



CPCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT

THEORY EXAM INSTRUCTIONS

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

Participant name _____

Participant signature _____

Assessor name _____

Assessor signature _____

Date _____

Number of questions	Number of questions answered correctly	Satisfactory?	
32		Yes	No



Q1. **Why is it necessary and important to have a fully documented and completed compliant building contract between a contractor (Builder) and client?**

Answer

A workable and watertight building contract is as important to the success of a building project as the plans, designs, and materials used during construction. A contract should apply to every construction project - from a small bathroom renovation, to a construction of a new home. All parties need to work to a written roadmap with clear guidelines and rules on issues such as:

- When the work is to be completed
- The scope of works
- The contract price
- How and when payment is to occur
- What happens if there are delays
- How to manage variations and
- Any other matters that could lead to misunderstandings and disputes.

The Master Builders Association (MBA) and Housing Industry Association (HIA) as well as the likes of Licensing Authorities in States and Territories have contracts and/or contracts' advice which has been specifically prepared for the residential construction industry to reflect the risks and responsibilities of home building. Over the years these organisations amend and update their contracts to ensure they comply with the very specific and detailed laws and regulations that apply to the home building industry.

Q2. Briefly list some of the things you need to know before you can select and prepare a construction contract (e.g. Various Acts, Legislation, Regulations and Authorities)?

Answer

Legislation, Basic contract principles, Legal capacity, Queensland Building and Construction Commission Act (QBCC), Offences under the Act, Penalties as per Legislation, Preliminary Agreement, Queensland Building & Construction Commission Act 1991 (QBCC), Queensland Civil Administrative Tribunal Act (QCAT) – previously the CCT, Building Act 1975 & Regulations, Building and Construction Industry Payments Act 2004 (BCIPA) and Workplace Health & Safety Act 2011 (WHS Act)



Q3. What does the acronym QBCC stand for and what does it regulate in the Queensland building industry?

Answer

QBCC stands for Queensland Building and Construction Commission. The QBCC regulates: licensing of contractors, educating contractors about their legal rights and responsibilities, educating consumers about their rights and obligations, handling disputes fairly and equitably, protecting homeowners against loss through the Queensland Home Warranty Scheme, implementing and enforcing legislative reforms and, where necessary, prosecuting people not complying with the law



Q4. Who is the Queensland Civil and Administrative Tribunal and what is its role?

Answer

Queensland Civil and Administrative Tribunal (QCAT) (pronounced Q – CAT) replaces the old Consumer and Commercial Tribunal (CCT) and is where building disputes can go to be sorted out – it is the preference and recommendation of QCAT that it prefers the parties (in dispute) to represent themselves so as to keep legal costs down.



Q5. What is the dollar value limit above which a written contract must be in place between parties?

Answer

If the cost of a building work exceeds \$3300 it must be covered by a written contract because often home owners and builders in failing to complete and document a contract can then lead to disputes. The contract must be fully documented and complete as it is the single greatest protection to ensure that: a) home owners receive the finished product they envisioned and b) builders get paid and paid on time.



Q6. What is a contract deemed as when an enforceable agreement between two parties satisfies certain legal, legislative and technical requirements?

Answer

It is deemed as:

- An offer given by one party to another;
- An intention to create a legal relationship;
- Consideration given by the second party for the offer;
- Certainty as to the terms contained in the agreement;
- The acceptance of the offer by a party;
- Compliance with the prevailing laws as they apply/are implied and is not illegal in nature; and
- Legal capacity by all parties to enter into a contract.



Q7. There are a number of industry contracts on the market.
Name where some of these might be obtained.

Answer

Master Builders, QBCC, HIA and ABIC Simple Works (for architects)



Q8. What is a Residential Building Contract?

Answer

It is a contract that is between a builder contractor and a residential owner for an agreed lump sum amount. The Residential Building Contract embodies the terms of the agreement between parties and should be an easy-to-use industry standard document which incorporates various terms and conditions and complies with the QBCC Act 1991 Schedule 1B.



