



CPCBC4003A SELECT AND PREPARE A CONSTRUCTION CONTRACT

THEORY EXAM INSTRUCTIONS

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

Participant name Cia Dermanakis

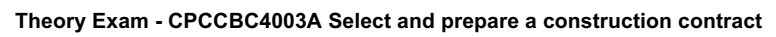
Participant signature

Assessor name _____

Assessor signature

Date 2/03/2018

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



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

Answer

Construction contracts are inherently complicated, therefore a fully documented, complete and compliant contract is necessary to ensure both that home owners receive the finished product they envisioned, and builders get paid the correct amount, on time.

More specifically, a contract helps to ensure that the project will run smoothly, and diminishes the risk of problems by:

- establishing a legal relationship between the parties
- providing a guide to regulating the commercial relationship using reasonable business procedures
- pre-emptively requiring both parties to consider and agree on issues that otherwise might not have been raised
- providing referencable, full and specific scope of work under the contract
- providing a clear road map at the onset of the project of how the parties will proceed to carry out the work.
- detailing how each party will behave with respect to their duties, entitlements and obligations
- detailing both parties' respective risks and obligations
- providing a method of tracking agreed changes over time, especially if a dispute arises
- clearly determines how risks will be shared or divided on the project eg. The cost of time delays, costs, design defects, acts of god or weather, regulatory delays/issues, Concealed or Unexpected Conditions.

If a dispute does arise or end up in litigation, it is likely to be resolved more efficiently and at less cost as more terms will have been captured in a clear written statement so there will be fewer issues to genuinely fight over.



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

Before selecting and preparing a construction contract you need to be familiar with:

- legislation
- penalties under the legislation
- the QBCC Act
- what constitutes an offence under the Act
- basic contract principles
- preliminary agreement
- contract definition
- legal capacity



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.

It regulates the Queensland building industry through:

- licensing contractors,
- educating contractors on their legal rights/responsibilities,
- educating consumers about their rights/obligations,
- handling disputes fairly and equitably,
- protecting homeowners against loss via the Queensland Home Warranty Scheme,
- implementing and enforcing legislative reforms,
- prosecuting people not complying with the law.



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

Answer

The Queensland Civil and Administrative Tribunal (QCAT) is an independent tribunal that resolves domestic and commercial building disputes, and makes and reviews decisions in relation to those disputes.



Disputes may involve:

- the performance of the work
- a contract for the work
- a claim of negligence, nuisance or trespass other than a claim for personal injuries.

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

Answer

\$3300



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

Answer

A contract deemed as an enforceable agreement when:

- An offer is given by one party to another
- The acceptance of the offer by the offeree
- There is an intention to create a legal relationship
- Consideration is given by the offeree for the offer (usually money).



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

Answer

Industry contracts may be obtained from :

- Queensland Building and Construction Commission (domestic work only)
- Master Builders (commercial and residential)
- Housing Industry Association (residential)
- ABIC Simple Works (for architects)



Q8. What is a Residential Building Contract?

Answer

A Residential Building Contract is a legally binding agreement between a builder and owner that embodies the terms and conditions of the agreement between them for an agreed lump sum amount.

It is normally an industry standard document that complies with legislation, and is formatted so it is easy to use, allowing for easy referencing to other RBC-1 schedules and clauses.



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

The Residential Building Contract sections include:

- The Schedule
- The Appendix
- The General Conditions of Contract

Additional documents attached to the contract include:

- Drawings
- The Specification
- Termite Management Documentation
- Engineering Specification Confirmation
- Foundation Maintenance Declarations
- Cooling off period
- other documents that relate to the works including soil test, colour selections, etc.

The following specialists would be consulted for Additional Documents:

- Buyer's advocates
- Certified legal practitioners
- Conveyancers



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

Answer

A Residential Cost Plus contract should only be used where the extent of the work cannot be determined. Using this method in other circumstances can frequently lead to cost overruns and disputes. An example of appropriate application would be termite repairs.



