



QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

QBCC NEW HOME CONSTRUCTION CONTRACT

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

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

THIS PACK CONTAINS:

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

DO NOT ACCEPT THIS PACK IF CONTENTS ARE INCOMPLETE

WARNING FOR CONTRACTOR

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

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

CONSUMER BUILDING GUIDE

Your contractor must give you this guide before you sign a contract priced at or over \$20,000

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

COOLING-OFF PERIOD

You may withdraw from the contract within 5 business days after the day you receive copies of both the signed contract (including any plans and specifications) and this guide. However, there are costs for home owners in withdrawing (generally \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). You must advise the contractor in writing that you are withdrawing under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.

QBCC LICENCE

You should **only deal with a QBCC-licensed contractor**. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home Warranty Scheme. **Before committing, check the contractor's licence and history via the Online Licence Search on the QBCC website or by calling the QBCC.**

QLD HOME WARRANTY SCHEME

Residential construction work valued at more than \$3,300 is covered by the Queensland Home Warranty Scheme. The Scheme provides protection for home owners against non-completion, defective work and subsidence for up to 6 years from completion, provided a licensed contractor performs the work. The building contractor must collect the premium from the owner and pay it to the QBCC within 10 business days after the date the contract was entered into or before the contracted work is started (whichever is earlier). You should receive an email with a Notice of Cover and links to important information about the cover provided within 2 weeks of signing the contract.

WARNING – COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS

QBCC strongly recommends home owners obtain formal legal advice before signing either of these types of contracts which increase your legal risk, reduce your Home Warranty Scheme protection and often result in disputes and cost overruns.

COMMENCEMENT NOTICE

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

CONTRACT PRICE

For contracts priced at \$20,000 or more, the contract price, if fixed, must be shown prominently on the first page of the contract schedule. If the contract price is not fixed, the method for calculating it, including any allowances, must be stated in the contract schedule. Allowances (items or services for which the price is not fixed when the contract is signed) should be kept to a minimum as the final cost often exceeds the estimate in the contract. The contract must also contain a warning about any provisions that may alter the contract price.

DEPOSIT LIMITS

The maximum deposit allowed (before work starts on site) is:

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

PROGRESS PAYMENTS

After the deposit is paid, owners and contractors are free to choose the number and timing of progress payments (if any) for their project, provided the amount claimed is directly related to work progress on site and proportionate to (or less than) the value of the work that relates to the claim.

BUILDING APPROVALS AND INSPECTIONS

Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction. The contractor must give you copies of any certificates of inspection as soon as practicable after they receive them from the certifier. You can check the certifier's licence via QBCC's Online Licence Search.

VARIATIONS

Any change to the materials used or work to be performed under the contract is known as a 'variation'. Variations are frequently the cause of cost overruns and building disputes. **All variations must be agreed in writing by the home owner before the variation work commences** and any price increase due to the variation can not be required to be paid until the variation work is started.

DISPUTE PREVENTION

To reduce the risk of a dispute, carefully check and be sure you understand the contract, including any plans and specifications, before signing. Discuss any questions with your contractor and seek independent legal advice if you still have concerns. Once construction starts, maintain regular communication and, where possible, site inspections with your contractor and pay promptly when required under the contract.

DISPUTE RESOLUTION

If a dispute with your contractor occurs, firstly advise them in writing giving them a reasonable time to respond. If this doesn't resolve the problem, explore QBCC's free Early Dispute Resolution (EDR) service and your legal options. **QBCC recommends you obtain independent legal advice before terminating the contract. Incorrect termination may have serious legal and financial consequences and reduce your protection under the Qld Home Warranty Scheme.**

EXTENSIONS OF TIME (EOTs)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined (e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could reasonably have been anticipated). The contractor must give you a written EOT claim which you should carefully consider (not unreasonably reject) and respond to promptly in writing. If you approve the claim, the Date for Practical Completion will be extended by the period claimed. If you do not approve the claim, the extension is deemed 'disputed'.

LIQUIDATED DAMAGES (LDs)

LDs are contractual payments to compensate a home owner for extra costs/losses they are likely to incur (e.g. extra rental costs) if the contractor fails to complete the work within the time allowed for in the contract (after allowing for legitimate extensions of time). Carefully consider what, if any, LD amount is appropriate for your project and ensure it is recorded in the contract.