Q9. In order to understand the essential terms and elements of a contract it is necessary to look at the *Residential Building Contract – Sections and Additional documents* which are needed for a contract to be effected.

What are these additional documents which ensure that a contract complies with the law? Who would be consulted?

Answer

Termite Management Documentation, Engineering Specification Confirmation, Foundation Maintenance Declarations and the “Cooling-off” period and will include drawings and specifications and other documents that refer to soil tests, wiring diagrams, lighting, environmental containment, colour selections, electrical and white goods as examples.



Contract rise and fall amounts must also be accurately calculated and the schedule of progress payments organised.

Processes for applying for extensions of time must be included.

Parties involved in the process would need to be consulted.

**Q10. When might you use a Residential “Cost Plus” Contract?
Give an example.**

Answer

A Residential Cost Plus contract might only be used where the extent of the work cannot be determined.



An example could be termite damaged repairs to an existing dwelling where the level of damage is an unknown factor until such time as the full extent of the damage is uncovered and a full assessment of restoration can be made.

This event would require a request for an extension of time and negotiations between parties to that effect.

Q11. What are the four essential elements for an agreement to contain to be regarded as a contract and in which if any one of the four is missing, then the agreement cannot be legally binding?

Answer

The Four essential elements are an Offer, Acceptance, Intention of Legal Consequences and Consideration



Q12. When might an ‘offer’ be deemed to have lapsed?

Answer

An offer will lapse: when the time for acceptance expires; if the offer is withdrawn before it is accepted; or after a reasonable time in the circumstances the offer would be reasonably considered to have lapsed. A rule of thumb is generally that the greater the value of the contract, the longer the life of the offer.



Q13. 'Intention of Legal Consequences' requires that the parties intend to enter into a legally binding agreement. What does this mean?

Answer

It means that the parties entering into the contract must intend to create legal relations and must understand that the agreement can be enforced by law in which case the intention to create legal relations is presumed. If the parties decide not to be legally bound, then this must be clearly stated in the contract for it not to be legally enforced.



Q14. In order for a contract to be binding it must be supported by 'consideration'. Explain this term.

Answer

Consideration means that one party promises to do something in return for a promise from another party. Consideration is what each party gives to the other as the agreed price for the other's promises and usually the consideration is the payment of money from one party in exchange for services of some kind from the other party.



Q15. Explain each of the following terms.

**Answer**

Term	Explanation
Addition	Any construction or change to a building or facility that increases its external dimensions and cubic contents.
Arbitration	A procedure for resolving disputes that involves less formality than a court hearing. An arbitrator's decision is final and cannot be appealed.
BCA	The Building Code of Australia.
Building Act 1993	A legal enactment by a parliament that specifies the procedures to be used in the building control process, outlines the functions and composition of the controlling body or bodies, and grants power to create subordinate regulations, ordinances or by-law.
Building inspections	Assists builders, contractors and owners by ensuring that construction projects meet building regulations and codes of practice. Inspections assess design documentation and make on-site inspections during building work.
Final inspection certificate	Demonstrates that a building, other than a dwelling has been inspected and passed according to the Building Regulations 2006. It is obtained once the final inspection has been inspected and passed.
Compliance	The achievement of performance criteria described in a regulation or other statutory requirement. This is usually demonstrated by a compliance or approval certificate.
Contract	An agreement entered into between two or more parties that involve an exchange or specified goods and/or services for specified financial reimbursement or other considerations.
Domestic dwelling	One or more buildings which in association constitute a single dwelling being a detached house or one or more attached dwellings.

