

JOB NO.

BUILDER'S COPY

MASTER BUILDERS
COST PLUS
(RESIDENTIAL)

THE BUILDERS SHOULD INSERT INSIDE THE FRONT COVER OF THIS BOOKLET THE BUILDER'S YELLOW COPY OF THE SCHEDULE AND APPENDIX AND RETAIN FOR THE BUILDER'S RECORDS



GENERAL CONDITIONS

COST PLUS
(RESIDENTIAL)

COST PLUS CONTRACT

1. DEFINITIONS	PAGE 6
2. INTERPRETATION	PAGE 7
3. DISCREPANCIES AND AMBIGUITIES	PAGE 7
3.1 Parties to consult if discrepancy or ambiguity found	7
3.2 Contract complete in itself	7
3.3 Order of precedence of documents	7
3.4 Figured dimensions prevail over scaled dimensions	7
4. APPROVAL TO COMMENCE BUILDING	PAGE 7
4.1 Necessary steps to be taken to obtain any required approvals	7
4.2 A party may end the Contract if necessary approvals not obtained within 75 days	7
4.3 Consequences of ending Contract under Clause 4.2	7
5. COOLING OFF PERIOD	PAGE 8
5.1 Owner may withdraw from Contract during Cooling off Period	8
5.2 Requirements for Owner to withdraw	8
5.3 Limitations on right to withdraw	8
5.4 Consequences of withdrawal	8
6. INSURANCE	PAGE 8
6.1 Builder's obligation to comply with WorkCover requirements	8
6.2 Contract Works policy to be provided by Builder	8
6.3 Public liability insurance to be provided by Builder	8
6.4 Requirements for public liability insurance policy	8
6.5 No responsibility on builder if injury, death, loss or damage caused by owner	8
6.6 Evidence of policies to be provided by the builder upon written request	8
6.7 Owner's responsibility for insurance	8
7. THE LAND	PAGE 8
7.1 Evidence of title or land owner's consent to carry out the works	8
7.2 Builder has free and uninterrupted access to land and existing buildings	8
7.3 Access for vehicles and machinery	8
7.4 Owner's right to inspect Works	8
7.5 Identification of land to be provided by owner	8
7.6 Evidence of boundaries or position of the land to be provided by owner	8
7.7 Owner's failure to provide evidence of boundaries or position of the land	8
8. COMMENCEMENT AND COMPLETION	PAGE 9
8.1 Date for Commencement	9
8.2 Builder may give commencement notice to owner	9
8.3 Time for completion	9
9. PRIME COST ITEMS AND PROVISIONAL SUMS	PAGE 9
9.1 Owner to provide directions relating to prime cost items or provisional sums	9
9.2 Builder to provide notice to owner where a prime cost item is unavailable	9
9.3 If owner fails to specify alternative prime cost item	9
9.4 Builder to provide copies of invoices, receipts etc to the owner	9
10. BUILDER'S OBLIGATIONS	PAGE 9
10.1 The builder's warranties	9

COST PLUS CONTRACT

11. OWNER'S OBLIGATIONS		PAGE 9
11.1	Evidence of capacity to pay the Estimated Total Cost of the Works	9
11.2	Builder may request evidence of capacity to pay during the contract	9
11.3	Owner's obligation if capacity to pay is reduced or ceases	9
11.4	Owner's obligation to pay the Total Cost of the Works	9
11.5	Owner's obligation to pay deposit.....	9
11.6	Builder to make Progress Claims	9
11.7	Owner to make progress payments	9
11.8	No retentions or set-off	9
11.9	Interest payable on outstanding payments.....	10
11.10	Materials supplied by owner to be good and suitable for their purpose	10
11.11	Document supplied by Owner	10
11.12	Owner not to interfere with the carrying out of the works	10
11.13	Communications between Owner and Builder	10
11.14	Contract subject to loan approval.....	10
11.15	Right to cancel contract if loan approval rejected	10
11.16	Owner to deposit money into security account	10
11.17	Builders entitlement to security account money.....	10
11.18	Owner's entitlement after final payment	10
11.19	Disputes relating to Security Account Money.....	10
12. VARIATIONS BY AGREEMENT		PAGE 10
12.1	Notice required when party requests a variation	10
12.2	Builder not obliged to perform variation	10
12.3	Agreement to vary Works	10
12.4	Variation Document.....	10
12.5	Copy of variation document must be given to Owner	10
12.6	Builder under no obligation to commence any variation until Owner provides evidence of capacity to pay	10
13. VARIATIONS REQUIRED BY LAW		PAGE 10
13.1	Variation due to legal requirements	10
13.2	Procedure for variation	11
13.3	Owners must consent to variation	11
14. VARIATIONS FOR LATENT CONDITIONS		PAGE 11
14.1	Builder to notify Owner of Latent Condition	11
14.2	Variation due to Latent Condition	11
14.3	Procedure for variation	11
14.4	Owners must consent to variation	11
14.5	Limitation on Builder's right to recover for variation	11
14.6	Clause not to apply where Provisional Sum.....	11
15. DELAYS AND EXTENSIONS OF TIME		PAGE 11
15.1	Builder's entitlement to extensions of time	11
15.2	Extensions for delay which have been allowed	11
15.3	Date for Practical Completion deemed to be extended if Owner fails to reject or dispute Builder's claim	11
15.4	If Owner rejects or disputes Builders claim	11
16. SUSPENSION OF THE WORKS		PAGE 11
16.1	Builder's entitlement to suspend the Works.....	11
16.2	Written notice to suspend the Works	11
16.3	Owner to remedy breach within 7 days	11
16.4	Builder must recommence the Works within 14 days of Owner remedying breach	11

COST PLUS CONTRACT

17. OBLIGATIONS OF BOTH PARTIES UPON PRACTICAL COMPLETION	PAGE 11
17.1 Submission of final progress claim and certificate of practical completion by builder	11
17.2 Owner must notify builder if unable to attend final inspection.....	12
17.3 If owner fails to attend final inspection final claim due and payable.....	12
17.4 If owner agrees works are complete, final claim becomes due and payable	12
17.5 Builder to provide signed defects document to owner in certain circumstances	12
17.6 Builder must complete the agreed works on the defects document	12
17.7 Final claim payable by owner upon practical completion	12
17.8 Owner's entitlement to keys and possession of the works	12
17.9 If Owner takes possession of the works when not entitled to do so.....	12
17.10 Builder to hand over works upon payment of all monies under the contract	12
18. LIQUIDATED DAMAGES	PAGE 12
18.1 Owner's entitlement to liquidated damages	12
18.2 Liquidated damages may be deducted from final payment	12
19. DEFECTS LIABILITY PERIOD	PAGE 12
19.1 Defects liability period	12
19.2 Owner to provide defects list prior to expiry of defects liability period	12
19.3 Builder must rectify defects identified during the defects liability period.....	12
20. OWNER'S RIGHTS TO TERMINATE CONTRACT	PAGE 12
20.1 Owner's right to serve notice of intention to terminate contract	12
20.2 If builder fails to remedy breach, owner may terminate contract	13
20.3 Owner may not terminate contract in certain circumstances	13
20.4 Owner's right to engage another builder to complete the works.....	13
21. OWNER'S STATUTORY RIGHTS TO TERMINATE CONTRACT	PAGE 13
21.1 Owner's right to terminate the contract under Section 90 of the Act	13
21.2 Owner to give written notice to terminate contract	13
21.3 Builder entitled to reasonable price if contract ended	13
22. BUILDER'S RIGHTS TO TERMINATE CONTRACT	PAGE 13
22.1 Builder's right to serve notice of intention to terminate contract	13
22.2 If owner fails to remedy breach builder may terminate contract	13
22.3 Builder may not terminate contract in certain circumstances	13
22.4 Builder's right to recover upon termination	13
23. TERMINATION FOR INSOLVENCY	PAGE 13
23.1 Either party may terminate contract for insolvency	13
23.2 Requirements of notice	13
24. SERVICE OF NOTICES	PAGE 13
24.1 Copies of notices to be provided by one party to the other	13
24.2 Methods of service for notices and other documents	13
25. COST ESCALATION - ESTIMATED TOTAL COST OF THE WORKS LESS THAN \$200,000	PAGE 14
25.1 Application of Clause	14
25.2 Delays before commencement of the works	14
25.3 Delays after commencement of the works	14
25.4 Right not subject to claim for extension of time	14

COST PLUS CONTRACT

26. COST ESCALATION - ESTIMATED TOTAL COST OF THE WORKS OVER \$200,000	PAGE 14
26.1 Application of Clause	14
26.2 Delays for which Builder is not responsible	14
25.3 Right not subject to claim for extension of time	14
27. LODGING OF A CAVEAT BY THE BUILDER	PAGE 14
27.1 Lodging of Caveat on Resident Owner	14
27.2 Builder may lodge Caveat on non-Resident Owner	14
28. RESOLUTION OF DISPUTES	PAGE 14
28.1 Disputes may be referred to relevant bodies	14
29. COST PLUS PROVISIONS	PAGE 14
29.1 Items constituting the Total Cost of the Works	14
29.2 Items constituting the Actual Cost of the Works	14
29.3 Items constituting the Preliminaries which form part of the Actual Cost of the Works	15
29.4 Items constituting the Cost Plus Fee component	16
29.5 How Cost Plus Fee to be determined	16
29.6 How Preliminaries are to be accounted for	16
29.7 Progress Payments for the Total Cost of the Works	16
29.8 Payment for unfixed materials	16
29.9 Schedule of Rates relating to Actual Costs of the Works	16
29.10 Adjustment of Cost Plus Fee component	17
29.11 Reimbursement for Additional Duties	17
29.12 Records to Substantiate Costs	17
29.13 Periodical revision and updates	17
29.14 Value of Estimated Total Cost of the Works	17
30. MISCELLANEOUS	PAGE 17
30.1 Unfixed and demolished materials	17
30.2 No adjustment for different dimensions	17
30.3 Builder's rights to subcontract	17
30.4 Parties rights to assign contract	17
30.5 Copyright	17
30.6 Contract to be governed by the laws of Queensland	17
30.7 Severance	17
30.8 Joint and several liability	17
30.9 Owner's agent	17
30.10 Acts of owner's agent deemed to be those of the owner	17
30.11 Architect as Owner's agent	17
30.12 Architect's Instructions	17
30.13 Replacement of Owner's Agent	17
30.14 Builder to act as principal contractor	17