PRACTICAL COMPLETION AND HANDOVER

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract including any plans and specifications, all legal requirements, and either without any defects or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.

WARNING: Strict timeframes apply for notifying QBCC about defects. For more information please refer to the Regulatory Guide on the following QBCC website address qbcc.build/rectify-building-work

IMPLIED WARRANTIES

Sections 19 - 26 of Schedule 1B of the Act set out statutory warranties deemed to be part of all regulated domestic building contracts, even if not stated in the contract. The *warranty period* is 6 years from completion, termination or cessation of the work for breaches resulting in structural defects; 1 year for all other breaches. Legal proceedings for any breach must be started within the warranty period or a further 6 months if the breach becomes apparent within the last 6 months of the warranty period.

FOR FURTHER INFORMATION

- Read the booklet, '*Domestic Building Contracts – General Information for owners and contractors*' on the QBCC website.
- Refer to the relevant legislation, Schedule 1B of the QBCC Act.

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

- ☐ I have read this Consumer Building Guide
- ☐ I have read and checked all contract documents, including the contract schedule, general conditions and special conditions (if any) and any plans and specifications
- ☐ I have checked the building contractor's licence and licence history on the QBCC Online Licence Search
- ☐ I note and understand my cooling-off rights (including how and when I may withdraw from the contract if I choose to)
- ☐ I have checked the total contract price (including what proportion is comprised of allowances) and I understand the deposit and progress payments set out in the contract schedule
- ☐ I have checked the start and finish dates and practical completion requirements in the contract
- ☐ (If applicable) I have discussed my questions/concerns about the contract with a practising solicitor

Owner's acknowledgement

Complete and sign the section below to acknowledge that you have received this guide from your building contractor. Once signed, the building contractor will return a copy of this guide to you.

NAME(S): _____

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



QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

GENERAL CONDITIONS

of

QBCC New Home Construction Contract

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

IMPORTANT NOTE FOR CONTRACTOR AND HOMEOWNER

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

You should regularly check the timeframes in this document.

CONTENTS

PAGE NO.

TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT	3
GENERAL CONDITIONS	
1. DEFINITIONS	4
2. WITHDRAWAL DURING 'COOLING-OFF' PERIOD	5
3. WARRANTIES UNDER SCHEDULE 1B OF QBCC ACT	6
4. PRICE	6
5. EVIDENCE OF CAPACITY TO PAY THE CONTRACT PRICE	7
6. SECURITY ACCOUNT MONEY	8
7. EVIDENCE OF TITLE TO, AND BOUNDARIES OF, THE SITE	8
8. COPYRIGHT	8
9. BUILDING APPROVAL	8
10. TERMINATION FOR LACK OF BUILDING APPROVAL	8
11. CONTRACTOR'S INDEMNITY IN FAVOUR OF THE OWNER	8
12. CONTRACTOR'S INSURANCE OBLIGATIONS	8
13. ACCESS TO THE SITE	9
14. CARE OF THE WORK UNDER THIS CONTRACT	9
15. WORKPLACE HEALTH AND SAFETY	9
16. COMMUNICATION BETWEEN OWNER AND CONTRACTOR	9
17. COMMENCEMENT AND PERFORMANCE OF THE WORKS	9
18. ASSIGNMENT AND SUBCONTRACTING	10
19. PAYMENT	10
20. INTEREST ON OVERDUE PAYMENTS	10
21. VARIATIONS	11
22. TIME FOR PRACTICAL COMPLETION	12
23. EXTENSION OF TIME	12
24. LIQUIDATED DAMAGES	12
25. DISPUTE RESOLUTION	12
26. TERMINATION AFTER NOTICE OF DEFAULT	13
27. TERMINATION FOR BANKRUPTCY OR LIQUIDATION	13
28. PRACTICAL COMPLETION	14
29. DEFECTS AFTER COMPLETION	14
30. NOTICES	14

TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

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

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

GENERAL CONDITIONS

1. Definitions

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

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

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

the Contract before entering into the Contract;
or

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

3. Warranties under Schedule 1B of QBCC Act

- 3.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:
 - (a) the **work under this Contract** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
 - (b) all materials supplied will be of good quality and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless this Contract expressly provides otherwise;
 - (c) the **work under this Contract** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
 - (d) the **work under this Contract** will be carried out in accordance with the plans and specifications and any other Contract documents described in Schedule Item 15;
 - (e) if the **work under this Contract** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage reasonably suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **Works** are finished; and
 - (f) any estimate of **Provisional Sums** or **Prime Cost Items** included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).
- 3.2 Without limiting any other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:
 - (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an **intended use**; and
 - (b) the Owner is given all information about the **building product** required by section 74AG(4) of the QBCC Act.

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

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

4. Price

- 4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:
 - (a) **Fixed Price Component**;
 - (b) **Prime Cost Items Component** (if any); and
 - (c) **Provisional Sum Component** (if any).
- 4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to the commencement of the **Works** give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**.

In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.
- 4.3 If allowances for **Prime Cost Items** and **Provisional Sums** are included in the **Contract Price**, the total amount for each type of allowance must be shown adjacent to the words '**Prime Cost Items**' and '**Provisional Sums**' in Schedule Item 1 and the Contractor must give the Owner a separate schedule which states, for each **Prime Cost Item** or **Provisional Sum**, the following details:
 - (a) a detailed description of the **Prime Cost Item** or the contracted services to which the **Provisional Sum** relates;
 - (b) a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**, including any margin the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's margin'); and
 - (c) the total price payable, inclusive of **GST**, for each **Prime Cost Item** or **Provisional Sum**.
- 4.4 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date.
- 4.5 For **Prime Cost Items** which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor

- in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain and supply the relevant item.
- 4.6 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.
- 4.7 The Contractor warrants that each estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*:
- has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the **Site**); and
 - represents the reasonable cost of supplying and delivering each **Prime Cost Item**, or providing the contracted service covered by the **Provisional Sum**, including the Contractor's margin.
- 4.8 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.9 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.10 Prior to or when presenting a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, or providing the contracted services covered by a **Provisional Sum**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost to the Contractor of supplying the item or providing the contracted services under the Contract. The Contractor cannot seek payment for the **Prime Cost Item**, or the contracted service covered by the **Provisional Sum**, until the progress claim following the incorporation of the item in the **Works** or following the completion of the said contracted service.
- 4.11 As soon as practicable after the Contractor becomes aware that the actual cost of any **Prime Cost Item** or **Provisional Sum** will be more than 20% above the Contractor's estimate for that item in the *Prime Cost Items Schedule* or the contracted service in the *Provisional Sums Schedule*, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:
- describes the **Prime Cost Item** or **Provisional Sum**;
 - states the cost to the Contractor of the **Prime Cost Item** or **Provisional Sum**, together with the Contractor's margin, and the amount by which this total amount exceeds the total allowance for that item in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*; and
 - identifies the Progress Payment stage under this Contract at which payment for the **Prime Cost Item** or **Provisional Sum** will be required.
- ## GOODS AND SERVICES TAX
- 4.12 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 21) have been or will be calculated on a **GST** inclusive basis.
- ## 5 Evidence of capacity to pay the Contract Price
- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied as to the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than 5 **business days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must, subject to Condition 5.5, immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 5.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- fees paid by the Contractor to another person for the **Foundations Data**;
 - fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - fees paid to an **Assessing Certifier** for development and/or building approval; and
 - fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 5.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.
- 5.7 After commencement of **work under this Contract**, the Owner must, upon reasonable written request from the Contractor, provide the Contractor with current

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

6 Security account money

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

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

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

8 Copyright

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

9 Building approval

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

10 Termination for lack of building approval

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

11 Contractor's indemnity in favour of the Owner

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

12 Contractor's insurance obligations

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

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

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

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

13 Access to the Site

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

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

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

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

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

14 Care of the work under this Contract

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

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

15 Workplace health and safety

15.1 For the purposes of this clause:

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

(Qld), as amended from time to time;

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

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

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

(a) comply with and discharge all obligations and duties imposed on a person by the Act, the Regulation and any other regulation in connection with health and safety including without limitation obligations imposed on a person who conducts a business or undertaking; and

(b) accept that it is the principal contractor and the person having management and control of the workplace at which the **work under this Contract** is being undertaken.

