Queensland Peace of Mind New Home Construction Contract

OWNERS:  
OWNER 1  
OWNER 2  

JOB:  
HIA FIXED PRICE PEACE OF MIND BUILDING CONTRACT - EXAMPLE

To verify your builder is a HIA member call 1902 973 555

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<table>
<thead>
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<tbody>
<tr>
<td>21.</td>
<td>Materials etc. supplied by owner</td>
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<tr>
<td>22.</td>
<td>Practical completion</td>
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<td>23.</td>
<td>Owner taking possession</td>
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<td>24.</td>
<td>Defects liability period</td>
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<td>25.</td>
<td>Termination by default</td>
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<td>27.</td>
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</table>
Schedule 1. Particulars of contract

Schedules 1 to 3 must be completed and form part of this contract.

Item

1. Date

This contract is dated the:

2. Owners

Owner 1
NAME  OWNER 1
ADDRESS  ADDRESS
SUBURB
ABN
IS THE OWNER A RESIDENT OWNER  No
WORK
FAX
EMAIL

Owner 2
NAME  OWNER 2
ADDRESS  ADDRESS
SUBURB
ABN
IS THE OWNER A RESIDENT OWNER  Yes
WORK  HOME
FAX  MOBILE
EMAIL

3. Builder(s)

NAME  AFFORDABLE HOUSING COMPANY PTY LTD
ADDRESS  PO BOX 9499
SUBURB  WYNNUM WEST
STATE  QLD
POSTCODE  4178
ABN  56 972 645 857
ACN  162 389 086
WORK  HOME
FAX  MOBILE  0417 729 202
EMAIL  geoff@builderbrisbane.net
BUILDER'S LICENCE NUMBER  1252687
HIA MEMBER NUMBER  596397  HIA MEMBERSHIP EXPIRY  MAY 2014
4. **The works**  (describe generally ie. low set brick veneer house, and state the plans and specifications that set out the detail of the works and form part of this contract)

New brick veneer and cladding house constructed to the plans and specifications attached to this building contract.

5. **Contract price**  (Clauses 1 and 35)

*The contract price includes GST*

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRICE EXCLUDING GST:</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>PLUS GST ON THE ABOVE AMOUNT:</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>THE CONTRACT PRICE IS:</td>
<td>$275,000.00</td>
</tr>
</tbody>
</table>

**WARNING**

The contract price is subject to change. The clauses that allow for changes to the contract price are clauses 11, 15 and 19.

The contract price does not include the costs that the owner will have to pay to a third party (being someone other than the builder) for:

- (a) conveying services to the site;
- (b) connecting or installing services for use at the site; or
- (c) issuing a development approval or similar authorisation,

that are related to the carrying out of the works.

(Examples for (a) and (b) are gas, electricity, telephone, water and sewerage)

However, the contract price may include amounts for the above services if the owner is to make payment for such services directly to the builder.

6. **Start and price review date**  (Clauses 2 and 15)

40 days after the date of this contract.

7. **The land**  (Clause 6)

<table>
<thead>
<tr>
<th>LOT 1</th>
<th>RP/SP NO XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>CERTIFICATE OF TITLE</td>
<td>STREET ADDRESS:</td>
</tr>
<tr>
<td>SUBURB</td>
<td>STATE POSTCODE</td>
</tr>
</tbody>
</table>

8. **Matters affecting the site**  (Clause 6)

The owner must complete this

The site is affected by the following easements, building covenants and planning restrictions. Please specify the substance of each and give registration details, where registered at the Land Titles Office.

AS ADVISED BY OWNER

9. **Lending details**  (Clauses 2, 5 and 7)

<table>
<thead>
<tr>
<th>Lender 1</th>
<th>Approval letter from lender must be given to the builder before building start</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
<td>ADDRESS</td>
</tr>
</tbody>
</table>
10. **Building period** (Clauses 3 and 16)

   The works must reach **practical completion** within 182 days after **commencement**, subject to Clause 16.

   (a) **Calculable Delays**
   The building period includes the following allowances for:
   
   - Inclement weather and the effects of inclement weather - 5 **days**.
   - Weekends, public holidays, rostered days off and other days not generally available for the carrying out of the works - 55 **days**.
   - Any other matter that is reasonable likely to delay the carrying out of the works - 10 **days**.

   (b) **Incalculable Delays**
   The works will be delayed due to the following specific causes of delay for which the builder cannot adequately estimate the period of likely delay:

<table>
<thead>
<tr>
<th>Specific Cause</th>
<th>General effect that the delay is likely to have on the carrying out of the works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply of special order items (if any)</td>
<td>Possible delays while waiting for the delivery of items</td>
</tr>
</tbody>
</table>

   **Incalculable delays** include things like obtaining a specific imported material (such as marble cladding) that the builder knows is subject to the vagaries of international shipping.

   The building period stated above is the total of the allowances for **calculable delays** and the allowance for carrying out the works. The building period is in calendar days and not working days.

11. **Late completion damages** (Clause 29)

   *(If nothing stated, then $15)*

   $50 per day.

12. **Other contract documents** (Clauses 13 and 35)

   1. PLANS- SITE PLAN, FLOOR PLAN(S), ELEVATION PLAN(S), Electrical PLANS.
   2. COLOUR LIST (SHOWING COLOURS CHOSEN OR ALLOCATED FOR MOST ITEMS)
   3. STANDARD SPECIFICATIONS (LISTING THE STANDARD INCLUSIONS AND ANY UPGRADES AND ADDITIONS)
   4. SKETCH OF THE LAND DESCRIBED IN SECTION 7 OF THIS CONTRACT

   These documents are documents that form part of this contract and are in addition to any special conditions, these general conditions, the specifications and the plans.

13. **Owner’s guarantors** (Clause 32)

   Guarantor 1
   NAME  NA
14. **Default interest rate** (Clause 30)

*(If nothing stated: 18% per annum)*

<table>
<thead>
<tr>
<th>RATE ON OVERDUE PAYMENTS:</th>
<th>% PER ANNUM</th>
</tr>
</thead>
</table>

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Part A - Prescribed progress payment schedule

This part applies unless Part B is completed.

Section 66 of the Domestic Building Contracts Act prescribed the following payment schedule:

<table>
<thead>
<tr>
<th>Stage</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit</td>
<td>%</td>
</tr>
<tr>
<td>Base</td>
<td>10.00%</td>
</tr>
<tr>
<td>Frame</td>
<td>15.00%</td>
</tr>
<tr>
<td>Enclosed</td>
<td>35.00%</td>
</tr>
<tr>
<td>Fixing</td>
<td>20.00%</td>
</tr>
<tr>
<td>Practical Completion</td>
<td>%</td>
</tr>
<tr>
<td>Total</td>
<td>80.00%</td>
</tr>
</tbody>
</table>

Note: The total must equal the contract price stated in item 5. The deposit, by law, cannot exceed 5% if the contract price is $20,000 or more, or 10% if the contract price is less than $20,000.

In the above schedule the stages have the following meaning:

'Bear stage' means:

(a) for a building with a timber floor with base brickwork - the stage when:
   (i) the concrete footings for the building's floor are poured; and
   (ii) the building's base brickwork is built to floor level; and
   (iii) the bearers and joists for the building are installed; or

(b) for a building with a timber floor without base brickwork - the stage when:
   (i) the building's stumps, piers or columns are finished; and
   (ii) the bearers and joists for the building are installed; or

(c) for a building with a suspended concrete slab floor - the stage when:
   (i) the building's concrete footings are poured; and
   (ii) the formwork and reinforcing for the suspended slab are installed; or

(d) for a building with a concrete floor, other than a suspended concrete slab floor - the stage when the building's floor is finished.

'Frame stage' means the stage when a building's frame is finished

'Enclosed stage' for a building means the stage when:

(a) the external wall cladding is fixed; and

(b) the roof covering is fixed; but without:

   (i) soffit linings necessarily having been fixed; or
   (ii) for a tile roof - pointing necessarily having been done; or
   (iii) for a metal roof - scribing and final screwing off necessarily having been done; and

(c) the structural flooring is laid; and
(d) 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 garage doors necessarily having been fixed; and
(e) the external windows are fixed (even if only temporarily)

'Fixing stage' means the stage when all internal, lining, architraves, cornice, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards of a building are fitted and fixed in position.

'Practical completion' means the stage when the works:

(a) have been completed in accordance with this contract and all relevant statutory requirements apart from minor defects or minor omissions; and
(b) are reasonably suitable for habitation

Part B - Customised progress payment schedule

Notice: The Domestic Building Contracts Act generally prohibits a builder from demanding or receiving progress payments that are more than the amounts set out in the Act.

Part B is to be used where the regulated table is inappropriate for the works or you wish to use your own stages or percentages. To use Part B you must state the reason why you are not using the regulated table and complete the progress payment table. If this Part B is completed then Part A does not apply:

Reason
DUE TO DESIGN.