COST PLUS CONTRACT

1. DEFINITIONS

Note - In this **Contract**, certain words and phrases used throughout are defined and are shown in bold when used; e.g., **Owner**

In this Contract, except where the context otherwise requires -

Act -	means the Domestic Building Contracts Act 2000;
Actual Cost of the Works	means the costs and expenses incurred by the Builder and the Owner in the Construction of the Works whether paid for or not, excluding any fees, on costs and percentages charges or payable to the Builder under Contract for the services of management of the construction of the Works ;
Appendix -	means the Appendix to the Schedule of this Contract ;
Authority -	means the Queensland Building Services Authority;
Base Stage -	means that stage of the Works when; <ul style="list-style-type: none"> * for a home with a timber floor with base brickwork, when the concrete footings for the floor are poured and the base brickwork is built to floor level and the bearers and joists are installed; * for a home with a timber floor without base brickwork, the stumps, piers or columns are finished and the bearers and joists are installed; * for a home with a suspended concrete slab floor, the concrete footings are poured and the formwork and reinforcing for the suspended slab are installed; and * for a home with a concrete floor, other than a suspended concrete slab floor, the floor is finished.
Builder -	means the person stated in Item 2 of the Schedule and includes the Builder's permitted assignees and transferees;
Builder's Representative -	means the person stated in Item 20 of the Schedule ;
Business Day -	means a Day that is not a Saturday, Sunday, or day that is wholly or partly observed as a public holiday throughout Queensland;
Contract -	means these general conditions, the Schedule , the Plans , Specifications , and other documents annexed to, or incorporated by reference in, the Contract ;
Contract Works Insurance -	means a policy of insurance providing indemnity to the Builder , its subcontractors, the Owner and any lending authority against liability for physical loss, destruction or damage to the Works or to materials and goods upon or adjacent to the Land ;
Cost Plus Fee -	means that charge, fee, on cost and/or percentage nominated by the Builder in the Contract for managing the construction of the Works to remunerate the Builder for services provided under the Contract ;
Days -	means calendar days;
Date for Commencement	means the date by which the Builder must commence the Works on the Land as determined in accordance with Clause 8.1 of the Contract ;
Date of Practical Completion -	means the date certified as such in a certificate under Clause 17.1;
Date for Practical Completion -	means the date by which the Works are to reach Practical Completion as determined in accordance with Item 14 of the Schedule ;
Defects Liability Period -	means the period commencing on the Date of Practical Completion and ending six (6) months after that date;
Deposit -	means the amount to be paid by the Owner to the Builder pursuant to Clause 11.5 of this Contract and as stated in Item 7 of the Schedule ;
Domestic Building Work -	has that meaning provided for in Section 8 of the Act ;
Enclosed Stage -	means that stage of the Works when the external wall cladding is fixed; the roof is fixed but without soffit linings necessarily having been fixed or for a tile roof, pointing necessarily having been done or for a metal roof, scribing and final screwing off necessarily having been done; and the structural flooring is laid; and the external doors are fixed (even if only temporarily, but, if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed; and the external windows are fixed (even if only temporarily);
Estimated Total Cost of the Works -	means that figure provided to the Owner by the Builder as stated in ITEM 6 of the Schedule ;
Foundations Data -	means the information about the Land needed for the preparation of an appropriate footings design for the Land , if appropriate a slab design for the Land and an adequate estimate of the cost of constructing the footings and concrete slab, eg. soil test, contour plan etc;
Frame Stage -	means that stage of the Works when the building's frame is finished;
Fixing Stage -	means that stage of the Works when all the internal linings, architraves, cornices, skirtings, doors to rooms, baths, shower trays, wet area tiling, built in shelves, built in cabinets and built in cupboards are fitted and fixed in position;
Land -	means the Land described in Item 4 of the Schedule on which the Works are to be carried out;
Land Owner -	means a registered owner of the Land as stated on the certificate of title;
Land Owner's Consent -	means the written consent obtained by the Owner (if required) under Clause 7.1 from all Land Owners consenting to the carrying out of the Works by the Builder on the Land ;
Latent Condition -	means any physical condition on or around the Land , including surface and subsurface conditions, which differ materially from the physical conditions reasonably expected by the Builder at the time the Contract was entered into.
Owner -	means the person stated in Item 1 of the Schedule & includes the Owner's heirs, executors, administrators, permitted assignees & transferees;
Owner's Agent -	means the person stated in Item 20 of the Schedule ;
Plans -	means the plans, drawings and designs relating to the Works described in Item 5(a) of the Schedule .

COST PLUS CONTRACT

Possession -	means when the Works , or any part of the Works , are taken over, occupied or used by the Owner or the Owner's employees or agents;
Practical Completion Stage -	means that stage of the Works when the Works are completed in accordance with the Contract and all relevant statutory requirements, apart from minor omissions or minor defects, and the Works are reasonably suitable for habitation;
Prime Cost Item -	means an item (for example, a fixture or fitting) that either has not been selected, or whose price is not known; at the time the Contract is entered into the cost for the supply and delivery of which the Builder must make a reasonable allowance in the Contract ;
Provisional Sum -	means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under the Contract for which the Builder , after making all reasonable inquiries, cannot give a definite amount at the time the Contract is entered into.
Resident Owner -	means an Owner who is an individual and intends to reside in the building on completion of the Works or within six (6) months after completion of the Works ;
Schedule -	means the Schedule contained in this Contract ;
Security Account Money -	means that part of the Estimated Total Cost of the Works which is to be provided directly by the Owner and is not to be provided by a financial institution by way of a loan provision;
Specifications -	means the specifications described in Item 5(b) of the Schedule ;
Tribunal -	means the Commercial and Consumer Tribunal established under the Commercial and Consumer Tribunal Act 2003; and
Total Cost of the Works -	means that the Actual Cost of the Works plus the Cost Plus Fee component stipulated in the Contract , as adjusted under this Contract and as revised from time to time;
Works -	means the whole of the work to be carried out by the Builder under the Contract , a description of which is contained in Item 3 of the Schedule , and includes variations to the Works .

2. INTERPRETATION

In this **Contract**;

- (a) headings and explanatory notes contained in this **Contract** do not form part of and cannot be used in its interpretation;
- (b) words in the singular include the plural and vice versa, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) references to a person includes an individual, firm or a body incorporated or unincorporated; and
- (e) if the time for giving any notice, making any payment or doing any other act required or permitted by the **Contract** falls on a **Day** which is not a **Business Day**, then the time for giving the notice, making the payment or doing the other act shall be deemed to be the next **Business Day**.

3. DISCREPANCIES AND AMBIGUITIES

3.1 Parties to consult if discrepancy or ambiguity found

If either party finds any discrepancy or ambiguity in this **Contract** that party must notify the other party in writing. The parties agree to consult with each other in an attempt to resolve the discrepancy or ambiguity. Failing resolution, the discrepancy or ambiguity is to be resolved in accordance with Clause 28.

3.2 Contract complete in itself

The parties acknowledge that the terms of this **Contract** are set out in the **Contract** and shall not be altered, varied, suspended, deleted, or affected by reference to any prior representations, conditions or agreement, whether written or verbal.

3.3 Order of precedence of documents

Subject to Clause 3.1, any discrepancy or ambiguity in or between any document comprising the **Contract** is to be resolved by adopting the following order of precedence:

- * special conditions (if any);
- * these general conditions;
- * the **Specifications**;
- * the **Plans**;
- * any other documents.

3.4 Figured dimensions prevail over scaled dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

4. APPROVAL TO COMMENCE BUILDING WORK

4.1 Necessary steps to be taken to obtain any required approvals

The **person** stated in Item 18 of the **Schedule** (if applicable) must take all necessary and reasonable steps, and pay any relevant fee, to obtain the necessary building and/or planning approvals to commence the **Works** on the **Land**.

4.2 A party may end the Contract if necessary approvals not obtained within 75 days

If the necessary building and/or planning approvals are not obtained within seventy-five (75) **Days** of the date of the signing of this **Contract**, either party may give written notice to the other party ending this **Contract** without liability to the other, except only that the **Builder** is entitled to be paid the reasonable amount of expenses incurred under this **Contract** to the date the **Contract** was ended. This amount is deemed to be a debt due and payable by the **Owner** to the **Builder**.

4.3 Consequences of ending Contract under Clause 4.2

If the **Builder** has received the **Deposit** from the **Owner** and that amount is in excess of the amount payable to the **Builder** under Clause 4.2, the **Builder** must refund any excess to the **Owner** within seven (7) **Days** of the **Contract** ending.