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

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

16 Communication between Owner and Contractor

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

17 Commencement and performance of the Works

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

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

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

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

18 Assignment and subcontracting

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

19 Payment

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

and for which payment has not previously been made; and

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

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

20 Interest on overdue payments

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

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

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

21 Variations

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

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

VARIATIONS REQUIRED BY LAW

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

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

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

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

22 Time for Practical Completion

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

23 Extension of time

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

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

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

24 Liquidated damages

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

WARNING TO OWNER

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

25 Dispute resolution

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

under this Contract notwithstanding the existence of the dispute.

26 Termination after notice of default

26.1 If:

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

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

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

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

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

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

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

licence required under the QBCC Act; and

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

27 Termination for bankruptcy or liquidation

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

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

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

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

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

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

WARNING TO OWNER AND CONTRACTOR

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

28 Practical Completion

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

29 Defects after completion

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

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

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

30 Notices

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

This image shows a full page of white paper with horizontal blue lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Contact list

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

YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

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



QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

GENERAL CONDITIONS

of

QBCC New Home Construction Contract

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

IMPORTANT NOTE FOR CONTRACTOR AND HOMEOWNER

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

You should regularly check the timeframes in this document.

CONTENTS

PAGE NO.

TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT	3
GENERAL CONDITIONS	
1. DEFINITIONS	4
2. WITHDRAWAL DURING 'COOLING-OFF' PERIOD	5
3. WARRANTIES UNDER SCHEDULE 1B OF QBCC ACT	6
4. PRICE	6
5. EVIDENCE OF CAPACITY TO PAY THE CONTRACT PRICE	7
6. SECURITY ACCOUNT MONEY	8
7. EVIDENCE OF TITLE TO, AND BOUNDARIES OF, THE SITE	8
8. COPYRIGHT	8
9. BUILDING APPROVAL	8
10. TERMINATION FOR LACK OF BUILDING APPROVAL	8
11. CONTRACTOR'S INDEMNITY IN FAVOUR OF THE OWNER	8
12. CONTRACTOR'S INSURANCE OBLIGATIONS	8
13. ACCESS TO THE SITE	9
14. CARE OF THE WORK UNDER THIS CONTRACT	9
15. WORKPLACE HEALTH AND SAFETY	9
16. COMMUNICATION BETWEEN OWNER AND CONTRACTOR	9
17. COMMENCEMENT AND PERFORMANCE OF THE WORKS	9
18. ASSIGNMENT AND SUBCONTRACTING	10
19. PAYMENT	10
20. INTEREST ON OVERDUE PAYMENTS	10
21. VARIATIONS	11
22. TIME FOR PRACTICAL COMPLETION	12
23. EXTENSION OF TIME	12
24. LIQUIDATED DAMAGES	12
25. DISPUTE RESOLUTION	12
26. TERMINATION AFTER NOTICE OF DEFAULT	13
27. TERMINATION FOR BANKRUPTCY OR LIQUIDATION	13
28. PRACTICAL COMPLETION	14
29. DEFECTS AFTER COMPLETION	14
30. NOTICES	14

TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

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

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

GENERAL CONDITIONS

1. Definitions

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

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

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

the Contract before entering into the Contract;
or

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

3. Warranties under Schedule 1B of QBCC Act

- 3.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:
 - (a) the **work under this Contract** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
 - (b) all materials supplied will be of good quality and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless this Contract expressly provides otherwise;
 - (c) the **work under this Contract** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
 - (d) the **work under this Contract** will be carried out in accordance with the plans and specifications and any other Contract documents described in Schedule Item 15;
 - (e) if the **work under this Contract** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage reasonably suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **Works** are finished; and
 - (f) any estimate of **Provisional Sums** or **Prime Cost Items** included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building site).
- 3.2 Without limiting any other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:
 - (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an **intended use**; and
 - (b) the Owner is given all information about the **building product** required by section 74AG(4) of the QBCC Act.