Progress Payment Table
You need to complete this table giving a full description of the stages at which payment claims may be made and the percentage and amount of the contract price that is payable at each stage. If you use the name of a stage in Part A, it will have the same meaning unless you give a different meaning in the table.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Percent</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit</td>
<td>5.00%</td>
<td>$13,750.00</td>
</tr>
<tr>
<td>2. BASE</td>
<td>15.00%</td>
<td>$41,250.00</td>
</tr>
<tr>
<td>NOTE PAYMENT STAGE DEFINITIONS ARE THE SAME AS THE PRESCRIBED PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. FRAME</td>
<td>27.00%</td>
<td>$74,250.00</td>
</tr>
<tr>
<td>NOTE PAYMENT STAGE DEFINITIONS ARE THE SAME AS THE PRESCRIBED PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. ENCLOSED</td>
<td>30.00%</td>
<td>$82,500.00</td>
</tr>
<tr>
<td>NOTE PAYMENT STAGE DEFINITIONS ARE THE SAME AS THE PRESCRIBED PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. FIXING</td>
<td>16.00%</td>
<td>$44,000.00</td>
</tr>
<tr>
<td>NOTE PAYMENT STAGE DEFINITIONS ARE THE SAME AS THE PRESCRIBED PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. PRACTICAL COMPLETION</td>
<td>7.00%</td>
<td>$19,250.00</td>
</tr>
<tr>
<td>NOTE PAYMENT STAGE DEFINITIONS ARE THE SAME AS THE PRESCRIBED PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROGRESS PAYMENTS SCHEDULE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>$275,000.00</strong></td>
</tr>
</tbody>
</table>

Note: The total must equal the contract price stated in item 5. The deposit, by law, cannot exceed 5% if the contract price is $20,000 or more, or 10% if the contract price is less than $20,000.

Owner(s) to initial here

________________________
Schedule 3. Excluded Items (Clause 20)

The owner acknowledges that the cost of the supply and/or installation of materials, goods or the provision of the labour or services that are listed below are not included in the contract price. The owner may be supplying these items or having other contractors do the work.

EXCLUDED ITEMS ARE AS PER THE STANDARD SPECIFICATIONS ATTACHED TO THIS CONTRACT

Owner(s) to initial here

__________________
Special Conditions

1. SPECIAL CONDITIONS - INCLUSIONS. THIS CONTRACT INCLUDES THE ITEMS IN THE INCLUSION LIST ATTACHED.

2. SPECIAL CONDITIONS - LAND OWNERSHIP, HOUSE AND LAND PACKAGES. THIS BUILDING CONTRACT IS SUBJECT TO THE CLIENT COMPLETING THE LAND CONTRACT FOR THE PURCHASE BY THE CLIENT OF THE LAND DESCRIBED IN SECTION 7 OF THIS BUILDING CONTRACT, IN ACCORDANCE WITH ITS TERMS. IF THE LAND CONTRACT IS TERMINATED FOR ANY REASON THIS BUILDING CONTRACT IS DEEMED TERMINATED.

3. SPECIAL CONDITIONS - DEPOSIT, HOUSE AND LAND PACKAGE - THE DEPOSIT FOR THE BUILDING CONTRACT IS PAYABLE ON SETTLEMENT OF THE LAND CONTRACT.
Signatures

This contract is made between the Owner and the Builder. The schedules form part of this contract. The Owner has read and understood this contract.

Owner 1

NAME OWNER 1
SIGNATURE
WITNESS’S SIGNATURE
WITNESS’S NAME AND ADDRESS

Owner 2

NAME OWNER 2
SIGNATURE
WITNESS’S SIGNATURE
WITNESS’S NAME AND ADDRESS
Please note
1. Where a company is signing: ‘by A. Smith, director’ or ‘Signed for and on behalf of XYZ Pty Ltd’.
2. Where a partnership is signing: ‘B. Bloggs in partnership with A. Bloggs and C. Bloggs’

Notice to the building owner of right to withdraw from this contract under Section 72 of the Domestic Building Contracts Act

You may end this contract within 5 business days after the receipt day for this contract. The receipt day for this contract means:

- the day on which you receive the following documents from the building contractor:
  - a copy of this contract;
  - a copy of the appropriate contract information statement for this contract; or
- if the documents mentioned in paragraph (a) are received by you from the building contractor on different days - the later of the days.

To end this contract within the time allowed you must complete a withdrawal notice and:
- give it to the building contractor; or
- leave it at the address shown as the building contractor's address in this contract; or
- serve it on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by you.
Deed of guarantee and indemnity

Interpretation

BUILDER IS AFFORDABLE HOUSING COMPANY PTY LTD
OWNER 1 IS OWNER 1
OWNER 2 IS OWNER 2

Guarantors
NA
ADDRESS LINE 1
ADDRESS LINE 2
SUBURB
STATE
POSTCODE

Contract is that between the Builder and the owner dated:

Background

The owner executed the contract at the guarantor’s request.
The guarantor is aware of the owner’s obligations under the contract.

Operative

1. Guarantee
   The Guarantor guarantees to the Builder, the fulfilment of the Owner’s obligations under the Contract including but not limited to the due payment of all moneys arising out of the subject matter of the Contract.

2. Indemnity
   The Guarantor indemnifies the Builder against any claim, loss or damage arising out of the subject matter of the contract caused by or resulting from any non-fulfilment of the Owner’s obligations under the Contract.

3. Principal Debtor
   The Guarantor is deemed to be principal debtor jointly and severally liable with the Owner to discharge the Owner’s obligations under the Contract.

4. No Merger
   The Guarantor agrees that this Deed does not merge on completion or on the ending of the Contract by either party and continues notwithstanding that the Owner, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. No Release
   The Guarantor is not discharged by:
   ◦ any variation to the Contract including a variation to the building works;
   ◦ any delay or claim by the Builder to enforce a right against the Owner; and
   ◦ any forbearance given to the Owner to perform the Owner’s obligations under the contract.

6. Severability
   Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of
such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

7. **When More Than One Guarantor**
   If the Guarantor consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the Guarantor to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

8. **Waiver of Rights**
   The Guarantor waives all rights as surety inconsistent with any of the terms of this Deed or to the detriment or disadvantage of the Builder.

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**Guarantor's Statement**

I/we understand that the nature, terms and extent of the guarantee and indemnity provided by me/us and further acknowledge that I/we have obtained legal advice prior to executing this Deed.

**Signed as a Deed**

NA

SIGNATURE

WITNESS'S NAME AND ADDRESS

SIGNATURE

DATE
1. Performance

**Builder's obligation**

1.1 The **builder** must:

(a) complete the **works** in accordance with this **contract**; and

(b) comply with all laws and lawful requirements of any **statutory or other authority** with respect to the carrying out of the **works**.

**Owner's obligation**

1.2 The **owner** must pay the **contract price**, adjusted by any additions or deductions made under this **contract**, in the manner and at the times stated in this **contract**.

2. Commencement

**Date for commencement**

2.1 **Commencement** is to take place on or before the **start and price review date** stated in **item 6** or within 20 **working days** from the day that:

(a) the **owner** gives the **builder** evidence of the **owner's** title to the **land** under **Clause 6**;

(b) the **owner** gives the **builder** evidence of the **owner's** capacity to pay to the **builder** the **contract price** under **Clause 7**;

(c) the **owner** establishes the **security account** under **Clause 8**;

(d) the **owner** gives the **builder** possession of the **site** under **Clause 10**;

(e) the **builder** receives all permissions, consents and approvals required from the relevant **statutory or other authority** under **Clause 11**, or

(f) where the name of the **lending body** is stated in **item 9**, the **owner** gives the **builder** a notice from the **lending body** that construction of the **works** may commence, whichever is the later.

2.2 If any of the requirements set out in subclause 2.1 are not satisfied by the **start and price review date**, the **builder** may, by written notice to the **owner**;

(a) end this **contract**, in which case, subclause 25.8 applies; or

(b) extend the time for the **owner** to satisfy the requirements of subclause 2.1 and, at the option of the **builder**, increase the **contract price** under **Clause 15**.

**Commencement of the building period**

2.3 The **building period** starts on the actual day of **commencement**.

**Builder to ensure commencement**

2.4 The **builder** must ensure **commencement** occurs as soon as is reasonably possible.

3. Completion and progress

**Builder to complete the works**

3.1 The **builder** must complete the **works** on or before the end of the **building period** stated in **item 10** as extended under **Clause 16**.
3.2 If, after **commencement**, progress of the **works** is delayed by a cause for which the **owner** is responsible the **contract price** may, at the option of the **builder**, be increased under Clause 15.

### 4. Progress payments

**Owner to pay progressively**

4.1 The **owner** must pay the **contract price** adjusted by any additions or deductions made under this **contract** progressively at each **stage**.