COST PLUS CONTRACT

5. COOLING OFF PERIOD

- 5.1 Owner may withdraw from Contract during cooling off period**
Subject to Clause 5.2, the **Owner** may withdraw from the **Contract** within five (5) **Business Days** after receiving both a signed copy of the **Contract** and a copy of a Contract Information Statement approved by the **Authority**.
- 5.2 Requirements for Owner to withdraw**
In order to withdraw from the **Contract** the **Owner** must give a written notice to the **Builder** stating that the **Owner** withdraws from the **Contract** under section 72 of the Domestic Building Contracts Act 2000.
- 5.3 Limitations on right to withdraw**
The **Owner** may not withdraw from the **Contract** if:
(a) the **Owner** and the **Builder** have previously entered into a **Contract** relating to the same home or **Land** in substantially the same terms;
(b) the **Owner** has received formal legal advice about the **Contract** before entering into the **Contract**; or
(c) at any time, the **Owner** tells the **Builder** that the **Owner** has received formal legal advice about the **Contract** before entering into the **Contract**.
- 5.4 Consequences of withdrawal**
If the **Owner** withdraws from the **Contract** under this Clause, the **Builder** must return the **Deposit** to the **Owner** less \$100 and any out of pocket expenses reasonably incurred by the **Builder** to the date the **Builder** received the **Owner's** notice. If the **Owner** has not paid the **Deposit**, the amount of \$100 plus the **Builder's** out of pocket expenses is deemed to be a debt due and payable from the **Owner** to the **Builder**.

6. INSURANCE

- 6.1 Builder's obligation to comply with WorkCover Requirements**
The **Builder** must, in respect of its workers, comply with all requirements of the current WorkCover Act.
- 6.2 Contract Works Policy to be provided by Builder**
The **Builder** is to effect and maintain a **Contract Works Policy** for the full insurable value of the **Works** in the joint names of **Owner**, **Builder** and any lender (if so required) from the **Date for Commencement** until the **Date of Practical Completion** or the date the **Owner** takes **Possession** of the **Works**, whichever is earlier.
- 6.3 Public liability insurance to be provided by Builder**
The **Builder** must, during the currency of the **Contract**, effect and maintain a public liability insurance policy covering the liabilities of the **Builder** and **Owner** to third parties in respect of personal injury, death and loss or damage to property, arising out of, or in connection with, the **Works**.
- 6.4 Requirements for public liability insurance policy**
The policy referred to in Clause 6.3 must:
(a) be in the joint names of the **Owner** and the **Builder**;
(b) provide cover for an amount which is not less than \$5 million for any one occurrence;
(c) include a waiver by the insurer of its subrogation rights against any of the co-insured; and
(d) operate as if each of the co-insured is deemed to be the subject of a separate policy of insurance (subject always to the overall sum not being increased thereby).
- 6.5 No responsibility on Builder if loss caused by Owner.**
As far as is permitted by law, the **Builder** is not liable for and does not provide an indemnity to the **Owner**, the **Owner's** employees or agents, or any other person for whom the **Owner** is responsible, for any personal injury or death to any person, or loss or damage to any property, which arises as a result of any act or omission by the **Owner** or any person for whom the **Owner** is responsible and in respect of such claims the **Owner** must indemnify the **Builder**.
- 6.6 Evidence of policies to be provided by the builder upon written request**
The **Builder** must, on written request from the **Owner**,

provide evidence of any insurance policies required to be effected by the **Builder** under this **Contract** within seven (7) Days.

6.7 Owner's responsibility for insurance

The **Owner** must insure the **Works** from the **Date of Practical Completion**.

If the **Works** involve the alteration, addition or repair of an existing building then the **Owner** must effect and maintain an insurance policy for the duration of the **Contract** which provides cover for the full replacement value of the any building affected by the **Works** and any contents thereof, against loss or damage, and must provide a copy to the **Builder** if the **Builder** makes a request in writing.

7. THE LAND

7.1 Evidence of title or Land Owner's Consent to carry out the Works

The **Owner** must provide to the **Builder** within ten (10) Days of signing the **Contract** either:

- satisfactory written evidence of the **Owner's** title to the **Land**, together with full details of any easements, restrictions or covenants which may affect the performance of the **Works**, or
- if the **Owner** is not the **Land Owner**, written consent from all **Land Owners** consenting to the carrying out of the **Works** by the **Builder** on the **Land**, together with satisfactory written evidence of their title to the **Land** and full details of any easements, restrictions or covenants which may affect the performance of the **Works**.

7.2 Builder to have free and uninterrupted access to land and existing buildings

As soon as practicable after the date of this **Contract**, and by the time stated in Item 17 of the Schedule, the **Owner** must provide to the **Builder** free and uninterrupted occupation of, and access to, the **Land** and to any existing buildings necessary to carry out the **Works**.

7.3 Access for vehicles and machinery

The party nominated in Item 17 of the **Schedule** is responsible for the cost of providing and maintaining access to the **Land** for any vehicles or machinery reasonably necessary for the carrying out of the **Works**.

If the **Owner** is responsible for providing access and the **Land** becomes inaccessible due to any reason beyond the control of the **Builder**, the cost incurred by the **Builder** in obtaining sufficient access is to be added to the **Total Cost of the Works** and included in the next progress claim.

7.4 Owner's right to inspect Works

Upon written request by the **Owner**, the **Builder** must give to the **Owner**, or a person authorised by the **Owner**;

- reasonable access to the **Land**, and
- a reasonable opportunity to view any part of the **Works**, provided the **Builder's** performance is not obstructed.

Access shall be by prior arrangement with the **Builder** and shall be during working hours or other times as agreed.

7.5 Identification of Land to be provided by Owner

The **Owner** must clearly and accurately identify the **Land** to the **Builder** to the **Builder's** satisfaction.

7.6 Evidence of boundaries or position of the Land to be provided by Owner

The **Owner** must, within seven (7) Days of signing this **Contract**, give to the **Builder** satisfactory evidence of the boundaries or position of the **Land**, and the **Owner** warrants that such evidence is accurate.

7.7 Owner's failure to provide evidence of boundaries or position of the Land

If the **Owner** fails to comply with Clauses 7.5 or 7.6, the **Builder** may, in writing, request the **Owner** to obtain a survey of the **Land**. If the **Owner** fails to obtain a survey within five (5) Days of the date of the **Builder's** request, the **Builder** may arrange for a survey of the **Land** and the cost of the survey plus 15% for overhead and profit is to be added to the **Actual Cost of the Works** and included in the next progress claim.

COST PLUS CONTRACT

8. COMMENCEMENT AND COMPLETION

8.1 Date for Commencement

The **Builder** must commence the **Works** on the **Land**:

- on or before the date (if any) specified in Item 13 of the **Schedule**; or
- within ten (10) **Days** of receiving all of the following:
 - all information, evidence and consents required to be given by the **Owner** under Clause 7;
 - satisfactory evidence of the **Owner's** capacity to pay the **Estimated Total Cost of the Works** pursuant to Clause 11.1; and
 - all necessary building and/or planning approvals required pursuant to Clause 4.1.
 - if a financial institution is providing loan money, the **Owner** gives the **Builder** a notice from the lending body that the **Works** may commence.

8.2 Builder may give commencement notice to owner

After commencement of the **Works**, the **Builder** may give a written notice to the **Owner** stating;

- the date the **Builder** commenced the **Works**;
- the **Date for Practical Completion**; and
- the date when the **Works** are anticipated to reach **Practical Completion**.

8.3 Time for completion

The **Builder** must bring the **Works** to **Practical Completion** by the **Date for Practical Completion**, as adjusted in accordance with this **Contract**.

9. PRIME COST ITEMS AND PROVISIONAL SUMS

WARNING TO BUILDING OWNER AS TO PRIME COST ITEMS AND PROVISIONAL SUMS

*It is always better to get a fixed price for all work. However, some fixtures, fittings and items of work may need to be selected after the **Contract** is signed (e.g., a stove, type of taps, etc, or cannot be priced at the time the **Contract** was entered into). If these items are specified as **Prime Cost Items** or **Provisional Sums**, the **Builder** will allow an amount in the **Estimated Total Cost of the Works** which should cover the expected cost of the item.*

9.1 Owner to provide directions relating to Prime Cost Items or Provisional Sums

If this **Contract** includes any **Prime Cost Items** or **Provisional Sums**, the **Owner** must give to the **Builder** all necessary written and signed directions requested by the **Builder** regarding the selection or supply of the items or work represented by either a **Prime Cost Item** or a **Provisional Sum** within seven (7) **Days**.

9.2 Builder to provide notice to Owner where a Prime Cost Item is unavailable

If any **Prime Cost Item** selected by the **Owner** is unavailable or will, in the opinion of the **Builder**, unduly delay the **Works**, the **Owner** must specify in writing to the **Builder** an alternative item, within seven (7) **Days** of the **Builder's** request to do so.

9.3 If Owner fails to specify alternative Prime Cost Item

If the **Owner** fails to comply with Clause 9.2, the **Builder** may select and supply an alternative **Prime Cost Item**, as near as reasonably possible in quality to the original **Prime Cost Item**.

9.4 Builder to provide copies of invoices, receipts, etc to the Owner

The **Builder** must give to the **Owner** a copy of any invoice, receipt or other document relating to the actual cost incurred by the **Builder** for any **Prime Cost Item** or **Provisional Sum** prior to or when seeking payment for, the relevant item or work.

10. BUILDER'S OBLIGATIONS

10.1 The Builder's warranties

The following warranties are incorporated into the **Contract** under Part 4 of the **Act**:

(a) The **Builder** will carry out the **Works**:

- in an appropriate and skilful way;
 - with reasonable care and skill;
 - in accordance with the **Plans and Specifications**; and
 - in accordance with all relevant laws and legal requirements including, for example, the Building Act 1975;
- (b) Materials supplied by the **Builder** for use in the **Works** will be good and suitable for the purpose for which they are to be used and, unless otherwise stated in the **Contract**, will be new;
- (c) **Prime Cost Items** and **Provisional Sums** have been calculated with reasonable care and skill;
- (d) If the **Works** consist of the erection or construction of a detached dwelling or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the **Works** will be suitable for occupation when the **Works** are completed.