**Q16. Explain each of the following terms.**

Answer

Term	Explanation
Major domestic building contracts	Required if you engage a building practitioner or tradesperson to carry out building work valued at over, \$5,000.
Owner-builder	A person who carries out domestic building work on his her own land, who is not in the business of building.
Private building surveyor	Independent professionals with the same power to issue building permits and occupancy permits as municipal building surveyors.
Qualified person	A person accepted by the appropriate authority as qualified to design, construct (or install) or supervise the erection of, buildings or services; usually recognised by a certificate of registration.
Site coverage	That part of an allotment which is covered by buildings, expressed as a percentage of the area of the allotment.
Structure	A construction, not necessarily roofed, which performs a function or functions requiring rigidity, such as bridge or a mast.
Warranty	A minor clause in a contract the remedy for breach of which is damages for any loss. Also, a promise to repair or replace defective goods.



Q17. A breach of contract is a legal cause of action in which a binding agreement or bargained-for exchange is not honoured.

Explain then a minor breach of contract, a material breach of contract and a fundamental breach of contract.

Answer

Term	Explanation
Minor breach of contract	A minor breach the non-breaching party cannot sue for specific performance but actual damages.
Material breach of contract	A material breach is any failure to perform that permits the other party to the contract to either compel performance, or collect damages because of the breach.
Fundamental breach of contract	A fundamental breach is a breach that permits the aggravated party to terminate performance of the contract and sue for damages.



Q18. Explain in your own words ‘Liquidity (Liquidated) Damages’?

Answer

‘Liquidity damages’ as a fixed sum accrues to a party as a means of compensation where there is a breach of contract. It could occur if a contractor fails to complete the contract by the time nominated or fails to achieve the performance obligations and is in breach of the contract enabling the owner to deduct from monies owing to these failures as “liquidated damages”. When dealing with contracts that contain liquidated damages clauses these must consider genuine amounts reflective of the loss that would be suffered as a result of the breach and/or estimate which is calculated at the time of contracting – if no damage occurs from the breach, liquidated damages are still payable.



Q19. When preparing a quote what are some of the things for a contractor to consider ensuring?

Answer

The quote should accurately describe the scope of work being priced and include all necessary details with no hidden costs and have an end date in place at which point the quote expires and is no longer valid.



Q20. The Queensland Building and Construction Commission (QBCC) provides five contracts for residential building.

Name them and briefly explain the use of each contract.

Answer

QBCC New Home Construction contract is for the construction of an entire home.



QBCC Renovation, Extension and Repair Contract are for renovations, extensions, improvements and routine repairs to a home, duplex or home unit.

QBCC Natural Disaster Repairs Contract is specially intended for repairs arising from damage caused by natural disasters.

QBCC Contract for Small Business Projects up to \$3,300 is recommended for small renovation, maintenance and repair jobs with a contract price up to but not exceeding \$3,300.

QBCC Demolition contract for Residential Premises is recommended for the demolition of homes severely damaged by a natural disaster.



Q21. In your own words briefly explain 'an offer' and 'an acceptance' as they apply to an agreement or contract of engagement.

Answer

An offer is basically a statement by one individual that he/she will do something for another under certain conditions. An offer in itself is unenforceable and can be revoked by the one making the offer at any time up until acceptance. Acceptance of the offer completes the negotiations and creates the contract or agreement between two or more parties



Q22. What is your understanding of 'Consent' as it applies to contracted agreements between parties?

Answer

Parties must mutually agree to the proposed objectives and terms of a contract in order for it to be enforceable. There will be no binding contract without the real consent of the parties. Apparent consent may be negated because of mistake, fraud, innocent misrepresentation, duress or undue influence, all of which are defences to the enforcement of a contract.



Q23. When preparing contracts what must you always do?

Answer

Read and understand the Contract before it is signed; Check all contract documents to ensure they contain all agreed provisions; Study all conditions in the contract and seek expert advice if required; Fill each item out fully and do not leave any designated boxes or spaces blank; All parties (e.g. contractor and client), must initial all pages and initial any crossing out, changes or alterations to the contract and each party should be given a copy of the completed document.