**Owner to pay deposit**

4.2 The **owner** must pay the deposit stated in **schedule 2** when the **owner** signs this **contract**.

**Builder to claim**

4.3 The **builder** must give the **owner** a written claim for a progress payment for the completion of each **stage**.

**Contents of progress claim**

4.4 A progress claim is to state:

- (a) the amount claimed for the **stage**;
- (b) the amount of any addition or deduction for **variations**;
- (c) the amount of any addition or deduction due to a prime cost item or provisional sum item;
- (d) the amount of any other addition to or deduction from the **contract price** made under this **contract**; and
- (e) the sum of the above amounts.

**Due date for payments**

4.5 The **owner** must pay a progress claim to the **builder** within 5 **working days** of receiving the progress claim.

**No certificates required**

4.6 The **builder** is not required to give any certificate of approval from any relevant **statutory or other authority** to the **owner** as a precondition to the payment of a progress claim.

**Owner liable if lending body does not pay**

4.7 The **owner** must ensure the **lending body**, if any, pays a progress claim by the due date. If payment is not made by the due date, the **builder** is entitled to claim **default interest** under Clause 30.

**Payment on account**

4.8 Other than in relation to the final claim:

- (a) payment of a progress claim is on account only; and
- (b) the **owner** has no right of set off.

### 5. Direction to the lending body

**Lending body may directly pay the builder**

5.1 The **lending body** may pay all money advanced to the **owner** for payment of all or part of the **contract price**, adjusted by any additions or deductions made under this **contract**, directly to the **builder**.

**Direction to the lending body**

5.2 The **owner** must give a direction to the **lending body** to pay all such money advanced by the **lending body** directly to the **builder**.

### 6. Evidence of title

**Owner to give evidence of title**

6.1 As soon as practicable after the date of this **contract**, the **owner** must give the **builder** evidence, to the **builder's** satisfaction, of the **owner's** title to the **land**.

**Owner warrants title and description**

6.2 The **owner** warrants:

- (a) that the **owner** is entitled to build on the **land**; and
- (b) the accuracy of the description of the **land** as set out in **item 7**.

**Owner warrants disclosure of restrictions affecting the site**

6.3 The **owner** warrants that all easements, covenants, caveats and zoning restrictions that may affect the **works** being carried out and constructed on the **site** are disclosed in **item 8**.
7. Evidence of capacity to pay

Not subject to finance 7.1 This contract is not subject to finance.

Owner to give evidence of ability to pay on signing 7.2 As soon as practicable after the date of this contract, the owner must give the builder evidence, to the builder’s satisfaction, of the owner’s capacity to pay the contract price by the progress payments and at the stages specified in schedule 2.

Owner to give evidence of ability to pay on request 7.3 From time to time if requested by the builder, the owner must give the builder evidence, to the builder’s satisfaction, of the owner’s capacity to pay to the builder the balance of the contract price, adjusted by any additions or deductions made under this contract.

Owner to use best endeavours 7.4 Where the name of a lending body is stated in item 9, the owner must use best endeavours to sign all documents and do all acts necessary to obtain:

(a) approval from the lending body on its usual terms for a loan of an amount sufficient to enable the owner to pay the contract price; and
(b) a notice from the lending body to the builder that all documents relevant to the loan are completed and that construction of the works may commence.

Owner to give evidence of any failure 7.5 If the owner does not obtain:

(a) approval under subclause 7.4(a); or
(b) the notice under subclause 7.4(b),
then the owner must give the builder written evidence, signed by the lending body, as to the reason for the failure.

8. Security account

Owner to establish security account 8.1 The owner must:

(a) on or before commencement; and
(b) immediately on the request of the builder from time to time, deposit into a security account an amount of money equal to the security account money or any additional amount to reach the total required for the security account money.

Withdrawals 8.2 Withdrawals from the security account require the signature of both the owner and the builder.

Interest 8.3 The owner is entitled to all interest earned on the investment of the security account money.

Use of security account money 8.4 The security account money must be applied to pay the contract price, adjusted by any additions or deductions made under this contract and other amounts due to the builder under this contract.

Lending body’s discretion 8.5 Where the owner is to pay the contract price, adjusted by any additions or deductions made under this contract, using security account money and other money from the lending body, the priority of payments will be at the lending body’s discretion.

Entitlement to security account money 8.6 If:

(a) the owner does not pay an amount to the builder by the due date for payment; or
(b) this contract is ended,
the builder is entitled to the money in the security account to the extent of any money due and owing to the builder. The owner is only entitled to
the balance in the **security account**, after payment of the **contract price**, adjusted by any additions or deductions made under this **contract**, and other amounts due to the **builder** under this **contract**.

### 9. Site information and survey

**Owner to identify the site**

9.1 Unless stated elsewhere in this **contract**, the **owner** must, prior to the **builder** commencing, identify the **land**, the **site** and the siting of the **works**.

### 10. Site possession and access

**Owner to give exclusive possession**

10.1 The **owner** must, as soon as practicable after the date of this **contract**, give the **builder** exclusive possession of the **site** to carry out the **works**.

**All weather access**

10.2 The **owner** must provide all weather access.

**Owner not to impede**

10.3 The **owner**, a person authorised by the **owner** and officers of the **lending body**:

(a) must not interfere with:
   (i) the **builder's** access or possession of the **site**; or
   (ii) the progress of the **works**;

(b) must not:
   (i) make inquiry of;
   (ii) issue directions to; or
   (iii) give instructions to,
   the **builder's** workers, suppliers or subcontractors. Communication must only be with the **builder**; and

(c) may only have access to the **works** under the **builder's** supervision, at reasonable times and after giving reasonable prior written notice, for the purposes of inspecting the progress of the **works**.

**Owner to pay costs of interference**

10.4 Notwithstanding any other provision of this **contract**, the **owner** is to pay to the **builder**, on demand, any additional costs the **builder** incurs because the **owner** or the **owner's** representative interferes with the carrying out of the **works**.

**Builder to claim interference costs**

10.5 To claim payment from the **owner**, the **builder** must give the **owner** written notice of such costs within 5 **days** after the interference comes to the **builder's** knowledge.

**Owner liable for damage**

10.6 The **owner** will be solely responsible for any loss or damage sustained by the **owner** if the **owner** accesses the **site** without the **builder's** prior written approval.

**Owner indemnifies the builder**

10.7 The **owner** indemnifies the **builder** against any liability, loss, claim or proceeding in respect of any injury to any person or any loss or damage to any property on the **site** to the extent that such injury, loss or damage is connected with the **owner's** breach of this Clause.

### 11. Compliance with requirements of local and other authorities

**Requirements of statutory and other authorities**

11.1 The **builder** must, on behalf of the **owner**, comply with any lawful requirement of any **statutory or other authority** but only to the extent that such requirement relates to carrying out and completing the **works**.
Variation to comply with a requirement

11.2 The **builder** must:

(a) notify the **owner** of any extra work required to comply with subclause 11.1; and

(b) request a **variation** to carry out that extra work.

Owner to do acts

11.3 The **owner** must sign all documents and do all acts as requested by the **builder** to obtain all permissions, consents and approvals required from the relevant **statutory or other authority**.

Owner's works and final certificate

11.4 If the **owner** is to carry out other works and the failure to complete those works on or before **practical completion** prevents the **builder** from obtaining a final certificate from the relevant **statutory or other authority**, the **owner** releases the **builder** from any obligation to obtain the final certificate.

12. Use of plans

Where the owner is to supply

12.1 If the **owner** is to supply the plans to the **builder** then, without cost to the **builder**, the **owner** must give the **builder** 5 copies of the plans to enable the **builder** to carry out the **works**.

Indemnity

12.2 Each party indemnifies the other party for all costs and expenses incurred relating to any claim for breach of copyright if the **builder** carries out the **works** according to plans which are:

(a) supplied by that party;

(b) prepared and under instruction of that party; or

(c) prepared from sketches provided by that party.

Grant of licence

12.3 Where the **builder** draws the plans, the **owner** agrees that the **builder** retains copyright in those plans but the **builder** grants to the **owner** a licence to cause the construction of the **works** by the **builder** in accordance with those plans.

Licence fee

12.4 The parties agree that the reasonable fee for the licence granted to the **owner** is 5% of the **contract price**. It is acknowledged that the **contract price** includes this licence fee.

Unauthorised use of plans

12.5 If the **owner** uses the **builder**'s plans without the **builder**'s written consent, other than under the above licence, the **owner** must pay to the **builder** on demand the licence fee referred to in subclause 12.4.

13. Discrepancy or error in documentation

Owner warrants contract documents

13.1 The **owner** warrants the accuracy of the **contract documents** supplied by the **owner** and the suitability of the design, materials and methods of working each specified therein.

Notice of errors

13.2 If either party becomes aware of any error, ambiguity or inconsistency in or between the **contract documents**, that party must, within 5 **working days** of becoming aware, give the other party written notice detailing the problem.

Owner to instruct

13.3 The **owner** must within 5 **working days** of becoming aware of such a problem, give to the **builder** such written instructions as are necessary to enable the **builder** to proceed with the **works**.