11. OWNER'S OBLIGATIONS

11.1 Evidence of capacity to pay the Estimated Total Cost of the Works

The **Owner** must, within ten (10) **Days** of the **Owner** signing the **Contract**, provide evidence satisfactory to the **Builder** that the **Owner** has the financial capacity to pay the **Estimated Total Cost of the Works**.

11.2 Builder may request evidence of capacity to pay during the Contract

The **Builder** may, at any time prior to the **Works** reaching **Practical Completion**, request that the **Owner** provide satisfactory evidence of its capacity to pay the unpaid balance of the **Estimated Total Cost of the Works**, or the price of any variation, and the **Owner** must, within ten (10) **Days** of the request, provide such evidence to the **Builder**.

11.3 Owner's obligation if capacity to pay is reduced or ceases

The **Owner** must immediately notify the **Builder** if at any time during the currency of the **Contract** the **Owner's** capacity to pay the unpaid balance of the **Estimated Total Cost of the Works** is in any way reduced or ceases.

11.4 Owner's obligation to pay the Contract Price

The **Owner** must pay the **Builder** the **Contract Price** in accordance with this **Contract**.

11.5 Owner's obligation to pay deposit

The **Owner** must pay the **Deposit** to the **Builder**, upon signing of this **Contract**.

11.6 Builder to make progress claims

The **Builder** is entitled to claim payment of the **Contract Price** progressively, on completion of the stages set out in Part D of the **Appendix** to the **Schedule**. A progress claim must be in writing, certify that the **Works** have been completed to the relevant stage and set out the amount to be paid to the **Builder** in accordance with Clause 11.7.

11.7 Owner to make progress payments

On receiving a progress claim, the **Owner** must pay the **Builder**, within the period stated in Item 25 of the **Schedule**, a progress payment calculated in accordance with the following:

- The **Total Cost of the Works** calculated in accordance with Clause 29.1 for completion of the relevant stage; or
- The **Total Cost of the Works** based on a period of time;
- any adjustment to the **Total Cost of the Works** under this **Contract**;
- any other amount due and payable by the **Owner** to the **Builder** under the **Contract** or otherwise.

11.8 No retentions or set off

The **Owner** acknowledges that, subject to Clause 18.2, the **Owner** has no right of set-off under the **Contract** or otherwise, that is to deduct any amount from a progress payment due to the **Builder** under Clause 11.7, or to hold any retentions for defects or omissions.

COST PLUS CONTRACT

11.9 Interest payable on outstanding payments

If the **Owner** fails to make any payment to the **Builder** within the time for payment under this **Contract**, the **Builder** is entitled to interest on the outstanding amount at the rate specified in Item 24 of the **Schedule**, payable from the time for payment until the date of payment.

11.10 Materials supplied by Owner to be good and suitable for their purpose

If the **Owner** supplies materials for use in the **Works**, the **Owner** must supply materials which are good and suitable for the purpose for which they are to be used and, unless otherwise stated in the **Contract**, materials are to be new.

11.11 Documents supplied by Owner

If the **Owner** supplies any documents or **Foundations Data** to the **Builder**, the **Owner**:

- warrants that the documents or data are accurate and suitable for the purpose for which they are to be used;
- acknowledges that it is reasonable for the **Builder** to rely on the documents or data; and
- must supply sufficient number of copies to enable the **Builder** to undertake the **Works** and to obtain the necessary approvals, if the **Builder** is required to do so under this **Contract**.

11.12 Owner not to interfere with the carrying out of the Works

The **Owner**, must not obstruct, interfere with or hinder the carrying out of the **Works**. The **Owner** must take all reasonable steps to prevent all others from obstructing, interfering with or hindering the carrying out of the **Works**.

If the **Owner** or any person authorised by the **Owner** obstructs, interferes with, or hinders the performance of the **Works**, the **Owner** is liable to the **Builder** for any delay, and any additional costs incurred by the **Builder**, if the **Builder** gives the **Owner** a written notice advising of the delay or the additional cost within five (5) **Days** of the **Builder** becoming aware of the obstruction, interference or hindrance.

11.13 Communications between Owner and Builder

The **Owner** must communicate and deal with the **Builder** personally, the **Builder's Representative** or such other person notified to the **Owner** by the **Builder**. The **Owner** must not give directions to the **Builder's** employees or subcontractors. The **Owner** is not entitled to rely on any statements made or representations given by the **Builder's** employees or subcontractors other than those made or given by the **Builder** personally or the **Builder's Representative** and later confirmed in writing.

11.14 Contract subject to loan approval

Subject to Clause 11.15, where stated in Item 15 of the **Schedule**, this **Contract** is subject to the **Owner** obtaining from the lender stated in the **Schedule**, on or before the loan approval date stated in the **Schedule**, approval for a loan not less than the amount stated in the **Schedule**.

The **Owner** must:

- apply to the lender for the loan approval within five (5) **Days** from the date of this **Contract**; and
- give the **Builder** a written notice within three (3) **Days** after the loan approval date stating whether the **Owner** has obtained the loan approval.

11.15 Right to cancel Contract if loan approval rejected

If, within three (3) **Days** after the loan approval date, the **Owner** gives the **Builder** written notice that the **Owner** has not obtained the loan approval, together with evidence satisfactory to the **Builder** that the lender has assessed and rejected the loan approval, this **Contract** is at an end and the **Builder** must refund the **Deposit** less any expenses incurred by the **Builder** in performing the **Works**.

11.16 Owner to deposit money into security account

Unless the parties otherwise agree:

- the **Owner** is to deposit the **Security Account Money** into an account, in the joint names of the **Builder** and the **Owner**, with a financial institution selected by the **Owner** and approved by the **Builder**;
- withdrawals from the account are to be applied to pay progress payments to the **Builder** under the **Contract** before the loan monies (if any) are used to pay the balance of progress payments;

- the **Owner** must deposit the **Security Account Money** before the commencement of **Works**; and
- withdrawals from the account must require the signatures of both the **Builder** and **Owner**.

11.17 Builder's entitlement to Security Account Money

If the **Owner** fails to pay any amount due to the **Builder**, or if the **Builder** terminates the **Contract**, the **Builder** is entitled to the **Security Account Money** to the extent of any amount due and owing to the **Builder**.

11.18 Owner's entitlement after final payment

The **Owner** is entitled to the balance of the **Security Account Money** and any interest earned on the account after payment of the final progress payment to the **Builder**.

11.19 Disputes relating to Security Account Money

Should there be any dispute between the parties as to their entitlement to the **Security Account Money** it must be dealt with in accordance with any order or direction of the **Tribunal**. The parties must authorise the relevant financial institution to pay any **Security Account Money** in accordance with any such order or direction and acknowledge that the relevant financial institution is under no liability to either party on account of any such payment.

12. VARIATIONS BY AGREEMENT

12.1 Notice required when party requests a variation

Either party may give to the other a written notice requesting a variation of the **Works**.

12.2 Builder not obliged to perform variation

The **Builder**, may at its discretion, agree to carry out any variation requested by the **Owner**.

12.3 Agreement to vary Works

The parties may agree to vary the **Works** by adding or omitting work from the **Works**.

The **Builder** must ensure that the parties agreement to vary the **Works** is put in writing in a variation document signed by the **Builder** and the **Owner** within the shortest practicable time and before any work the subject of the variation is carried out.

12.4 Variation Document

The variation document provided by the **Builder** must:

- describe the variation;
- if the variation was requested by the **Builder**, state the reason for the variation;
- state the **Builder's** estimate of any delay to the **Works** as a result of the variation;
- state any adjustment to the **Estimated Total Cost of the Works** as a result of the variation, or how the adjustment will be calculated;
- where the value of the variation cannot be accurately determined, state a fair and reasonable estimate of the costs associated with the addition or omission the subject of the variation, and the amount for the variation shall be valued by reference to the actual costs incurred.

12.5 Copy of variation document must be given to Owner

As soon as practicable, and within five (5) **Business Days**, after a variation is agreed to, the **Builder** must give the **Owner** a copy of the signed variation document.

12.6 Builder under no obligation to commence any variation until Owner provides evidence of capacity to pay

The **Builder** is under no obligation to commence any variation until such time as the **Owner** produces satisfactory evidence to the **Builder** that the **Owner** has the financial capacity to pay the cost of the variation.

13. VARIATIONS REQUIRED BY LAW

13.1 Variation due to legal requirements

If a variation to the **Works** is necessary due to the requirements of any statute, local authority, private certifier or other body having

COST PLUS CONTRACT

jurisdiction over the **Works**, the **Builder** shall, with the prior written consent of the **Owner**, vary the **Works** as required.

13.2 Procedure for variation

Prior to the **Builder** commencing any work the subject of the variation, the **Builder** must give the **Owner** an estimate of the cost involved in carrying out the variation and the parties must agree to vary the **Works** and confirm their agreement in writing in accordance with Clause 12.3.

To remove doubt, the requirements of Clauses 12.3, 12.4, and 12.5 apply to variations under this Clause.

13.3 Owner must consent to variation

The **Owner** must not unreasonably withhold its consent to a variation under this Clause and must take all steps necessary to sign the variation document provided by the **Builder**.

14. VARIATIONS FOR LATENT CONDITIONS

14.1 Builder to notify Owner of Latent Condition

The **Builder** must, upon becoming aware of a **Latent Condition**, promptly give the **Owner** a written notice describing the **Latent Condition**, the **Builder's** estimate of the work required to overcome the **Latent Condition** and the **Builder's** estimate of the cost.