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

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

4. Price

- 4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:
 - (a) **Fixed Price Component**;
 - (b) **Prime Cost Items Component** (if any); and
 - (c) **Provisional Sum Component** (if any).
- 4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to the commencement of the **Works** give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**.

In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.
- 4.3 If allowances for **Prime Cost Items** and **Provisional Sums** are included in the **Contract Price**, the total amount for each type of allowance must be shown adjacent to the words '**Prime Cost Items**' and '**Provisional Sums**' in Schedule Item 1 and the Contractor must give the Owner a separate schedule which states, for each **Prime Cost Item** or **Provisional Sum**, the following details:
 - (a) a detailed description of the **Prime Cost Item** or the contracted services to which the **Provisional Sum** relates;
 - (b) a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**, including any margin the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's margin'); and
 - (c) the total price payable, inclusive of **GST**, for each **Prime Cost Item** or **Provisional Sum**.
- 4.4 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date.
- 4.5 For **Prime Cost Items** which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor

- in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain and supply the relevant item.
- 4.6 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.
- 4.7 The Contractor warrants that each estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*:
- has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the **Site**); and
 - represents the reasonable cost of supplying and delivering each **Prime Cost Item**, or providing the contracted service covered by the **Provisional Sum**, including the Contractor's margin.
- 4.8 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.9 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.10 Prior to or when presenting a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, or providing the contracted services covered by a **Provisional Sum**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost to the Contractor of supplying the item or providing the contracted services under the Contract. The Contractor cannot seek payment for the **Prime Cost Item**, or the contracted service covered by the **Provisional Sum**, until the progress claim following the incorporation of the item in the **Works** or following the completion of the said contracted service.
- 4.11 As soon as practicable after the Contractor becomes aware that the actual cost of any **Prime Cost Item** or **Provisional Sum** will be more than 20% above the Contractor's estimate for that item in the *Prime Cost Items Schedule* or the contracted service in the *Provisional Sums Schedule*, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:
- describes the **Prime Cost Item** or **Provisional Sum**;
 - states the cost to the Contractor of the **Prime Cost Item** or **Provisional Sum**, together with the Contractor's margin, and the amount by which this total amount exceeds the total allowance for that item in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*; and
 - identifies the Progress Payment stage under this Contract at which payment for the **Prime Cost Item** or **Provisional Sum** will be required.
- ## GOODS AND SERVICES TAX
- 4.12 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 21) have been or will be calculated on a **GST** inclusive basis.
- ## 5 Evidence of capacity to pay the Contract Price
- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied as to the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than 5 **business days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must, subject to Condition 5.5, immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 5.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- fees paid by the Contractor to another person for the **Foundations Data**;
 - fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - fees paid to an **Assessing Certifier** for development and/or building approval; and
 - fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 5.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.
- 5.7 After commencement of **work under this Contract**, the Owner must, upon reasonable written request from the Contractor, provide the Contractor with current

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

6 Security account money

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

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

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

8 Copyright

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

9 Building approval

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

10 Termination for lack of building approval

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

11 Contractor's indemnity in favour of the Owner

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

12 Contractor's insurance obligations

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

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

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

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

13 Access to the Site

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

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

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

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

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

14 Care of the work under this Contract

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

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

15 Workplace health and safety

15.1 For the purposes of this clause:

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

(Qld), as amended from time to time;

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

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

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

(a) comply with and discharge all obligations and duties imposed on a person by the Act, the Regulation and any other regulation in connection with health and safety including without limitation obligations imposed on a person who conducts a business or undertaking; and

(b) accept that it is the principal contractor and the person having management and control of the workplace at which the **work under this Contract** is being undertaken.

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

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

16 Communication between Owner and Contractor

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

17 Commencement and performance of the Works

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

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

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

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

18 Assignment and subcontracting

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

19 Payment

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

and for which payment has not previously been made; and

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

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

20 Interest on overdue payments

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

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

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

21 Variations

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

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

VARIATIONS REQUIRED BY LAW

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

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

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

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

22 Time for Practical Completion

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

23 Extension of time

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

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

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

24 Liquidated damages

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

WARNING TO OWNER

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

25 Dispute resolution

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

under this Contract notwithstanding the existence of the dispute.