Owner fails to instruct

13.4 If the **owner** does not give written instructions as required by subclause 13.3, the **owner** is deemed to have instructed that the **builder** carry out the **works** using the order of precedence.

Order of precedence

13.5 The order of precedence is:

(a) any special conditions;
(b) these general conditions;
(c) the specifications;
(d) the plans, then
(e) other documents in the order listed in item 12.

### 14. Insurance and risk

#### Builder to have works insurance cover

**14.1** The *builder* must:

- (a) prior to *commencement*, take out insurance cover against loss or damage to the *works* in an amount equal to the *contract price* and maintain such cover until the *date of practical completion*; and
- (b) if requested by the *owner*, give to the *owner* evidence of such insurance cover.

#### Extent of works insurance cover

**14.2** Such insurance must:

- (a) note the insured as jointly being the *builder* and the *owner*; and
- (b) be against all liability, loss, action, claim or proceeding whatsoever including without limitation in respect of fire, explosion, earthquake, lightning, flood, storm and tempest or civil commotion.

#### Public liability risk

**14.3** The *builder* is liable for and indemnifies the *owner* against any liability, loss, claim or proceeding in respect of:

- (a) any personal injury; or
- (b) damage to any property real or personal,

which may be occasioned by or arise out of the carrying out of the *works* to the extent that it is due to the negligent or wilful act, omission or default of the *builder* or the *builder’s* contractors or employees.

#### Workcover

**14.4** The *builder* must comply with all obligations imposed on the *builder* under the Workcover Act.

#### Builder not liable for certain property

**14.5** The *builder* is not liable for any liability, loss, claim or proceeding in respect of any property placed on the *site* without the *builder’s* written approval.

### 15. Delay damages

#### Regulated clause - delay before commencement

**15.1** Subject to subclause 15.3, where *commencement* is delayed for longer than 4 weeks on and after the *start and price review date* due to a cause of delay for which the *builder* is not responsible, the *owner* must pay to the *builder*, as a debt due and payable, the lesser of the amount:

- (a) of the costs incurred by the *builder* because of the delay; and
- (b) representing 0.125% of the *contract price* for each week or part of a week of the delay after the first 4 weeks of the delay.

#### Regulated clause - delay after commencement

**15.2** Subject to subclause 15.4, where, after *commencement*, the carrying out of the *works* are delayed, by a cause for which the *owner* is responsible, the *owner* must pay to the *builder*, as a debt due and payable, the lesser of the amount:

- (a) of the costs incurred by the *builder* because of the delay; and
- (b) representing 0.05% of the *contract price* for each *day* of the delay.

#### Delay before commencement - unregulated clause

**15.3** Where:

- (a) the *contract price* is more than the *set amount*; or
- (b) this *contract* is to be administered by an architect engaged by the *owner*.
and commencement is delayed for longer than 4 weeks on and after the start and price review date due to a cause of delay for which the builder is not responsible, the owner must pay to the builder, as a debt due and payable, the greater of the amount:

(c) of the costs incurred by the builder because of the delay; and

(d) representing 0.125% of the contract price for each week or part of a week of the delay after the first 4 weeks of the delay.

15.4 Where:

(a) the contract price is more than the set amount; or

(b) this contract is to be administered by an architect engaged by the owner,

then for every day that, after commencement, the carrying out of the works are delayed by a cause for which the owner is responsible the owner must pay to the builder, as a debt due and payable, the greater of the amount:

(c) of the costs incurred by the builder because of the delay; and

(d) representing 0.05% of the contract price for each day of the delay.

16. Delays and extensions of time

16.1 The builder is entitled to a reasonable extension of time to the building period if commencement or the carrying out of the works is delayed by a claimable delay.

16.2 A claimable delay means a delay caused by the builder suspending the works under Clause 18 or from a cause beyond the builder’s sole control that was not reasonably foreseeable at the time the builder entered into this contract including:

(a) a variation requested by the owner or a request by the owner for a variation;

(b) a variation requested by the builder if the need for the variation could not have been reasonably foreseen at the date of this contract;

(c) a calculable delay in excess of the allowance for that cause of delay stated in item 10;

(d) an incalculable delay if the cause and the general effect that the delay is likely to have on the carrying out of the works are stated in item 10;

(e) an act of God, fire, explosion, earthquake or civil commotion;

(f) an industrial dispute;

(g) a dispute with adjoining or neighbouring residents or owners;

(h) anything done or not done by the owner;

(i) delays in getting any approvals;

(j) a delay in the supply of materials selected by the owner;

(k) the need for a survey of or other report in relation to the site; or

(l) the industry shutdown being a 3 week period commencing on or about 22 December in each year.
The builder is to notify

16.3 The **builder** is to give the **owner** written notice of the extension of time detailing both:

(a) the cause of the delay; and

(b) the extension of time,

by the later of the day that is:

(c) 20 **working days** on and after the **builder** is aware of both the cause and the extent of the delay; or

(d) 5 **working days** on and before the **date of practical completion**.

If the owner disputes the extension notified

16.4 If the **owner** wishes to dispute an extension of time the **owner** must, within **5 working days** of receiving the **builder’s** notice, give the **builder** a written notice:

(a) disputing the extension of time; and

(b) detailing the reasons why the extension of time is disputed.

Allowance for omissions

16.5 The **builder** must allow a reasonable reduction to the **building period** if, by **variation**, work is omitted from the **works**.

17. **Compliance with Workplace Health & Safety Act**

**Principal contractor**

17.1 The **builder** is the "principal contractor" for the purposes of Section 13(2) of the Workplace Health and Safety Act 1995.

**Right to exclude**

17.2 The **builder** may exclude or remove from the **site** any person who fails to comply with the requirements of the Workplace Health and Safety Act 1995.

18. **Suspension of works**

**Builder’s right to suspend**

18.1 The **builder** may by written notice to the **owner** suspend the carrying out of the **works** if:

(a) the **owner** does not pay a progress claim as required by Clause 4;

(b) the **owner** does not give the **builder** evidence, satisfactory to the **builder**, of the **owner’s** capacity to pay the balance of the **contract price** when requested by the **builder** under subclause 7.3;

(c) the **owner** enters the **site** in breach of Clause 10;

(d) the **owner** does not give an instruction within 5 **working days** of becoming aware of a problem under Clause 13;

(e) the **owner** or the **owner’s** contractors when supplying materials or goods or carrying out any work breach the requirements of Clause 21;

(f) the **owner** takes control of, possession of or use of the **works** or any part of the **works** without the **builder’s** written consent, prior to payment of the **final claim**;

(g) any dispute or difference between the **owner** and the **builder** has been referred for determination to the Queensland Civil and Administrative Tribunal; or

(h) the **owner** is otherwise in substantial breach of this **contract**.

**Builder to recommence**

18.2 The **builder** must recommence the carrying out of the **works** within a reasonable time after the **owner** gives the **builder** written notice that the reason for the suspension no longer exists.

**No waiver**

18.3 The **builder’s** exercise of the right of suspension does not prevent the **builder** from exercising any right to end this **contract** under Clause 25 in regard to the same occurrence.
19. Variations

Contents of a variation document

19.1 A variation document must be in readily legible English and;
   (a) in all cases, state:
      (i) the work required to carry out the variation;
      (ii) the price of the variation;
      (iii) when that price becomes payable; and
      (iv) if there will be a delay because of the variation, a reasonable estimate of that delay; and
   (b) where the builder requests the variation must, in addition, state the reason for the variation.

Owner's request

19.2 If the owner requests a variation, the builder must, before commencing the work and as soon as is reasonable, either:
   (a) agree to carry out the variation by giving the owner a variation document signed by the builder; or
   (b) refuse to carry out the variation. If the builder refuses, the builder does not have to give any reasons for such refusal.

Builder's request

19.3 If the builder requests a variation:
   (a) the builder must, before commencing the work, give the owner a variation document signed by the builder;
   (b) if the owner agrees to the builder's request, the owner must sign the variation document and return it to the builder as soon as practicable after receiving it.

Where the owner does not sign the variation document

19.4 If a variation is agreed and the owner has not, within 5 working days of the builder giving the owner a variation document, signed that variation document and given it to the builder, the builder may:
   (a) if the builder has taken all reasonable steps to ensure the document is signed by the owner, carry out the variation; or
   (b) withdraw the request or acceptance, as applicable.

Builder to give copy of variation document

19.5 As soon as practicable (but within 5 working days) after a variation is agreed, the builder must give the owner:
   (a) a copy of the variation document signed by the owner and the builder; or
   (b) where the owner has not signed the variation document and the builder has taken all reasonable steps to ensure the document is signed by the owner, a copy of the variation document signed by the builder.

Where work is required urgently

19.6 Notwithstanding the above, the builder is not required to create a variation document before carrying out the varied work if that work is required to be carried out urgently and it is not reasonably practicable in the particular circumstances to do so.