14.2 Variation due to Latent Condition

Subject to this **Contract**, if the **Owner** is named in Item 19 of the **Schedule** as the party responsible for extra costs due to a **Latent Condition** the **Builder** shall, with the prior written consent of the **Owner**, vary the **Works** to include the work required to overcome the **Latent Condition**.

14.3 Procedure for variation

Prior to the **Builder** commencing any work the subject of the variation, the parties must agree to vary the **Works** and confirm their agreement in writing in accordance with Clause 12.3.

To remove doubt, the requirements of Clauses 12.3, 12.4, and 12.5 apply to variations under this Clause.

14.4 Owner's must consent to variation

The **Owner** must not unreasonably withhold its consent to a variation under this Clause and must take all steps necessary to sign the variation document provided by the **Builder**.

14.5 Limitation on Builder's right to recover for variation

The **Builder** cannot recover additional payment for a variation in respect of a **Latent Condition** where the need for the variation has arisen because:

- the **Builder** failed to obtain the **Foundations Data** before entering the **Contract** and, had the **Builder** obtained the **Foundations Data**, the need for the additional work could reasonably have been established; or
- the **Builder** obtained the **Foundations Data** before entering the **Contract**, and the need for the additional work could reasonably have been established from the **Foundations Data**.

14.6 Clause not apply where Provisional Sum

Subject to Clause 14.5, nothing in this Clause imposes any extra obligation on the **Builder** where the work required to overcome the **Latent Condition** has been allowed for as a **Provisional Sum**.

15. DELAYS AND EXTENSION OF TIME CLAIMS

15.1 Builder's entitlement to extensions of time

If the progress of the **Works** is delayed as a result of:

- any variations to the **Works**;
- proceedings being taken, or threatened by, or disputes with, adjoining neighbouring owners or residents;
- any industrial action or civil commotion affecting the **Works**, any persons employed upon the **Works**, or the manufacture or supply of materials for the **Works**;
- the unavailability of any materials necessary to carry out the **Works**;

(e) inclement weather or any condition arising as a result of inclement weather;

(f) any act, default or omission on the part of the **Owner**, or the **Owner's Agent**, including any failure to consent to a variation under Clauses 13 or 14 or failure to sign a variation document;

(g) any suspension of the **Works** under this **Contract**; or

(h) any other cause beyond the reasonable control of the **Builder**; the **Builder** may, within a reasonable time, claim a reasonable extension of the **Date for Practical Completion** equal to the period of the delay.

15.2 Extensions for delays which have been allowed

Where the reason for the delay has been allowed for by the **Builder** in Part C of the **Appendix** to the **Schedule**, the **Builder** is only entitled to an extension of the **Date for Practical Completion** to the extent that the length of the delay exceeds the **Builder's** allowance.

15.3 Date for Practical Completion deemed to be extended if Owner fails to reject or dispute Builder's claim

If the **Owner** does not notify the **Builder** in writing and reject or dispute the claim within seven (7) **Days** after receipt, the **Date for Practical Completion** is deemed to be automatically extended by the period stated in the claim.

15.4 If Owner rejects or disputes Builder's claim

If the **Owner** serves a written notice upon the **Builder** disputing or rejecting the **Builder's** claim the **Builder** is still entitled to a fair and reasonable extension of time of the **Date of Practical Completion**.

16. SUSPENSION OF THE WORKS

16.1 Builder's entitlement to suspend the Works

The **Builder** may, without prejudice to any of the **Builder's** rights under this **Contract** or at law, suspend performance of the **Works** where the **Owner**;

- fails to comply with any of its obligations under Clause 7;
- fails to comply with any of its obligations under Clause 11;
- fails to provide the **Builder** with any information requested by the **Builder** under Clause 9;
- takes **Possession** of any part of the **Works** without the prior written consent of the **Builder** prior to paying the final progress payment;
- unreasonably fails to consent to any variation under Clause 13 or Clause 14 or fails to sign a variation document provided by the **Builder**; or
- is in breach of any term of this **Contract**.

16.2 Written notice to suspend the Works

The **Builder** must immediately notify the **Owner** in writing of the suspension and the grounds for the suspension. The **Date for Practical Completion** is deemed to be automatically extended by a period equivalent to the date the **Builder** gives its notice of suspension until the date the **Builder** recommences the **Works** on the **Land**.

16.3 Owner to remedy breach within 7 Days

The **Owner** must remedy the breach or breaches stated in any suspension notice given to the **Owner** in accordance with Clause 16.2 within seven (7) **Days** after receiving the notice from the **Builder**.

16.4 Builder must recommence the Works within 14 days of Owner remedying breach

The **Builder** must recommence the carrying out of the **Works** within fourteen (14) **Days** of the breach or breaches stated in the suspension notice being remedied by the **Owner**.

17. OBLIGATIONS OF BOTH PARTIES UPON PRACTICAL COMPLETION

17.1 Submission of final progress claim and certificate of Practical Completion by Builder

On reaching **Practical Completion**, the **Builder** must give to the **Owner**:

COST PLUS CONTRACT

- (a) the final progress claim; and
- (b) a certificate of **Practical Completion**:
 - (i) stating the date the **Works** reached **Practical Completion**;
 - (ii) providing for a final inspection of the **Works** with the **Owner** or the **Owner's Agent** at a date and time specified in the certificate.

17.2 Owner must notify Builder if unable to attend final inspection

If the **Owner** or the **Owner's Agent** is unable to attend the final inspection of the **Works** at the date and time specified in the **Builder's** certificate the **Owner** must:

- (a) immediately notify the **Builder** in writing; and
- (b) arrange with the **Builder** for an inspection of the **Works** at a mutually agreeable time during normal business hours and on a date no later than seven (7) **Days** from the **Builder's** proposed date for the final inspection.

If the **Owner** fails to comply, the **Owner** is taken to be available to attend the final inspection at the date and time stated in the **Builder's** certificate.

17.3 If Owner fails to attend the final inspection, the final claim is due and payable

If the **Owner** or the **Owner's Agent** does not attend the arranged final inspection of the **Works** the **Owner** is taken to have agreed that:

- (a) the **Works** have reached **Practical Completion**; and
- (b) the final progress claim submitted by the **Builder** is immediately payable in accordance with the **Contract**.

17.4 If Owner agrees Works are complete final claim becomes due and payable

If at the final inspection of the **Works** the **Owner** agrees that no defects exist and the **Works** have reached **Practical Completion**, the **Owner** must:

- (a) sign a notice to that effect; and
- (b) pay the final progress claim to the **Builder** in accordance with the **Contract**.

17.5 Builder to provide signed defects document to Owner in certain circumstances

If at the final inspection of the **Works** the **Owner** claims defects exist, or the **Works** are incomplete, the **Builder** must give to the **Owner** a defects document that:

- (a) lists the minor defects or omissions that the **Builder** and **Owner** agree exist;
- (b) lists the minor defects or omissions that the **Owner** claims exist, but that are not agreed by the **Builder**; and
- (c) states the time by when the **Builder** is to correct the listed agreed defects and omissions.

The **Builder** must make all reasonable efforts to have the **Owner** sign the defects document. Both the **Owner** and **Builder** are to retain a copy of the defects document.

17.6 Builder must complete the agreed works on the defects document

The **Builder** must rectify or complete any agreed items listed in the defects document within the time stated in the defects document or if necessary materials are unavailable, within a reasonable period.

17.7 Final claim payable by Owner upon Practical Completion

On giving the defects document to the **Owner**, and notwithstanding that **Practical Completion** may have been reached with minor omissions or defects, the **Owner** must pay the final progress claim to the **Builder** in accordance with the **Contract**.

If the **Owner** wishes to take **Possession** of the **Works** but disputes the amount payable to the **Builder** and the **Builder** is a member of the Queensland Master Builders Association, the **Owner** may pay the disputed amount into the Queensland Master Builders' Trust Account.

The **Owner** is to then give the **Builder** a receipt showing that the disputed money has been deposited and the **Owner** must pay the undisputed amount to the **Builder**. On receiving the receipt and payment, the **Builder** is to hand the keys to the **Owner** and give the **Owner** vacant possession of the **Works**.

The parties must ensure that any money held in trust by the Association is released:

- (a) upon receipt of written instructions signed by the **Builder** and **Owner**;
- (b) upon receipt of a determination or order from the **Tribunal**; or
- (c) by order of a Court.

17.8 Owner's entitlement to keys and possession of the Works

The **Owner** must not take **Possession** of the **Works**, nor is it entitled to the keys to the **Works** prior to payment to the **Builder** of the final progress claim unless the **Owner** has obtained the **Builder's** written consent.

17.9 If Owner takes possession of the Works when not entitled to do so

If the **Owner** takes **Possession** of the **Works**, or any part of the **Works**, when not entitled to do so under this **Contract**, the **Works** are deemed to have reached **Practical Completion** on the date of **Possession** and the **Owner** is liable to the **Builder** for any loss or damage arising as a result.

17.10 Builder to hand over Works upon payment of all monies under the Contract

On payment by the **Owner** of the final progress claim, the **Builder** must hand over the **Works** to the **Owner** or the **Owner's Agent**.

18. LIQUIDATED DAMAGES

18.1 Owner's entitlement to liquidated damages

If the **Builder** fails to bring the **Works** to **Practical Completion** by the **Date for Practical Completion**, the **Builder** must pay or allow to the **Owner** liquidated damages at the rate stated in Item 23 of the **Schedule** for the period commencing from the **Date for Practical Completion** and ending on the day the **Works** reach **Practical Completion**, or the date the **Owner** takes **Possession**, whichever is earlier.

18.2 Liquidated damages may be deducted from final payment

Liquidated Damages may only be deducted by the **Owner** from the final progress payment. Any deficiency may be recovered by the **Owner** as a debt due to the **Owner** by the **Builder**.