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 for an agreement to be regarded as a contract are: ☐

1. Offer
2. Acceptance
3. Intention of legal consequences
4. Consideration

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

Answer An offer may be deemed to have lapsed when: ☐

- the time for acceptance expires (according to the 'sunset clause'),
- the offer is withdrawn before being accepted,
- after a 'reasonable time' in the circumstances (variable depending on size and nature of the build).

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

Answer 'Intention of Legal Consequences' means all parties entering into the contract must : ☐

- intend to create legal relations, and
- understand the agreement can be enforced by law.

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

Answer

Consideration is the concept of value offered and accepted by people or organisations entering into contracts.

Anything of value can be treated as consideration, be it services, real assets or money. It can also include a promise **not** to do something. E.g. If Party A enters an agreement with Party B not to paint Party B's house in white each year for a fee of \$500, then both parties have provided value.

If consideration is only one sided, then it is considered a gift not a contract. e.g. If Party A enters an agreement to sell their car to Party B for \$0, then only Party A has shown consideration in providing value. Thus Party A has made a gift to Party B.



Q15. Explain each of the following terms.

Answer

Term	Explanation
Addition	Any change to a building that increases its external and cubic dimensions.
Arbitration	Arbitration is a private, contractual form of dispute resolution, typically using a mutually agreed third party arbitrator, the outcome of which is still legally binding. An arbitrators decision is final and cannot be appealed.
BCA	The Building Code of Australia.
Building Act 1993	The Building Act 1993 is the governs building activity in Victoria. It sets out the legislative framework for the regulation of building construction, building standards and the maintenance of specific building safety features.



Building inspections	Ensures construction projects meet building regulations and codes of practice. Inspections assess design documentation and make on-site inspections during building work.
Final inspection certificate	A certificate that is obtained once the final inspection of a building (other than a dwelling) has been completed and passed according to the <i>Building Regulations 2006</i> .
Compliance	The meeting of performance criteria as described in a regulation or other statutory requirement.
Contract	An agreement entered into between two or more parties that involves an exchange of 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	A contract required to engage a contractor for building and construction work valued above \$5,000.
Owner-builder	A person not in the business of building who carries out domestic building work on their own land.
Private building surveyor	Independent professionals with the power to issue building permits and occupancy permits.



Qualified person	A person accepted by the relevant authority as qualified to design, construct, install or supervise the erection of buildings or services.
Site coverage	The percentage of an allotment covered by buildings.
Structure	A construction, not necessarily roofed, which performs a function(s) requiring rigidity.
Warranty	A minor contract clause which if breached requires remedy in the form of damages for any loss. Is 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	The non-breaching party can only sue for actual damages (not specific performance).
Material breach of contract	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 breach that permits the other party to terminate the contract, and entitles them to sue for damages.



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

Answer

Liquidated damages are an amount of money that both parties agree as the amount one of them can recover if the other party breaches the contract. These damages can be deducted from future monies owing, thus reducing the overall amount paid.

Usually liquidated damages apply to a significant and specific type of contract breach, not just a breach of any clause in the contract. Typically they apply to completion dates or performance based obligations.



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

Answer

When preparing a quote the contractor should ensure it:

- Accurately describes the scope of work being quoted
- Is both complete and detailed with specifics of labour and materials to be supplied
- Includes a sunset date stating when the offer/quote expires.



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

1. New Home Construction Contract

- For the construction of an entire new home (not extensions)

2. Renovation, Extension and Repair Contract

- For renovations, extensions, improvements and repairs to a domestic dwelling

3. Natural Disaster Repairs Contract

- To repair damage caused by natural disasters (other than where demolition is required)

4. Contract for Small Business Projects ≤ \$3,300

- For small renovation, maintenance or repair jobs with a contract price up to \$3,300

5. Demolition Contract for Residential Premises

- 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 a statement by one party they will do something for another party under certain conditions. Offers can be revoked any time up until acceptance. As such an offer is not binding or enforceable until and unless it meets the criteria for becoming a contract.

If the offeree indicates they are willing to be bound by the conditions outlined in the offer, this is termed **acceptance** completes the negotiations and creates the contract.