26 Termination after notice of default

26.1 If:

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

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

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

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

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

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

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

licence required under the QBCC Act; and

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

27 Termination for bankruptcy or liquidation

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

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

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

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

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

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

WARNING TO OWNER AND CONTRACTOR

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

28 Practical Completion

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

29 Defects after completion

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

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

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

30 Notices

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

Notes

This image shows a full page of white paper with horizontal blue lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Contact list

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

YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

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



QBCC NEW HOME CONSTRUCTION CONTRACT

THIS DOCUMENT CONTAINS:

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

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

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

SCHEDULE FOR QBCC NEW HOME CONSTRUCTION CONTRACT

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

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

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

The Owner

Owner's name/s: _____

Address: _____

Post Code: _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

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

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

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

Owner's Authorised Representative (if any): _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

The Contractor

Contractor's name (must be as shown on licence): Resilient Homes Pty Ltd

Licence Number: 141526 ABN No: _____

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

Address: 28 Dell St, Rochedale

Postcode: 4123

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: 0406160720 Email: steve.zhu,au@hotmail.com

Contractor's Authorised Representative (if any): _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

Item	Subject	Notes	Particulars
1	CONTRACT PRICE Condition 4. WARNING: The Contract Price may increase or decrease due to Conditions 19, 20, 21 & 24.	For information about Prime Cost (PC) Items and Provisional Sums (PS) see Condition 4 of the General Conditions. If the Contract includes such allowances, a PC/PS Schedule must be completed by the Contractor, signed by both parties and attached.	(a) Fixed Price Component: \$ <u>509,000</u> (incl. GST) (includes deposit in Item 2) (b) Prime Cost Items (if any): \$ <u>136,000</u> (incl. GST) (c) Provisional Sums (if any): \$ <u>20,000</u> (incl. GST) CONTRACT PRICE = \$ <u>665,000</u> (incl. GST) (a) + (b) + (c)

Item	Subject	Notes	Particulars
2	DEPOSIT Condition 19	The deposit must not exceed 5% of the Contract Price if Contract Price is \$20,000 or more.	Amount of deposit: \$ <u>75,000</u> (incl. GST)
3	BRIEF DESCRIPTION OF THE WORKS	Insert a brief description of the contracted work and attach and refer to plans and specifications e.g. <i>construction of new home as per attached plans dated.../.../... & specifications dated.../.../...</i>	
4	SITE Condition 13		Site Address: _____ Real Property Description: Lot No: _____ Plan Type (e.g. RP/SP/BUP): _____ Plan No: _____ Local Authority: _____
5	STARTING DATE Conditions 1, 10 & 17	NOTE: The Contractor must ensure that the work under this Contract starts by the Starting Date. The Starting Date is the latest of: - the following agreed date _____ / _____ / _____ ; or 10 business days after the issue of approved plans by the Assessing Certifier; or 10 business days after the Owner has satisfied its financial obligations under Condition 5.1.	
6	COMPLETION PERIOD (including Construction Days and allowances for likely delays) Conditions 22, 23 & 28	NOTE TO CONTRACTOR: You must state here the allowances (in days) you have made for delay factors which are reasonably likely to affect the time required to carry out the work. NOTE TO OWNER: The Contractor is not entitled to claim an extension of the Date for Practical Completion (Schedule Item 7) for a delay stated here (e.g. inclement weather) unless the number of days the Contractor is actually delayed is greater than the allowance stated here in Schedule Item 6B.	A. Construction Days (excluding delays allowed in 'B') Business days needed to construct the Works = <u>161</u> PLUS B. Allowances for likely delays: (i) Inclement weather allowance (business days) = _____ (ii) Other likely delays, if any (business days) = _____ Details of delay _____ (iii) Non-working days (incl. weekends, public holidays, etc.) = <u>46</u> Total delay days allowed: (i) + (ii) + (iii) = <u>46</u> B COMPLETION PERIOD: Construction Days (Item 6A) _____ PLUS Total delay days allowed above (Item 6B) = <u>207</u> <i>(This total represents the number of days between the Starting Date and the Date for Practical Completion)</i>