If the price is not agreed

19.7 If the price of a variation is not agreed, the price is:
   (a) for additional work, the reasonable price for that work including an amount for the builder's margin; and
   (b) for omitted work, the reasonable price for that work.

Payment of variation

19.8 The price of a variation becomes payable immediately after that work is commenced unless otherwise agreed.

Owner must not refuse where work is required by law

19.9 The owner must not refuse a request by the builder for a variation where the variation is required for the works to comply with the law.
19.10 In the case of a variation requested by the builder, the builder is not entitled to payment for extra work unless the variation became necessary because of circumstances that could not have been reasonably foreseen by the builder at the date of this contract.

19.11 The owner acknowledges that the colour and grain of timber, granite and other natural materials can vary. The builder is to use reasonable endeavours to match the colour or grain of any sample selected by the owner but is under no liability if there is a difference and such difference is not a variation.

20. Excluded items

Items that are not part of the works 20.1 The owner and the builder agree that the materials, goods, labour and services shown in the contract documents and which are set out in schedule 3 are excluded from the works and the cost of those items are not included in the contract price.

21. Materials etc. supplied by owner

Owner’s obligation 21.1 Materials, goods and work to be provided by the owner must be:
- (a) suitable for inclusion in the works;
- (b) supplied or completed in the time required by the builder;
- (c) new unless otherwise specified; and
- (d) completed to the builder’s satisfaction.

Builder not responsible 21.2 Notwithstanding subclauses 21.3 and 21.4, the builder is not responsible for the performance and suitability of materials, services, labour and goods provided by the owner.

Defective items or materials 21.3 The builder may reject any item or material supplied by the owner, if the builder believes that item or material to be defective, and require the replacement or correction of that item or material.

Defective work 21.4 The builder may reject any work carried out by or on behalf of the owner or by the owner’s contractor and require that the owner or the owner’s contractor replace, correct or remove the defective work.

Owner’s risk 21.5 Notwithstanding subclause 14.5, all materials and goods supplied and work carried out by the owner or the owner’s contractors on the site are at the risk of the owner.

Conditions for the owner’s works 21.6 If the owner carries out or causes to be carried out other work on the site while the works are being carried out then the owner must, and must ensure that the owner’s contractors:
- (a) do not interfere with the progress of the works;
- (b) hold and maintain the same insurance coverage as the builder is required to hold and maintain under this contract in relation to their works;
- (c) hold an appropriate licence to carry out the work;
- (d) observe all relevant occupational health and safety laws and the requirements of the builder in regard to occupational health and safety;
- (e) obey all directions issued by the builder regarding the coordination and timing of their works on the site;
- (f) co-operate with all of the other workers and contractors on the site.
21.7 The owner must, on request, give the builder evidence of all licences and insurances referred to under subclause 21.6.

21.8 If the owner or the owner's contractors do not observe all of the requirements in subclauses 21.6 and 21.7 the builder may exclude or direct the owner or the owner's contractors to leave the site.

21.9 If the owner breaches this Clause the builder may:

(a) carry out the works without incorporating such materials, services or goods; or

(b) do either or both of the following:

(i) suspend the carrying out of the works under Clause 18;

(ii) end this contract under Clause 25.

22. Practical completion

22.1 The builder must, at the owner's request from time to time, give a non-binding estimate of when practical completion will be reached.

22.2 On reaching practical completion the builder must give the owner:

(a) a notice of practical completion stating the builder's opinion of the date of practical completion; and

(b) the final claim.

22.3 Subject to subclause 22.4, the owner must, within 5 working days of receiving the final claim, pay the amount of the final claim to the builder.

22.4 The final claim is not due until the builder:

(a) gives the owner a defects document signed by the builder listing minor defects and minor omissions;

(i) that are agreed to exist and the time for when those items will be completed or rectified; and

(ii) that the owner claims to exist but the builder does not agree with; and

(b) makes all reasonable efforts to have the owner sign the document to acknowledge its contents.

22.5 If the owner believes that practical completion has not been reached the owner must, within 5 working days of receiving the notice of practical completion, give the builder a written notice stating:

(a) the owner's requirements for the works to reach practical completion; and

(b) the provisions of this contract that relate to each requirement.

22.6 The builder must, on receiving the owner's notice, complete those requirements that, in the builder's opinion, are necessary to reach practical completion.

22.7 On completion of those requirements the builder must give a further notice of practical completion stating the new date of practical completion and subclause 22.3 applies.

22.8 The owner's payment of the final claim is conclusive evidence of the builder's satisfaction, and discharge, of the builder's obligations in connection with the subject matter of this contract except for:

(a) fraud, dishonesty or fraudulent concealment relating to the works;

(b) the builder's liability under subclause 24.1; and

(c) the builder's liability under a statutory warranty set out in Clause 33.
Date of practical completion

22.9 The date stated in the last notice of practical completion is deemed to be the date of practical completion unless within 5 working days of receiving the last notice of practical completion the owner gives the builder written notice:

(a) disputing the date; and

(b) detailing the reasons why the date is disputed.

23. Owner taking possession

Illegal early possession

23.1 The owner is not entitled to:

(a) take control of, possession of or use the works or any part of the works;

(b) receive the keys for the works;

until the builder has been paid the contract price, adjusted by any additions or deductions made under this contract.

Agreed early possession

23.2 The builder may by written notice to the owner permit the owner to:

(a) take control of;

(b) take possession of; or

(c) use,

the whole or any part of the works prior to practical completion but such possession does not reduce the owner’s liability to pay the outstanding balance of the contract price, adjusted by any additions or deductions made under this contract.

Consequences of taking possession

23.3 If the owner breach subclause 23.1 then, unless such control, possession or use is with the written consent of the builder under subclause 23.2 or after the owner has lawfully ended this contract under Clauses 25 or 26, the owner commits a substantial breach of this contract entitling the builder to elect to either:

(a) treat the owner’s actions as a repudiation of this contract and to accept that repudiation;

(b) give the owner a notice to remedy breach of contract under Clause 25; or

(c) accept the owner’s actions as a variation to omit that part of the works not carried out and completed as at the date the owner breaches subclause 23.1

Reservation of rights

23.4 If the owner breaches (including repudiates) this contract, nothing in this Clause prejudices the right of the builder to recover damages or exercise any other right or remedy.

Right to suspend

23.5 If the builder elects to give a notice to remedy breach under paragraph (b) of subclause 23.3, the builder is still entitled to suspend the carrying out of the works under Clause 18.

Accepting variation

23.6 If the builder accepts the variation under paragraph (c) of subclause 23.3, the builder is to give the owner:

(a) a variation document signed by the builder complying with subclause 19.1 to that effect; and

(b) a notice of practical completion and a final claim under Clause 22.

Release

23.7 The builder is deemed to be discharged and released from all liabilities, costs, losses or damages which the owner may suffer or incur which in any way related to the works omitted under paragraph (c) of subclause 23.3.
Release Indemnity 23.8 The owner indemnifies the builder against all liabilities, costs, charges, losses, damages, expenses or fees (including legal fees on a full indemnity basis) that the builder may suffer or incur arising out of or in any way related to:

(a) the owner's breach of subclause 23.1; or
(b) any direction to rectify or complete any part of the works omitted under paragraph (c) of subclause 23.3 issued by the Queensland Building Services Authority.

Risk 23.9 The works are at the risk of the owner on and from the owner taking possession of the works or any part of the works.

Continuing rights 23.10 The rights of the builder and obligations of the owner under this Clause 23 continue to be in effect after the ending of this contract.

24. Defects liability period

Builder to fix defects 24.1 The builder must rectify any defects or other faults (except for minor settlement or minor shrinkage) due to the works not being in accordance with this contract that appear and are notified in writing by the owner to the builder within 6 calendar months after the date of practical completion.

Risk 24.2 The works are at the risk of the owner on and from the owner taking possession of the works or any part of the works.

Continuing rights 24.3 The rights of the builder and obligations of the owner under this Clause 23 continue in effect after the ending of this contract.

25. Termination by default

When the builder is in substantial breach 25.1 The owner is entitled to give a notice to remedy breach under subclause 25.3 if the builder is in substantial breach of this contract. The builder is in substantial breach of this contract if the builder:

(a) suspends the carrying out of the works, other than under Clause 18;
(b) has the builder's licence cancelled or suspended; or
(c) is otherwise in substantial breach of this contract.