19. DEFECTS LIABILITY PERIOD

19.1 Defects liability period

The **Builder** must rectify defects and omissions in the **Works** which become apparent and are notified to the **Builder** during the **Defects Liability Period**. No retention money is to be held by the **Owner** during the **Defects Liability Period**.

19.2 Owner to provide defects list prior to expiry of Defects Liability Period

After **Practical Completion** and prior to the expiration of the **Defects Liability Period**, the **Owner** is to provide to the **Builder** a written list of any alleged defects arising out of **Builder's** defective workmanship or defective or unsuitable materials supplied by the **Builder** under this **Contract**.

19.3 Builder must rectify defects identified during the Defects Liability Period

Subject to reasonable access being provided, the **Builder** must within twenty-eight (28) **Days** of the expiry of the **Defects Liability Period**, rectify any defects notified to the **Builder** under Clause 19.2 during usual business hours and at no cost to the **Owner**. The **Builder** is not responsible for rectifying any alleged defects which arise from the fact that something is still to be supplied or done by the **Owner** or which relate to the maintenance of an item which is to be performed by the **Owner** or is the responsibility of the **Owner**.

20. OWNER'S RIGHTS TO TERMINATE CONTRACT

20.1 Owner's right to serve notice of intention to terminate contract

If the **Builder**:

COST PLUS CONTRACT

- (a) fails to proceed with the **Works** with due diligence or in a competent manner;
- (b) unlawfully suspends the carrying out of the **Works**;
- (c) refuses or persistently neglects to remove or remedy defective work or improper materials, so that the **Works** are adversely affected;
- (d) is unable or unwilling to complete the **Works** or abandons the **Contract**;
- (e) is in substantial breach of this **Contract**; or
- (f) fails to effect or maintain any insurance policy required by this **Contract**;

the **Owner** may give a written notice to the **Builder**:

- (i) describing the alleged breach or breaches of the **Contract** by the **Builder**; and
- (ii) stating the **Owner's** intention to terminate the **Contract** unless the **Builder** remedies the alleged breach or breaches within a ten (10) Days after receiving the **Owner's** notice.

20.2 If Builder fails to remedy breach, Owner may terminate Contract

If the **Builder** fails to remedy the breach or breaches stated in any notice served by the **Owner** under Clause 20.1, the **Owner** may, without prejudice to any other rights or remedies, terminate this **Contract** by further written notice to the **Builder**, provided that such notice of termination shall not be given unreasonably or vexatiously and, if so given then any such notice of termination shall be null and void and of no force or effect.

20.3 Owner may not terminate Contract in certain circumstances

The **Owner** may not terminate this **Contract** if the **Owner** is in substantial breach of this **Contract**.

20.4 Owner's right to engage another Builder to complete the Works

If the **Owner** terminates this **Contract** in accordance with this Clause, the **Owner** may engage another builder to complete the **Work**;

20.5 Builder entitled to reasonable price if Contract ended

If the **Contract** is ended under this Clause the **Builder** is entitled to be paid for the value of the **Total Cost of the Works** carried out under the **Contract** to the date the **Contract** is ended.

- (a) fails to comply with any of its obligations under Clause 7;
- (b) fails to comply with any of its obligations under Clause 11;
- (c) fails to provide the **Builder** with any information requested by the **Builder** under Clause 9;
- (d) unreasonably fails to consent to any variation under Clause 13 or Clause 14 or fails to sign a variation document provided by the **Builder**;
- (e) fails to remedy any breach specified in a notice of suspension given under Clause 16 within ten (10) Days of receipt of that notice; or
- (f) is in substantial breach of this **Contract**;

the **Builder** may give a written notice to the **Owner**:

- (i) describing the breach or breaches of the **Contract** by the **Owner**; and
- (ii) stating the **Builder's** intention to terminate the **Contract** unless the **Owner** remedies the breach or breaches within ten (10) Days after receiving the **Builder's** notice.

22.2 If Owner fails to remedy breach, Builder may terminate Contract

If the **Owner** fails to remedy the **Owner's** breach or breaches stated in any notice served by the **Builder** under Clause 22.1, the **Builder** may, without prejudice to any other rights or remedies, terminate this **Contract** by further written notice to the **Owner**.

22.3 Builder may not terminate Contract in certain circumstances

The **Builder** may not terminate this **Contract** if the **Builder** is in substantial breach of this **Contract**.

22.4 Builder's right to recover upon termination

If the **Builder** terminates the **Contract** in accordance with this Clause, the **Builder** is entitled to recover from the **Owner** all loss, costs, expenses and damages in connection with the **Owner's** breach, and the termination, as if the **Owner** had wrongfully repudiated this **Contract**.

The **Builder** may remove from the **Land**, and retain, all unfixed materials, goods, plant and equipment previously provided by the **Builder**.

21. OWNER'S STATUTORY RIGHTS TO TERMINATE CONTRACT

21.1 Owner's right to terminate the Contract under Section 90 of the Act

The **Owner** may terminate this **Contract** in accordance with section 90 of the **Act** if:

- (a) the **Estimated Total Cost of the Works** increases by 15% or more after the **Contract** is entered into because of the operation of a cost escalation clause (as that term is defined in section 11 of the **Act**); or
- (b) the **Works** have not been completed within one- and-a-half times (1 1/2) the initial contract period, including allowed delays.

The **Owner** may only terminate the **Contract** under this Clause where the reason for the increased time or cost was something that could have been reasonably foreseen by the **Builder** on the date this **Contract** was entered into and, in the case of an increase in the **Estimated Total Cost of the Works**, the increase was not due to a delay for which the **Owner** or the **Owner's Agent** was responsible.

21.2 Owner to give written notice to terminate contract

To end the **Contract** under this Clause, the **Owner** must give to the **Builder** a signed written notice stating that the **Owner** is ending the **Contract** under Section 90 of the **Act**, and stating the ground, and the details of the ground, on which the **Owner** relies.

21.3 Builder entitled to reasonable price if Contract ended

If the **Contract** is ended under this Clause the **Builder** is entitled to be paid for the value of the **Total Cost of the Works** carried out under the **Contract** to the date the **Contract** is ended.

22. BUILDER'S RIGHTS TO TERMINATE CONTRACT

22.1 Builder's right to serve notice of intention to terminate Contract

If the **Owner**:

23. TERMINATION FOR INSOLVENCY

23.1 Either party may terminate Contract for insolvency

Either the **Builder** or the **Owner** may terminate this **Contract** immediately on giving written notice to the other party, if the other party:

- (a) becomes insolvent or financially unable to proceed with the **Contract**;
- (b) commits an act of bankruptcy or is made bankrupt;
- (c) makes a composition or other arrangement with creditors;
- (d) assigns assets for the benefit of creditors generally;
- (e) being a company, enters into a deed of company arrangement or has a controller, administrator or receiver appointed; or
- (f) being a company, goes into liquidation.

23.2 Requirements of Notice

A written notice under Clause 23.1 must state the ground or grounds for the termination relied upon by that party.

24. SERVICE OF NOTICES

24.1 Copies of notices to be provided by one party to the other

The **Builder** and the **Owner** must provide to the other:

- (a) copies of any report, notice, order or other document given in relation to the **Works** by any supplier of services (such as gas, electricity, telephone, water and sewerage) as soon as practicable after **Practical Completion**; and
- (b) copies of any certificate of inspection of the **Works** as soon as practicable after receipt.

24.2 Methods of service for notices and other documents

Unless otherwise stated in this **Contract**, any written notice, or other document required to be given to the other party is deemed to have been given and received:

- (a) by hand to the person to whom it is required to be given, at that time;

COST PLUS CONTRACT

- (b) by pre-paid post or registered post to the address of the person to whom it is required to be given, on the date of receipt or, in the case of registered post, two (2) clear **Business Days** after posting, whichever is earlier; or
- (c) by facsimile transmission to the facsimile number (if any) stated in the **Schedule**, on confirmation of correct transmission of the facsimile.

NOTE: Where notices are served under this Contract copies of all relevant notices and documents should be kept for record purposes.

25. COST ESCALATION – ESTIMATED TOTAL COST OF THE WORKS LESS THAN \$200,000

25.1 Application of Clause

This Clause applies to the **Contract** if:

- (a) the **Estimated Total Cost of the Works** is less than or equal to \$200,000.
- (b) Item 17 of the **Schedule** provides that cost escalation is applicable; and
- (c) the **Owner** has placed its signature next to this Clause.

Owner signature(s)

25.2 Delays before commencement of the Works

Subject to this Clause, if commencement of the **Works** on the **Land** is delayed for a period exceeding four (4) weeks due to any reason, factor or thing for which the **Builder** is not responsible, the **Builder** may, by written notice to the **Owner**, adjust the **Estimated Total Cost of the Works** by an amount equal to 0.125% of the **Estimated Total Cost of the Works** for each week, or part week, of delay after the first four (4) weeks of delay;

25.3 Delays after commencement of the Works

Subject to this Clause, after commencement of the **Works** on the **Land**, if progress of the **Works** is delayed due to any reason, factor or thing for which the **Owner**, or the **Owner's Agent**, is responsible, the **Builder** may, by written notice to the **Owner**, adjust the **Estimated Total Cost of the Works** by: an amount equal to 0.05% of the **Contract Price** for each day of delay;

25.4 Right not subject to claim for extension of time

To remove doubt, the **Builder's** right to adjust the **Estimated Total Cost of the Works** is not subject to the **Builder** claiming an extension of the **Date for Practical Completion** in accordance with Clause 15.