Item	Subject	Notes	Particulars
7	DATE FOR PRACTICAL COMPLETION Conditions 22, 23 & 28	NOTE TO CONTRACTOR: Complete only one of the options in the 'Particulars' column (i.e. date or number of days) and delete the other.	Date: ____ / ____ / ____ OR Completion Period of <u>207</u> calendar days (see Schedule Item 6) from the Starting Date or the date on which the work under this Contract is commenced, whichever is the earlier .
PROGRESS PAYMENTS (Choose Option A or Option B below)			
8A	<u>OPTION A:</u> <i>NOTE: This Option may be used where you believe the contracted work involves typical house construction and the progress payment Stages set out in the 'Particulars' column are appropriate.</i> Conditions 19 & 28	NOTE TO CONTRACTOR: If the contracted house construction work does <u>not</u> involve the Stages set out in the 'Particulars' column in Option A, or the payment percentages are not appropriate (e.g. if the payments in Option A would amount to payment in advance of work progress on Site), you should use Option B below.	WARNING FOR CONTRACTOR: The QBCC Act requires that all progress payments must be directly related to the progress of the work at the Site and proportionate to the value of the work that relates to the claim (e.g. the total value of the progress claims plus the 5% deposit cannot exceed 50% of the Contract Price until more than 50% of the work on Site has been performed). Breaches of this requirement attract heavy penalties. In presenting each progress claim under Option A or Option B you are warranting that the work on Site has reached the relevant Stage set out below, and that the total amount claimed to date (including the deposit) is proportionate to the progress of the contracted work at the Site. PROGRESS PAYMENT STAGES (all prices incl. GST): Base Stage (excl. 5% deposit) - 15% \$ <u>99,750</u> Frame Stage - 20% \$ <u>133,000</u> Enclosed Stage - 25% \$ <u>166,250</u> Fixing Stage - 20% \$ <u>133,000</u> Practical Completion Stage - 15% \$ <u>99,750</u> NOTE: The total of Stage payments in Option A or B plus the deposit must equal Contract Price in Schedule Item 1.
8B	<u>OPTION B:</u> Conditions 19 & 28	NOTE TO CONTRACTOR: Option B should be used where the contracted house construction work does <u>not</u> involve the Stages set out in Option A above, or the payment percentages are not appropriate for the work.	ALTERNATIVE PROGRESS PAYMENT STAGES (incl. GST) *Stage 1: _____ - ____ % \$ _____ Stage 2: _____ - ____ % \$ _____ Stage 3: _____ - ____ % \$ _____ Stage 4: _____ - ____ % \$ _____ Stage 5: _____ - ____ % \$ _____ Stage 6: _____ - ____ % \$ _____ Stage 7: _____ - ____ % \$ _____ Practical Completion Stage - ____ % \$ _____ <i>*If extra space is required, attach a more detailed description of the Payment Stages to this Contract Schedule.</i>
WARNING TO OWNER		Your cover under the Queensland Home Warranty Scheme may be reduced if you make payments greater than, or prior to, what the Contract requires.	