When the owner is in substantial breach 25.2 The builder is entitled to give a notice to remedy breach under subclause 25.3 if the owner is in substantial breach of this contract. The owner is in substantial breach of this contract if the owner:

(a) does not pay progress payments as required by Clause 4;
(b) does not pay the deposit as required by subclause 4.2;
(c) does not give evidence of the owner's title as required by Clause 6;
(d) does not give evidence of the owner's capacity to pay the contract price from time to time as required by Clause 7;
(e) where a lending body is stated in item 9, does not comply with:
   (i) the requirements of subclauses 7.3 or 7.4;
   (ii) any of the requirements of the lending body; or
   (iii) the requirements of subclause 5.2;
(f) does not establish or maintain the security account as required by Clause 8;
(g) does not give possession of the site as required by subclause 10.1;
(h) interferes with or obstructs the builder or the builder's workers, suppliers or subcontractors in carrying out the works in breach of subclause 10.3;

(i) does not give an instruction within 5 working days of becoming aware of a problem under Clause 13;

(j) does not, or does not ensure that the owner's contractors, comply with the requirements of Clause 21;

(k) takes control of, possession of or uses the works or any part of the works without the prior written agreement of the builder prior to the payment in full of the contract price, adjusted by any additions or deductions made under this contract, in breach of Clause 23; or

(l) is otherwise in substantial breach of this contract.

Notice to remedy breach
25.3 If a party is in substantial breach of this contract, then the other party may give to that party a written notice to remedy breach:

(a) specifying the substantial breach;

(b) requiring that the substantial breach be rectified within 10 working days after the notice is given under this contract; and

(c) stating that, if the substantial breach is not rectified, the other party intends to end this contract.

Notice to end the contract
25.4 If the party in substantial breach does not rectify or commence to substantially rectify the substantial breach stated in the notice to remedy breach within 10 working days of receiving that notice, the other party may end this contract by giving a separate notice to that effect.

No right to end where matter is referred to QCAT
25.5 A party is not entitled to end this contract under this Clause if, within 5 working days of receiving the notice to remedy breach, the party in substantial breach refers the question as to whether the other party has the right to end this contract for determination by the Queensland Civil and Administrative Tribunal under Clause 34.

Where the matter is referred to the QCAT
25.6 If a reference for determination is made under subclause 25.5 the carrying out of the works is suspended and the notice to remedy is not effective until the Queensland Civil and Administrative Tribunal has made a determination.

When notice is ineffective
25.7 Neither party is entitled to give a notice to remedy breach while that party is in substantial breach of this contract. A notice given by a party in substantial breach is ineffective.

Builder's rights
25.8 On this contract being ended by the builder under Clauses 2, 21, 25 or 26 the builder may, without prejudice to any other rights or remedies that the builder may have under this contract or at law, recover from the owner a debt due and owing the greater of the following amounts:

(a) 5% of the contract price; or

(b) damages including:

(i) the cost of all work carried out by the builder under this contract;

(ii) the cost to the builder of any materials purchased by the builder and delivered to the site or ordered by the builder from suppliers and which orders can not be cancelled;

(iii) the cost to the builder of quitting the site;

(iv) the builder's margin on the total of the amounts payable under subparagraphs (i), (ii) and (iii);

(v) default interest on any unpaid moneys under Clause 30; and
(vi) all other costs and losses incurred by the builder as a consequence of this contract being ended.

25.9 If a party breaches (including repudiates) this contract, nothing in this Clause prejudices the right of the other party to recover damages or exercise any other right or remedy.

26. Termination for insolvency

26.1 If a party:

(a) informs the other party in writing or its creditors generally that the party is insolvent;
(b) becomes or is bankrupt or seeks to take advantage of the laws relating to bankruptcy; or
(c) has a Court order made for the winding up of the party or a resolution for its winding up is made,
and, as a consequence, that party is unable to perform its obligations under this contract, the other party may immediately end this contract by giving written notice to that party to that effect.

26.2 The builder is entitled to be paid all amounts calculated in accordance with subclause 25.8 if this contract is ended under this Clause 26.

27. Assignment and subcontracting

27.1 Neither party may assign this contract or any payment or any other right, benefit or interest under this contract without the prior written consent of the other party.

27.2 The builder may subcontract any part of the works but such subcontracting does not relieve the builder from the builder's obligations under this contract.

28. Notices

28.1 Unless otherwise stated in this contract, a notice is deemed to be given and received if the notice is:

(a) delivered by hand to the other party;
(b) posted by ordinary pre-paid mail to the other party's last known address, 2 working days following the day it was posted;
(c) sent by facsimile transmission to the party's last known facsimile number, on receiving confirmation of transmission and
(d) e-mailed to the party's current e-mail address.

29. Late completion damages

29.1 If the works do not reach practical completion by the end of the building period the owner is entitled to liquidated damages in the sum specified in item 11 for each day after the end of the building period to and including the earlier of:

(a) the date of practical completion;
(b) the date this contract is ended; and
(c) the date that the owner takes control of, possession of, or use of the site or any part of the site.
30. Default interest

Default interest 30.1 The builder may charge the owner interest at the rate stated in Item 14 of Schedule 1 from the day on which an amount falls due to be paid to the builder up to and including the day that amount is paid.

31. Debt collection costs

Owner to pay additional costs 31.1 The owner must pay to the builder any debt collection costs, including any legal fees on a solicitor and own client basis, associated with recovering or the attempted recovery of an amount under this contract.

32. Charge on materials and the site

Charge over the site 32.1 The owner grants a lien to the builder on all materials located on the site for the due payment to the builder of all moneys that are or may become payable to the builder arising out of the subject matter of this contract.

Charge over the land 32.2 Except where the owner is a resident owner, the owner charges the land with, and grants an equitable mortgage in favour of the builder for, the due payment to the builder of all moneys that are or may become payable to the builder arising out of the subject matter of this contract.

Owner to sign a mortgage 32.3 If so requested by the builder, the owner must deliver an executed mortgage in registrable form to secure the charge over the land.

Owner to pay fees and duties 32.4 The owner is to pay to the builder on demand all stamp duty and registration fees that are payable or paid on:

(a) this contract;
(b) any caveat or mortgage under this Clause that is lodged for registration; and
(c) any withdrawal of such caveat or release of such mortgage.

Guarantee 32.5 The owner must, at the builder’s request, provide to the builder a deed of guarantee and indemnity in the form in the Annexure duly executed by every guarantor named in item 13 and enforceable against each such guarantor.

33. Statutory warranties

Builder’s warranties 33.1 To the extent required by the Domestic Building Contracts Act, the builder warrants that:

(a) all materials supplied by the builder will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
(b) the works will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975;
(c) the works will be carried out in an appropriate and skilful way and with reasonable skill and care;
(d) the works will be carried out in accordance with the plans and the specifications to this contract;
(e) if the works consist of the erection or construction of a detached dwelling, or are intended to renovate, alter, extend, improve or repair a home, to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the works are finished; and
(f) each provisional sum item allowance, if calculated by the builder, has been calculated with reasonable skill and care, having regard to all the information reasonably available when this contract is entered into (including information about the nature and location of the site).

Meaning of relevant criteria

33.2 The relevant criteria for materials for the purpose of paragraph 33.1(a) means:

(a) generally accepted practices or standards applied in the building industry for the materials; or

(b) specifications, instructions or recommendations of manufacturers or suppliers of materials.

34. Disputes

Reference to the Queensland Civil and Administrative Tribunal

34.1 If any dispute or difference between the owner and the builder arises in connection with the subject matter of this contract then either party may give to the other party written notice of such dispute or difference and such dispute or difference may be referred for determination to the Queensland Civil and Administrative Tribunal.

35. Interpretation

Meanings

35.1 In this contract, except where the context otherwise requires:

'all weather access' means adequate access to the site as reasonably required by the builder for the builder to carry out the works:

(a) that complies with the law; and

(b) gives the builder access in all weather conditions;

'builder' means the party named in item 3 and includes the builder's successors, permitted assigns and, where appropriate, includes anyone acting with the builder's express authority;

'builder's margin' means the percentage of an amount to cover the builder's administration costs, overheads and profit being 20%.

'building period' means the number of days stated in item 10 as extended by Clause 16;

'calculable delay' means a delay to the carrying out of the works caused by inclement weather, non-working days or any other cause of delay that is reasonably likely to delay the carrying out of the works and for which a description and an allowance are set out in item 10;

'commencement' means when the builder commences physical work on the site;

'contract' means the agreement between the parties set out in the contract documents;

'contract documents' means these general conditions, any special conditions, the specification, the plans and other documents specified in item 12;

'contract price' means the amount stated in item 5;

'date of practical completion' has the meaning in Clause 22;

'days' means calendar days;

'defects liability period' has the meaning in subclause 24.1;

'deposit' means the amount stated for the deposit in schedule 2;
'final claim' means the claim by the builder for payment of the balance of the unpaid contract price, as adjusted by any additions or deductions made under this contract, plus all other moneys owing under this contract.

'guarantor' means those persons or entities named as guarantor in item 13;

'in calculable delay' means a specific cause described in item 10 that the builder believes will delay the carrying out of the works but for which it is not possible to adequately estimate the period of likely delay;

'item' means the relevant item number in schedule 1;

'land' means the land described in item 7;

'lending body'; where stated in item 9 means any bank, financial institution or government authority that provides funds to the owner to enable the owner to pay the contract price, adjusted by any additions or deductions made under this contract, to the builder.