If the offeree agrees to the offer conditional on the incorporation of additional terms this does not constitute acceptance, but is instead is deemed a counter-offer and would need to in turn be accepted for a contract to be created.



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

Answer

Consent is the deliberate, voluntary (ie without duress) agreement to the terms and conditions of a contract while being of sufficient mental capacity to make the decision.

Consent is implied in contract agreements.

While a parties consent may be genuine in intent it can be negated due to factors such as mistake, fraud, innocent misrepresentation or duress.



Q23. When preparing contracts what must you always do?

Answer

When preparing contracts it is proper to:

- Ensure the entire contract has been completed with no gaps
- Fully read and understand all clauses in the contract, and their implications (eg on cost, time, legal requirements)
- Ensure the contract contains all agreed terms, conditions and specifications
- Engage expert advice any an clauses are unclear
- Any written amendments to the contract are initialled, and original text crossed out on all copies.

Only when all of the above are satisfied should the contract be executed.

☐

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

A contract with a price change clause must include a warning that:

- States the contract price is subject to change
- Identifies which specific provisions of the contract allow for the contract price to be changed,
- Is located as near as possible to the first reference in the contract to the contract price.

☐

Q26. What is a 'price change' clause?

Answer

A 'price change' clause allows for an increase (or decrease) to be made to the total contract price for domestic building contracts. Price change clauses do not cover the adjustment in fees, wages or fluctuations in the costs of raw materials or labor.

☐

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 Domestic Building Contracts Act 2000 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

A time extension variation to the contract a requested by the client – like any request - should in the first instance be documented in writing.

Subsequently, a written variation should be raised along with an 'Extension of Time' form. This form identifies the reason for the extension, confirms there is no penalty (an 'entitled delay' as set out in general conditions of the specific contract), and captures the client's consent to grant the extension with no financial impact to the contractor.



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

The QBCC Act sets out a rule for maximum deposit percentages on domestic builds, and both QCAT Tribunal and the QBCC can prosecute and apply heavy fines if this is not upheld.

For contract prices greater than \$20,000 the maximum deposit is 5%.

Given this build is \$550,000 the maximum legal deposit would be \$27,500.

Therefore I would not accept the client offer of a \$70,000 deposit.



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

Hi Phil,

Thanks for your email last night. We understand your concern, and will work together with you to make sure this is resolved.

Looking at the signed documentation from your **colour selection** on 22nd November 2017 (see attached 'Colour Selection – Phil Smith – 20171122.pdf'), section 15.1.a states the bath chosen was a '**Caroma Cube 1600 Back to Wall Freestanding Bath**, Product Code CU6WFW'. (As a reference, a link to the manufacturers web site with a picture can be found here : <https://www.caroma.com.au/bathroom/baths/caesia/cube-1600-back-to-wall-freestanding-bath-2>)

In terms of what was specified in the contract, the Caroma Cube was correctly listed in section 20.1.d of the Specification. I'm happy to resend you a soft copy of the Specification if this assists.

We have checked our documentation to confirm that what was specified was both what was ordered and what arrived. Both the materials order and our receipt of goods both show that the Caroma Cube was ordered and delivered to the site.

From a process perspective, the bath selected has been correctly ordered and installed.

Having said that, our primary concern is that you are delighted with your new house. We can absolutely make a variation, uninstall the Cube and swap out the bath for a new model of your choosing. Note there will likely be a cost and perhaps time impact associated with doing so.

I'm more than happy to discuss – please don't hesitate to reach out if you have any questions.

Please let me know how you would like to proceed.

Regards,
Cia Dermanakis



Q32. Prepare a Domestic Building Contract using the following information. Be sure to define the factors that 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:

1. Telephone 07 4014 5760
2. Fax 07 4015 5766
3. 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.

0. The construction period excluding inclement weather and possible delays is 23 weeks
1. 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

Answer

Please attached documents :

1. "CPCCBC4003A Select and prepare a construction contract - Q32 - Cia Dermanakis – 20180302.pdf"
2. 'NHC Prime Cost Schedule - Cia Dermanakis – 20180302.pdf'
3. 'NHC Provisional Sums - Cia Dermanakis – 20180302.pdf'

