (one double and one single) and a store/workshop room at the rear of the double bay garage. A slab is to be put down in the back corner of the allotment for a 5m x 3m garden shed.
- The council approved building plans have been provided by Mr. and Mrs. Cousins these do not include the garden shed slab.
- The construction period excluding inclement weather and possible delays is 23 weeks
- Provisional sums are required for the wet areas, alfresco area and living area tiling. (Only the bedrooms are carpeted).
- Prime costs are required for the solar hot water system and ducted air conditioning
- Provide fictitious details for all other sections of the contract.
- 18 solar panels are to be installed on the roof

Answer



QBCC - New Home Construction Contract