'non-working days' means weekends, public holidays, rostered days off or other days not generally available for carrying out the works;

'notice of practical completion' has the meaning in Clause 22;

'owner' means the party named in item 2 and includes the owner's successors and permitted assigns;

'practical completion' has the same meaning as in schedule 2;

'resident owner' means an individual who intends to reside in the completed works;

(a) on practical completion; or

(b) within 6 months after practical completion;

'schedule' means the relevant schedule forming part of this contract;

'security account' means an account with a financial institution, bank or building society nominated by the owner and approved by the builder and described in Clause 8;

'security account money' means an amount equal to the contract price, adjusted by any additions or deductions made under this contract, less the total of any money being advanced by the lending body and any payments received by the builder;

'set amount' means the greater of $200,000 or an amount above $200,000 prescribed as the set amount under a regulation to Section 56 of the Domestic Building Contracts Act;

'site' means the whole of or that part of the land reasonably required by the builder for the carrying out and completion of the works;

'stage' means the relevant stage as described in schedule 2;

'start and price review date’ means the date stated in item 6;

'statutory or other authority' means a person authorised under the Building Act or the Local Government, State or Federal Government or any government agency that has power to affect the works;

'variation' means;

(a) an omission, addition or change to the works; or

(b) a change in the manner of carrying out the works;

'variation document' has the meaning in subclause 19.1;
'works' means the works to be carried out, completed and handed over to the owner in accordance with this contract as shown in the contract documents including variations;

'working days' means days other than non-working days, and like words have a corresponding meaning.

Defined terms indicated
35.2 Whenever a defined term appears in this contract it is in bold text.

Construction
35.3 In this contract:

(a) words denoting the singular number only include the plural number and vice versa;
(b) a reference to any gender includes every other gender;
(c) words denoting individuals only includes corporations and vice versa;
(d) where a period of time is specified by a number of days and the last day of the period falls on a non-working day such period is extended to end on the next working day; and
(e) the general notes, clause headings and side notes do not form part of this contract and cannot be used in its interpretation.

Governing law
35.4 This contract is to be construed under the law of the State of Queensland.

Where more than one owner
35.5 If there is more than one owner:
1. the obligations in this contract apply to each owner individually and to all owners as a group;
2. a quote, notice, claim or any other communication to the owner has only to be given to one of the owners; and
3. only one owner has to sign a quote, notice, instruction or other communication to bind all owners.

No waiver
35.6 Except as provided at law or in equity or elsewhere in this contract, none of the provisions of this contract may be varied, waived, discharged or released, except with the prior written consent of the parties.

Severance
35.7 Any provision in this contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this contract.
Contract Information Statement

This Statement is approved under S.99(1) of the Domestic Building Contracts Act 2000 for HIA QC1, QC2 and QC3 contracts only. This Statement is not to be used for a cost plus contract.

In this Statement, the Domestic Building Contracts Act is referred to as the Act.

This Statement contains general information about regulated contracts for the benefit of building owners.

Contract Checklist

☐ If the work under the contract is valued at more than $3,300 and involves:
  (a) the construction of a new home or duplex;
  (b) the construction of any building or fixture associated with your home, such as a garage, carport, retaining wall, driveway, fence, workshop, swimming pool or spa;
  (c) renovations, extensions, alterations, improvements or repairs to your home, duplex or home unit;
  (d) kitchen or bathroom refits; or
  (e) landscaping and paving.
then, you must enter into a written contract. Your contractor is to provide you with a copy of the written, signed contract as soon as practicable after the contract is entered into (no later than 5 days from the date of the contract) and before commencing work.

Before signing the contract, you should read it thoroughly, together with this statement, and ask your contractor about anything that you do not understand. Check that:

☐ the contract is in English and is legible;
☐ the names and addresses of you and your contractor are clearly stated;
☐ your contractor's licence number is stated on the contract and it is the same as on the contractor's licence card;
☐ the date the contract is made is indicated;
☐ the start and finish dates for the work are stated or if the start date is not known, the contract must state a building period and that your contractor will start work as soon as it is reasonably possible;
☐ the allowances that the contractor has made in working out the time required to do the work for certain types of likely delay (such as bad weather, weekends and public holidays etc) are reasonable for when it is anticipated that the work will be carried out;
☐ if the start date is unknown, the contract should state how the start date is to be decided;
☐ the location of the building site and description of location, including lot-on-plan or similar is included;
☐ the total price and payment provisions are clearly stated;
☐ definitions of key terms are included;
☐ there is a description of any fixtures or fittings shown on the plans which are not included in the work;
☐ if the work involves footings or slabs, the contractor has obtained appropriate foundations data. You are entitled to a copy of this data on paying for it; and
☐ the applicable statutory warranties are set out in the contract.

Other Contract Documents

If your contract includes prime cost items, or provisional sum items, the contract is to have a separate schedule describing each item and showing a breakdown of the estimated prices for each and any margin that your contractor may charge when the actual price is more than the allowance and when claiming payment your contractor must give you evidence of the cost.

The plans and specifications showing in detail what work is to be done are to be attached to the contract. These must be sufficiently detailed to enable any necessary approvals or authorisations from local government or private certifiers to be obtained.

Check the plans for accuracy ensuring all variations are included. Advise your contractor immediately of any errors or omissions. If you have specific requirements with regard to quality and finish, these details (eg type and number of coats of paint, materials to be used, etc) should be written in the contract.
Display Homes

If your contractor is to construct a home similar to your contractor’s display home, your contractor must, unless you agree otherwise and clearly indicate that agreement in your contract, use the same plans and specifications and build to the same quality using materials of the same quality.

The Cooling-Off Period

Under the Act you have a right to withdraw from the contract during a ‘cooling-off’ period. You may withdraw from the contract during the following periods of time:

☐ within 5 working days of receiving, from your contractor, a copy of both the signed contract and this information statement; or
☐ if the items above are given to you separately, then within 5 working days of receiving the second document.

To withdraw from the contract you must give a written notice of withdrawal to your contractor or to your contractor’s address as shown on the contract before the 5 working day period expires. If you withdraw your contractor is entitled to $100 plus all out of pocket expenses reasonably incurred to the date of withdrawal.

If your contract does not contain a notice advising you of your right to ‘cool off’, then you are entitled to withdraw within the period of up to 7 days after you become aware that the contract should have contained such a notice.

You do not have a right to withdraw if you:

☐ and your contractor had a previous contract on substantially the same terms for the same site or home; or
☐ have received independent legal advice before entering into the contract.

You may sign a notice waiving your rights to the cooling off period under a repair contract to enable the contractor to immediately start the repair work.

Building Approvals

Approvals for building work must be obtained from a building certifier. All building certifiers must be accredited by BSA.

If you wish to engage a building certifier, legislation states that the engagement must be in writing and must state the certification fee. It is unlawful for a building certifier to certify or approve work with which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

Building inspections on dwellings must be performed by a building certifier or a competent person authorised by the certifier at the footing, slab, frame and final stage. The primary function of these on-site inspections is to ensure that construction work complies with approved plans and recognised building standards, including the Building Code of Australia (BCA). These inspections do not ensure compliance with the terms of the contract or judge the quality of the work.

It is your responsibility, working together with your contractor to ensure that the work is constructed to an acceptable standard.

Your contractor must also provide you with a copy of each certificate of inspection as it is issued. As soon as is practicable after the work is completed, your contractor must also provide you with copies of any reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water or sewerage.

Insurance

For construction of a new home

Make sure that construction insurance has been arranged and paid for by your contractor. This insurance covers your home during the construction phase against such things as fire, storm and tempest, flood, theft, vandalism, etc.

For construction involving an existing home

Advise your existing insurance company of the details of the work before it is started. Your home property insurance policy may be inoperative while construction is in progress. Discuss this with your insurance company.
Statutory Insurance

For contracts for residential construction work over $3,300 in value, the BSA Statutory Insurance Scheme provides up to $200,000 cover for a 6 1/2 year period if a licensed contractor performs the work.

The residential construction work covered includes:
(a) the construction of a dwelling or unit (provided the building is not over 3 storeys in height) and residential outbuildings (ie garage, pool change room, etc); and
(b) certain replacements of, or extension to, part or all of a residential building (including refitting bathrooms and kitchens).

Your contractor is required to pay the premium directly to the BSA before the plans can be approved by the local government or building certifier. When you receive your Certificate of Insurance and policy from the BSA, read the terms of the policy (note the extent of cover and exclusions) and check that the Notified Contract Value agrees with your contract price. If these amounts vary by more than $5,000 you should contact the BSA to amend your cover.

PART TWO: DURING CONSTRUCTION

Payments

The Act places restrictions on amounts that your contractor can claim.

The deposit is to be no more than 5% where the price is $20,000 or more or where the price is less than $20,000 can be up to 10%.