Item	Subject	Notes	Particulars
9	AMOUNT TO BE DEPOSITED IN SECURITY ACCOUNT (if relevant) Condition 6	NOTE: This Item is optional – it may be relevant where a loan is not required to finance the project.	\$ _____
10	LIQUIDATED DAMAGES Condition 24	NOTE TO OWNER AND CONTRACTOR: You must discuss whether, or what, liquidated damages (LDs) apply to this project and insert either an amount per day or 'NIL' if LDs do not apply. If this space is left blank, a default amount of \$50/day shall apply.	\$ _____ per day for each calendar day of delay in achieving Practical Completion. NOTE TO OWNER REGARDING LIQUIDATED DAMAGES (if applicable): It is very important that you carefully consider and complete this section. The liquidated damages amount should be a genuine pre-estimate of the costs/losses the Owner will incur (if any) in the event the work under this Contract is not completed by the Date for Practical Completion (including any extra rental and storage costs, lost rent for rental properties, finance costs, etc. directly related to the delay in reaching Practical Completion).
11	INTEREST RATE ON OVERDUE PAYMENTS Condition 20	The rate must not exceed the sum of 10% per year plus the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills.	_____ % per annum
12	FINANCE Conditions 1 & 5	WARNING TO OWNER: The Finance Date is the date by which the Owner must provide the Contractor with written evidence, satisfactory to the Contractor, of their capacity to pay the Contract Price (even if no loan is required). Consult your Lender before inserting a date. Delays in providing this evidence may delay the start of your project or lead to termination of the Contract.	The Contract IS/IS NOT subject to Loan Approval. (Cross out whichever does not apply) Lender: <u>Commonwealth Bank</u> Amount of Loan: \$ <u>390,000</u> Finance Date: _____ / _____ / _____ (day) (month) (year) NOTE: If no date stated, Finance Date is 10 business days from date of this Contract.
13	PARTY RESPONSIBLE FOR OBTAINING BUILDING APPROVAL Conditions 9 & 10		_____ (State whether the responsible party is Owner or Contractor - if nothing stated, the Contractor shall be responsible)
14	PARTY RESPONSIBLE FOR COST OF EXTRA EXCAVATIONS AND FOUNDATIONS (if relevant) Condition 21	This item relates to responsibility for any extra excavations and foundations beyond what could reasonably be established from the Foundations Data.	_____ (State whether the responsible party is Owner or Contractor)

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

IMPORTANT NOTICE TO OWNER: 'COOLING-OFF' PERIOD

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

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

This Contract includes:

- ✓ Schedule for New Home Construction Contract, PC and PS Schedules (if relevant) and Forms 1 - 7 (if used), all dated July 2018;
- ✓ General Conditions of New Home Construction Contract dated July 2018, and
- ✓ Plans, specifications and any other contract documents described in Item 15 of this Contract Schedule.

PRIME COST ITEMS SCHEDULE

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

Description of Item to be supplied under the PC Item allowance.	Contractor's best estimate of price, and breakdown of estimate.		PLUS Contractor's margin (state \$ amount or % to be added)	Total for Prime Cost Item (incl. margin & GST)
	No. of items or quantity of materials	Cost per unit and Item total (excl. GST)		
Example: Floor tiles for kitchen	50m ²	@\$30/m ² = \$1,500 excl. GST	+ 10% margin = \$1,500 + \$150 = \$1,650 excl. GST	\$1,650 + 10% GST = \$1,815
Glazed clay tiles				\$10,000
Contrast metal fascia				\$40,000
Built-ins				\$12,000
Toilets and Showers				\$15,000
Ducted air conditioning				\$11,000
Kitchen				\$25,000
Bench top				\$15,000
Solar hot water system				\$8,000
Appliances				\$5,000
garden shed slab				\$10,000
TOTAL:				\$ 136,000
(Transfer total to Item 1(b) of Contract Schedule)				(incl. GST)

Signed by the Owner/Owner's Representative

Signed by the Contractor/Contractor's Representative

DATED: ____/____/____
(day) (month) (year)

DATED: ____/____/____
(day) (month) (year)

NOTE TO OWNER/S AND CONTRACTOR

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

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

PROVISIONAL SUMS SCHEDULE

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

Description of contracted service covered by the Provisional Sum	Contractor's best estimate of cost of providing the contracted service <u>excl. GST</u> . Include the estimated quantity and unit cost of materials (if any) and labour, and any other related costs (e.g. equipment hire).	<u>PLUS</u> Contractor's margin (state \$ amount or % to be added)	Total for Provisional Sum (<u>incl. Contractor's margin & GST</u>)
Example: Rock removal from Site	Excavator hire 5 hrs @ \$160/hr = \$800 Float hire = \$400 Tip fees = \$200 TOTAL: = \$1,400	+ 10% margin = \$1,400 + \$140 = \$1,540 excl. GST	\$1540 + 10% GST = \$1,694
Tree chipping			\$8,000
Earth work			\$12,000
TOTAL: (Transfer total to Item 1(c) of Contract Schedule)			\$ 20,000 (<u>incl. GST</u>)

Signed by the Owner/Owner's Representative

DATED: ____/____/____
(day) (month) (year)



Signed by the Contractor/Contractor's Representative

DATED: ____/____/____
(day) (month) (year)

NOTE TO OWNER/S AND CONTRACTOR

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

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