26. COST ESCALATION – ESTIMATED TOTAL COST OF THE WORKS OVER \$200,000

26.1 Application of Clause

This Clause applies to the **Contract** if:

- (a) the **Estimated Total Cost of the Works** is greater than \$200,000 or the **Contract** is being administered by an architect engaged by the **Owner**;
- (b) Item 21 of the **Schedule** provides that cost escalation is applicable; and
- (c) the **Owner** has placed its signature next to this Clause.

Owner signature(s)

26.2 Delays for which the Builder is not responsible

If commencement or progress of the **Works** is delayed due to any reason, factor or thing for which the **Builder** is not responsible, the **Builder** may, by written notice to the **Owner**, adjust the **Estimated Total Cost of the Works** by: an amount equal to 0.05% of the **Contract Price** for each day of delay;

26.3 Right not subject to claim for extension of time

To remove doubt, the **Builder's** right to adjust the **Estimated Total Cost of the Works** is not subject to the **Builder** claiming an extension of the **Date for Practical Completion** in accordance with Clause 15.

27. LODGING OF A CAVEAT BY THE BUILDER

27.1 Lodging of caveat on Resident Owner

A **Builder** cannot lodge a caveat claiming an interest in the **Land** where the **Owner** is a **Resident Owner**.

27.2 Builder may lodge caveat on non-resident owner

The **Builder** has an interest in the **Land** as against the **Owner**, and the **Owner**:

- (a) grants to the **Builder** an equitable mortgage over the **Land**, charging the **Land** as security for the performance by the **Owner** of all of the **Owner's** obligations under the **Contract**;
- (b) agrees to the **Builder** lodging a caveat over the **Land** to secure the **Builder's** interest in the **Land** as equitable mortgagee;
- (c) agrees to do all things and sign all documents necessary to enable the **Builder** to lodge the caveat; and
- (d) agrees to be responsible for and pay all stamp duty and registration fees that may be payable by virtue of the operation of this Clause and on any caveat lodged by the **Builder** under this Clause.

28. RESOLUTION OF DISPUTES

28.1 Disputes may be referred to relevant bodies

By agreement between the parties, a dispute in connection with this **Contract** may be referred to the Queensland Master Builders Association (QMBA) for conciliation at any time provided that one of the parties is a member of the QMBA.

If conciliation in accordance with Clause 28.1 is unsuccessful, then the dispute must be referred to the Commercial and Consumer Tribunal for resolution.

29. COST PLUS PROVISIONS

29.1 Items constituting the Total Cost of the Works

The **Total Cost of the Works** shall consist of the sum of the following:

- (a) The **Actual Cost of the Works** which shall include those items listed in Clause 29.2 being the cost of the **Works** together with items listed in Clause 29.3 being the **Builder's** Preliminaries for the **Works**, and
- (b) The **Cost Plus Fee** component in consideration of the performance by the **Builder** of providing services during the construction phase. The **Cost Plus Fee** component comprises the **Builder's** profit and margin to meet a proportion of the **Builder's** off site overheads as set out in Clause 29.4.

29.2 Items constituting Actual Cost of the Works

The following items directly related to the **Works** constitute the **Actual Cost of the Works** excluding the preliminaries costs.

- (a) The actual cost of all materials, supplies and equipment incorporated in the **Works** including cost of transportation and storage thereof, expressly purchased for the **Works**.
- (b) The net cost (after deducting all discounts other than cash discount) of all building supplies and materials, including concrete formwork and other temporary materials used in the **Works** where the same were not expressly purchased for the **Works**. The proper current list price thereof as at the date of use may be applied to arrive at a valuation.
- (c) Direct labour costs (labour employed specifically on or contracted for the **Works**) including the cost of direct and immediate supervision and any costs of advertising for labour for the **Works**.
- (d) Cost of board and/or lodging, fares and travelling time of workmen and others employed in the **Works** which is legally payable by the **Builder** or agreed to by the **Owner** as reasonable or necessary for the proper execution of the **Works**.
- (e) Wages and all allowances or remuneration paid for labour, whether individual or trade, engaged by the **Builder** for performing trade contract work or providing attendance upon trade contractors, subcontractors or suppliers, at the charge out rates listed in Park K(1) of the **Appendix**.

COST PLUS CONTRACT

- (f) Reasonable transport and away-from-home expenses of the **Builder** and of its representatives and employees incurred in discharge of duties connected with the **Works** in a productive trade work capacity.
- (g) Cost of WorkCover insurance, public risk insurance superannuation, and other Award entitlements or statutory requirements in so far that these items are payable to, or in respect of, the employees or direct labour, engaged by the **Builder**, performing trade contract work.
- (h) The net cost of all subcontracts including all payments made or payable by the **Builder** to trade contractors, subcontractors, specialist contractors, suppliers and manufacturers for goods and services incorporated into or indispensably necessary for the completion of the **Works**.
- (i) The actual cost of all **Prime Cost Items** or **Provisional Sums**.
- (j) Freight charges or cost of cartage paid or incurred by the **Builder** for transporting all building materials to the site including the use of the **Builder's** own vehicles at rates approved by the **Owner** or at current commercial charge out rates.
- (k) The cost of any work manufactured at the workshop of the **Builder** for incorporation into the **Works**.
- (l) Other such periodical amounts in the nature of remuneration as may be agreed between the **Owner** and the **Builder** in respect of work actually performed on or off-site in connection with the **Works**.
- (m) Charges for the hire and delivery of machinery, plant and equipment hired expressly for the **Works** and including incidental charges all at current rates or at the rates nominated in Part K(2) of the **Appendix**.
- (n) Cost of special plant, scaffolding and materials handling equipment to be used expressly and exclusively for the **Works** during the duration of the **Works**, including the cost of transport to and from the site and cost of erection and dismantling, and temporary buildings used in connection thereto.
- (o) Cost of running, maintenance and repair of plant and equipment referred to in the preceding subclauses while used on the **Works**.
- (p) All taxes and imposts imposed by authorities, including GST, legally payable on building materials or construction.
- (q) Permit fees, licences, tests, royalties, deposits and damages for infringements or patents and the cost of defending such suits relating to materials, labour and plant incorporated into or expressed provided to perform the **Works**.
- (r) Cost of removal of rubbish, debris and of progressive and final clean up.
- (s) Cost of emergency action relating to safety of persons and personal property relating to trade contractors and direct work.
- (t) Cost of all permanent service connections and fees and any temporary services required for specific trade work.
- (u) Cost of notice boards (other than site sign boards).
- (v) Cost of temporary fences and compounds required specifically by certain trade work.
- (w) Cost of installation costs of telephone, electricity and water.
- (x) Cost of hire of security services where required specifically by the **Owner**, if applicable.
- (y) Cost of temporary fire protection equipment required by any specific trade contract work.
- (z) Cost of all testing fees on materials and equipment except those which are specific trade costs.
- (aa) Cost of survey equipment hire and charges for specific trade setouts.
- (bb) Cost of advertising for tenders for specific trade contractors.
- (cc) Cost of any permanent equipment, machinery, plant, scaffolding and materials needed for the health, safety and welfare of those in, about or near the Site.
- (dd) Service costs for trade contract work.
- (ee) Cost of petrol, oil, lubricants and other fuel used on the **Works**.
- (ff) Costs of making good defects and faults which are not due to materials or workmanship not in accordance with this Contract.
- (gg) Cost of clearing away debris, replacement, repair and/or rebuilding after any damage due to causes beyond the reasonable control of the **Builder** whether or not reimbursable.
- (hh) Any fees paid by the **Builder** to municipal or other authorities and statutory and other Local Authorities (charges, costs and expenses, bonds etc.) that relate to the execution of the **Works**.
- (ii) Fees for design and other related technical assistance.
- (jj) Fee of Licensed Surveyor or Quantity Surveyor as may be approved by the **Owner** or shown to be necessary.
- (kk) The cost of any consultants employed by the **Builder** for the purpose of providing services to the **Works**, excepting any service to be provided by the **Builder**.
- (ll) Legal and other professional charges reasonably incurred in connection with the **Works**.
- (mm) Insurance premiums paid or payable by the **Builder** and any excess for insurance pursuant to this **Contract** or deemed necessary by the **Builder**.
- (nn) Losses, expenses and damages to the extent not recoverable from insurances and including settlement made with approval of the **Owner**.
- (oo) Any loss and damages including the costs of defending legal action and suits brought against or involving the **Builder** that relates to or arises out of the **Works** occasioned through no fault or omission of the **Builder**.
- (pp) The fair and reasonable costs of all Variations, Extensions of Time, or other proper price adjustment and charges permitted under the **Contract**.
- (qq) Any other expenses directly incurred by the **Builder** in carrying out the **Works**, not being an expense which is expressly disallowed by this **Contract** including costs that are attributable to the **Contract** activity in general and are capable of being allocated on a reasonable basis to the specific contract **Works**.
- (rr) Any other costs of whatsoever nature (whether of the same kind as those listed previously or not) reasonably incurred in the performance of the **Works** and approved (in advance where practicable) by the **Owner**.

29.3 Items constituting the Preliminaries which form part of the Actual Cost of the Works.

The following items constitute the preliminaries and form part of the **Actual Cost of the Works**.