If the price is to be paid in instalments, the amount of each instalment is to be stated in the contract.

The Act sets out the following payment schedules for relevant contracts:

<table>
<thead>
<tr>
<th>Stages</th>
<th>Percentage of Original Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contract to build to enclosed stage</td>
<td>Base Stage: 20%  Frame Stage: 25%  Completion of Contract: Balance</td>
</tr>
<tr>
<td>2. Contract to build to fixing stage</td>
<td>Base Stage: 12%  Frame Stage: 18%  Enclosed Stage: 40%  Completion of Contract: Balance</td>
</tr>
<tr>
<td>3. Contract to build to all stages</td>
<td>Base Stage: 10%  Frame Stage: 15%  Enclosed Stage: 35%  Fixing Stage: 20%  Practical Completion: Balance</td>
</tr>
</tbody>
</table>

You and your contractor may agree that a relevant schedule does not apply to your contract and, in which case, an amended schedule must form part of your contract. You cannot agree to vary the maximum deposit.

You should be aware of any upcoming progress payments. Carefully follow the arrangement for payment made in your contract, making sure that you pay by the due date and do not pay more than the required amount.

In the schedules:

*Base Stage* means

For buildings with a timber floor with base brickwork, when:
- concrete footings for the floor are poured; and
- base brickwork is built to floor level; and
- bearers and joists are installed;

OR

For buildings with timber floor without base brickwork, when
- stumps, piers or columns are finished; and
- bearers and joists are installed;
OR
For buildings with suspended concrete slab floor, when
☐ concrete footings are poured; and
☐ formwork and reinforcing for the suspended slab are installed;

OR
For a building with a concrete floor (not suspended), when the floor is finished.

Enclosed Stage means when:
☐ External wall cladding is fixed;
☐ The roof covering is fixed;
☐ Structural flooring is laid;
☐ External doors are fixed (even if only temporarily); and
☐ External windows are fixed (even if only temporarily).

Fixing Stage means when all internal lining, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed.

Where the contract is to build to a stage suitable for habitation, the payment on practical completion is due only once the home is suitable for habitation. If there are any minor omissions or defects then your contractor should provide you with a signed list of these stating by when your contractor is to correct each defect or omission. The list must also state any defects or omissions which you believe exist but that your contractor does not agree with.

Variations
Any change to the work to be done under a contract is known as a variation.

Your contractor must put any variations in writing as soon as practicable and, if the variation means additional work, it is to be done before that work is started except where the work is urgent and it is not practicable to get it in writing first.

Your contractor must give you a copy of the variation document as soon as practicable and at least within 5 business days from when the document is signed. The variation document must:
(a) be in English and legible;
(b) be signed by your contractor. Your contractor must also take reasonable steps to have you sign the document;
(c) describe the variation;
(d) state the reason for the variation (only if sought by your contractor);
(e) provide a reasonable estimate of any delay to the work which may result;
(f) state the change to the contract price or set out the method for calculating the price change. If this is not stated, your contractor may still be entitled to the cost of the variation plus a reasonable profit; and
(g) provide for when the price for the variation is to be paid or credited.

If you agree with the contents of the variation document, you should sign it.

If your contractor asks for a variation involving additional work, you are only liable to pay for that extra work, including excavations, if your contractor could not reasonably have foreseen that work at the time of contracting.

The Site
Your contractor is entitled to occupy the site for the purposes of carrying out the work. You are entitled to reasonable access to the site to view the work but you must not interfere with the carrying out of the work. If you do so, you become liable for resulting costs or delays. If you are going to live in the completed work within 6 months of completion the contractor has no right to place a caveat over your land.

Dispute Prevention
Disputes between contractors and consumers occur for many reasons including:
(a) inaccurate or incomplete documentation;
(b) poor communication;
(c) unsatisfactory work;
(d) delays; and
(e) lack of knowledge of building practices.

You should maintain regular contact with your contractor and ask your contractor about anything you
do not understand. Record key events, for example dates and details of meetings, phone calls, etc in
your diary. This can be very useful to avoid or resolve disputes.

Quality Control

It is your responsibility, working with your contractor, to check the quality of the work. The best way to
achieve the desired quality is to conduct regular inspections of the work (at roughly the progress
payment stages), by appointment with your contractor.

If you are not confident that you have the experience or time to sufficiently safeguard quality then you
may wish to engage an appropriately qualified and experienced building consultant. If you are going
away you should appoint an attorney to deal with your contractor in your absence. If you intend to
engage a building consultant or appoint an attorney, you should advise your contractor.

On Completion/Handover

When your contractor advises you of handover, a final, pre-handover inspection should be arranged.
This inspection, with your contractor, is an opportunity for you to:
(a) check the house thoroughly for defective or missing items;
(b) make sure you receive from your contractor a list of minor defects and omissions;
(c) record details on the handover document of any items missing, damaged or unfinished; and
(d) provide the final progress payment (do not withhold this payment without first obtaining legal
advice).

PART THREE: DISPUTES

If you have any concerns about the building work:

• Advise your contractor immediately of any problems

Your first step is to convey your concerns in writing to your contractor, giving a reasonable time (say,
14 days) in which to address the matter. Make sure you keep a copy for your records.

• For unresolved technical disputes after completion, you may refer the issue to the BSA

You should note that the BSA cannot assist with minor matters that are more than 6 months old so
you should contact the BSA about any such matter as soon as it is apparent. After you have lodged a
complaint, a BSA technical representative may meet you and your contractor on-site and inspect the
work. Prior to the site inspection, you and your contractor will have a further opportunity to resolve the
dispute.

The BSA, at the site inspection, will:
(a) make a determination as to who is responsible for defects;
(b) where appropriate, direct your contractor to rectify any defects or complete the works. If your
contractor is directed to rectify defects you should allow reasonable access.

The BSA can be contacted by calling 3225 2800 (or your regional BSA office) or writing to PMB 84
Coorparoo, Brisbane, Qld, 4151.

• Apply to the Queensland Civil and Administrative Tribunal

Contractors and consumers are all entitled to take their domestic building disputes to the Queensland
Civil and Administrative Tribunal. More information on the Queensland Civil and Administrative
Tribunal's procedures can be obtained by calling 1300 753 228, or writing to the Queensland Civil and
Administrative Tribunal, GPO Box 1639, Brisbane Qld 4001.

In addition to the dispute resolution alternatives outlined above, you may have a right to pursue your
concerns in the Court or arbitration system. Expert advice should be obtained before commencing
proceedings or taking any other action under the contract, eg pursuing liquidated damages or
terminating the contract.
PART FOUR: AFTER MOVING IN

Warranties

- **Manufacturer's Warranties**
  Obtain copies of the manufacturer's warranties (commonly of 12 month's duration) for each of your new household appliances from your contractor.

- **Statutory Warranties**
  The Act implies certain warranties into regulated contracts. These warranties must be stated in the contract and are set out below:

<table>
<thead>
<tr>
<th>Warranty</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>All materials will be good and suitable for the purpose for which they are used and unless otherwise stated in the contract, all materials used in the work will be new.</td>
<td>Only applies where the contractor is responsible for supplying the materials. The warranty does not apply where: (a) you have engaged an architect to administer the contract and the contractor is subject to the direction of the architect for supplying the materials; or (b) the contract states that you are responsible for nominating the materials and, without any recommendation, suggestion, criticism or other approach being made to you by the contractor, you specifically nominate certain materials and either: (i) there are no reasonable grounds for not using those materials; or (ii) there are reasonable grounds for not using those materials but the contractor has given written advice to you not to use them and despite that advice you have insisted on those materials being used. As to the suitability of materials regard must be had to generally accepted practices or standards applied in the building industry or the specifications, instructions or recommendations of manufacturers or suppliers of the materials.</td>
</tr>
<tr>
<td>The contractor will comply with all relevant laws.</td>
<td></td>
</tr>
<tr>
<td>The works will be carried out in an appropriate and skilful way and with reasonable care and skill.</td>
<td></td>
</tr>
<tr>
<td>The work will be carried out in accordance with the plans and specifications.</td>
<td></td>
</tr>
<tr>
<td>The detached dwelling or home will be suitable for occupation when the work is finished.</td>
<td>Applies if the contract is for work that: (a) consists of the erection or construction of a detached dwelling; or (b) is intended to renovate, alter, extend, improve or repair a home, to a stage suitable for occupation.</td>
</tr>
<tr>
<td>The work will be carried out with reasonable diligence</td>
<td>Applies only to contracts if the contract is a cost-plus contract and it does not have a stated completion date or period.</td>
</tr>
<tr>
<td>Provisional sums will be calculated with reasonable care and skill</td>
<td>Reasonable care and skill requires consideration by the contractor of all information reasonably available when the contract is entered into (including information about the nature and location of the building site).</td>
</tr>
</tbody>
</table>

**Footings Foundations and Termite Systems**

You should also be aware that you have obligations to maintain foundations and footings of completed work and also the termite management system.