Q24. An offer may be withdrawn by the contractor at any time prior to acceptance unless the offer is stated to be open for a set period of time.

At what point is withdrawal of an offer communicated? Tick your response.

Answer

Choice	Possible Answers
	Upon posting the withdrawal in the mail
✓	Upon receipt of withdrawal (i.e. either directly or receipt of postal withdrawal)
	Upon leaving a note in the offeror's letter box



Q25. A building contractor must not enter into a regulated contract containing a price change clause unless the contract contains a warning complying with this section. What must the warning state?

Answer

The warning must:

(a) state the contract price is subject to change; and

(b) state the provisions of the contract that allow for the contract price to be changed; and

(c) appear as near as practicable to the first reference in the contract to the contract price.



Q26. What is a 'price change' clause?

Answer

A price change clause means a provision of a domestic building contract allowing for a change to be made to the contract price, but does not include a cost escalation clause.





- Q27. Schedule 1B of the *Queensland Building and Construction Commission Act 1991 (Qld)* sets out maximum deposit percentages that must not be exceeded.

Complete the missing words from the sentences below.

If the contract for domestic building work is priced at \$ 20,000 or more, the maximum deposit is 5 %.

If the contract price is more than \$ 3,300 and less than \$20,000, the deposit must not exceed 10 %

Answer



- Q28. The QBCC New Home Construction Contract sets out an instalment schedule for progress payments in the construction of a residential dwelling. Complete the Schedule:

Answer

Stage	% of total contract
Deposit	5%
Base stage	15%
Frame stage	20%
Enclosed stage	25%
Fixing stage	20%
Practical completion	15%



Q29. How must a Builder (Contractor) deal with a ‘time extension’ and/or ‘variation’ to the contract when requested by the customer (client)?

Answer

It requires the variation to always be in writing and signed off by both parties.



The Contractor should issue an ‘extension of time’ form – asking the client to grant them an extension of the contract period to allow for delays caused by any variations.

The specific reasons for an extension of time are set out in the “general conditions” of the building contract and include reasons such as: inclement weather and delays caused by the owner, such as changes to the scope of works. The Builder should be familiar with the “General Conditions” of the contract and know what time extensions he or she are entitled to over the contract period.

Q30. You have been engaged by a Client to construct their residential dwelling and the proposed contract amount is \$550,000. Your client has finance approval from their lending bank and is pressuring you to accept a \$70,000 deposit to get priority on their construction.

Should you accept the deposit? Explain your response.

Answer

No! The deposit cannot be accepted because the Queensland Building and Construction Commission Act 1991 (QBCC Act) sets out maximum deposit percentages which must not be exceeded and in this case a maximum deposit is 5% of the contract price of \$550,000 amounting to a deposit of \$27,500.





Q31. During your build the client has emailed you at 7:00pm to say they have been to the premises and noticed the installed bath in the central (common) bathroom is the wrong style.

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

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

Answer

Assessor discretion.



Q32. Prepare a Domestic Building Contract using the following information. Be sure to define the factors may lead to the termination of a contract during the preparation of the contract.

You are to prepare a Domestic Building Contract to address a low rise building project on the Lend Lease Housing Estate Project at Yarrabilba, Queensland.

Mr. and Mrs. Jack and Marie Cousins are consumers who presently reside at 49-54 Glen Logan Lakes Drive, Greenbank QLD 4124. The Client contact details are:

- Telephone 07 4014 5760
- Fax 07 4015 5766
- Mobile 0408 878 411 (Jack Cousins) / 0409 713 141 (Marie Cousins).

Mr. and Mrs. Cousins intends to engage your company Resilient Homes Pty Ltd (QBCC License 141526) in order to build a new residential dwelling as their future retirement property at 114 Burley Griffin Drive, Yarrabilba, QLD 4207. Mid-term of this build the clients intend putting their current home on the real estate market for sale.

Additional details:

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



Answer

Assessor discretion.