- (a) The actual wages, or other remuneration paid to forepersons, costing clerks, bookkeepers or others as are necessary for the proper execution of the **Works**, including the salaries and expenses of employees of the **Builder** who are stationed at the Site office, involved in the general supervision of the **Works**.
- (b) Salaries of employees of the **Builder** who are stationed at its main or branch offices and who will be employed in providing management services to the **Works**, and whose functions and classifications are listed in Part K(3) of the **Appendix**.
- (c) Wages and all allowances paid for labour in the direct employment of the **Builder** for the performance of the **Works** not performing trade contract work.
- (d) Cost of WorkCover insurance, public risk insurance, superannuation, and other Award entitlements or statutory requirements insofar that all of these above items are payable to, or in respect of, the employees of the **Builder** other than those undertaking productive trade contract work or attendance to subcontractors and suppliers.
- (e) Reasonable transport and away-from-home expenses of the **Builder** and of its representatives and employees incurred in discharge of duties connected with the **Works** in a non productive non trade work capacity.
- (f) Cost of temporary materials, other than those necessary for trade contract work and which can be salvaged and reused on other than the subject **Works**.
- (g) Costs (including transport, maintenance, replacement, erection and dismantling) of all supplies, machinery, equipment, temporary facilities, power tools, and hand tools (not required to be part of the kit of tools used in the computation of the tool allowance under the relevant Award) which are employed but not consumed in performance of the **Works** where required for common use by all trades.
- (h) Charges for the use of such items of the **Builder's** general plant and equipment as and whilst they are required to be kept on site for the **Builder's** own purposes at the rates agreed.

COST PLUS CONTRACT

- (i) Hire charges for miscellaneous machinery, plant, and equipment used on the **Works**, and including incidental charges all at current rates, other than that required by or for specific trade or productive work.
- (j) All taxes and any other imposts imposed by competent authorities in respect of other than direct, productive or trade contract work.
- (k) Cost of facsimiles, telephones at the Site office, necessary long distance telephone calls, mobile telephone calls, postage and courier service, stationery materials and petty cash items.
- (l) Cost of removal of rubbish, debris and of progressive clean up, other than for trades.
- (m) Cost of emergency action relating to safety of persons and personal property associated with the duties of **Builder**.
- (n) Legal and other professional charges in association with the **Builder's** Preliminaries.
- (o) Cost of site sign required for the **Builder's** purposes.
- (p) Cost of temporary fences and compounds, excluding protective hoardings, temporary protective screens or similar to maintain the operations of the **Owner** if they remain in possession during the undertaking of the construction.
- (q) Cost of temporary installation and running costs of telephone, electricity and water.
- (r) Cost of replacement of small tools, ropes and brush ware and other similar items used on the **Works**, and costs of sharpening and repairing small tools.
- (s) Cost of temporary fire protection equipment required by all trades.
- (t) Cost of all testing fees on materials and equipment, which are not trade specific.
- (u) Cost of survey equipment hire for general set out purposes only.
- (v) Cost of advertising for tenders for Trade Contractors, Subcontractors and Suppliers.
- (w) Cost of first aid equipment.
- (x) Cost of any temporary equipment, machinery, plant and temporary materials and the cost of individuals needed for the health, safety and welfare of those in, about or near the Site.
- (y) Insurance premiums where stipulated to be paid by the **Builder** pursuant to this **Contract** or deemed necessary by the **Builder**.
- (z) Any other incidental costs directly incurred by the **Builder** in the execution of the obligations of the **Builder** under this **Contract**.

29.4 Items constituting the Cost Plus Fee component.

The following items are taken into consideration in determining the **Builder's Cost Plus Fee** component.

- (a) The **Builder's** profit
- (b) Salaries and on costs of employees and agents of the **Builder** who are stationed at its main or branch offices and who will not be employed in providing management services to the **Works** (and therefore not covered in Clause 29.3 whose functions and classifications are not listed in Part K(3) of the **Schedule** as directly relating to the **Works**.
- (c) Other salaries of clerical and other staff incurred "off the job" in routine checking and submission of accounts and statements, general correspondence and other similar administrative duties.
- (d) Expenses incurred by the **Builder** for the first cost or initial purchase of small tools, ropes and brush ware and other similar items of the extent they are not exhausted in performing the **Works** or purchased specifically for the **Works**.
- (e) Any overhead of other expenses incurred by the **Builder** including directors' fees, salaries of the **Builder**, partners or corporate officers of the **Builder's** organization, interest on moneys, general advertising, entertaining, office administration, commissions, government taxes, rents, rates or any other "off the job" costs.
- (f) Other costs that relate to the activities of the **Builder** generally and are normally not related to specific contracts, including general administration and selling costs, finance

costs, research and development costs, depreciation of idle plant and equipment to the extent and in circumstances where such costs are not capable of being attributed to particular contract **Works**.

29.5 How Cost Plus Fee to be determined

The **Cost Plus Fee** component may be stated as:

- (a) a percentage of the **Actual Cost of the Works**, and/or
- (b) a nominated fee, and/or
- (c) in a manner set out by agreement between the **Builder** and the **Owner** in Item 9 of the **Schedule**.

29.6 How Preliminaries are to be accounted for

- (a) The costs of Preliminaries are to be accounted for as part of the **Actual Cost of the Works** in accordance with Clause 29.1 and Clause 29.3.
- (b) As an ALTERNATIVE to accounting for the various actual costs of the items listed in Clause 29.3 (generally being the **Builder's** project overheads or job preliminaries) the **Owner** and **Builder** may agree, for progress payments and other administrative purposes, to reimburse these costs as either;
 - (i) a percentage of the **Actual Cost of the Works** relating to Clause 29.2, or
 - (ii) a nominated fee
 in lieu of providing receipts, invoices, timesheets or similar to justify this portion of the **Actual Cost of the Works** as part of the **Total Cost of the Works**.
- (c) Where this alternative is chosen, progress claims and payments shall include a fair valuation to date on this account by the **Builder**, having regard to the progress of the subject work on a time and value basis. The **Cost Plus Fee** component is to be applied in addition thereto, as it would be as if this was calculated as part of the **Actual Cost of the Works**.
- (d) Any amount so calculated or nominated by using the ALTERNATIVE method remains subject to adjustment pursuant to the terms of the **Contract** and shall be increased by or in relation to the proportion that the **Total Cost of the Works** exceeds the **Estimated Total Cost of the Works** (after taking into account any deductions or omissions allowed under the **Contract**) and the adjusted amount shall be claimed and paid progressively.

29.7 Progress Payments for the Total Cost of the Works

- (a) The **Builder** shall during the construction stage and at **Practical Completion** submit to the **Owner** progress claims showing the value of the **Total Cost of the Works** incurred during the stage or period to date which shall include the **Actual Cost of the Works** comprising;
 - (i) those items listed in Clause 29.2 and 29.3, or
 - (ii) those items listed in Clause 29.2 and the cost of Preliminaries as determined under Clause 29.6(b);
 PLUS
 - (iii) The **Cost Plus Fee** component.
- (b) The **Cost Plus Fee** component shall be paid progressively in the same proportion that the progressive **Actual Cost of the Works** claimed bears to the **Estimated Total Cost of the Works** at the prescribed stages or times nominated in Part D of the **Appendix**.
- (c) The **Owner** will pay to the **Builder** during the construction and upon **Practical Completion** progress payments in accordance with Part D of the **Appendix** and Item 25 of the **Schedule**.

29.8 Payment for unfixed materials

The value of any unfixed materials ordered specifically for incorporation into the **Works** (provided they have not been prematurely ordered) and properly stored either on or off site, and appropriately insured, shall be included in the valuation of progress claims and shall be payable by the **Owner**.

29.9 Schedule of Rates relating to Actual Cost of the Works

Where the **Actual Cost of the Works** includes services provided by the **Builder** of a type for which a schedule of rates has been agreed between the parties (i.e. the **Builder** undertakes some of the work to be incorporated into the **Works** directly) the costs to be taken into account in determining the valuation for payment of the **Actual Cost of the Works** are to be calculated by a summation of the rates nominated in PART K of the **Appendix** multiplied by the

COST PLUS CONTRACT

hours worked for the particular trade or classification or plant and equipment. In the absence of a prescribed rate a fair valuation will be allowed.

29.10 Adjustment of Cost Plus fee Component

In the event that any authorized additions, variations and other adjustments provided for under the **Contract**, including adjustment of the **Actual Cost of the Works**, increase the **Total Cost of the Works** over and above the **Estimated Total Cost of the Works**, THEN, the **Builder** shall be entitled to an adjustment of the **Cost Plus Fee** component computed on a pro rata basis in proportion to the total increase (after taking into account any deductions or omissions allowed under the **Contract**), which shall be claimed and paid progressively.

29.11 Reimbursement for Additional Duties

The **Owner** and **Builder** may agree that the **Builder** undertake additional duties for which the **Builder** shall be reimbursed for at the rates nominated in Part K(4) of the **Appendix**. The **Builder** shall be entitled to an adjustment of the **Cost Plus Fee** component in relation to these additional duties including any other additional labour, materials, plant, goods or services provided by the **Builder** under the **Contract**. The **Cost Plus Fee** component shall be applied additionally to, either prorata or as a percentage of, all goods and services provided by the **Builder**. In the absence of agreed charge out rates, the **Owner** and **Builder** shall negotiate a reasonable remuneration.

29.12 Records to Substantiate Costs

- If the **Owner** so requires, the **Builder** shall make available for reasonable inspection by the **Owner**, records showing the costs as ascertained together with any accrual of costs and estimate of committed costs used in compiling the progress claim. Where the **Builder** includes an estimation of cost it shall be considered on account only for the purposes of calculating the progress claim and the **Builder** shall not be unduly obliged by an unreasonable onus of proof as to records to substantiate any progress claim.
- The **Builder** shall without undue delay give to the **Owner** any such further information including copies of wages sheets, delivery dockets, invoices and other relevant data as the **Owner** may reasonably require in relation to any progress claim. Any extra costs of compiling such data shall be allowed as an actual cost in accounting for the **Actual Cost of the Works**.

29.13 Periodical Revision and Updates

The **Builder** may, from time to time, at the discretion of the **Builder** or when reasonably requested by the **Owner**, provide the **Owner** with a revised **Total Cost of the Works** for the purposes of payments.

29.14 Value of Estimated Total Cost of the Works

The estimation of the total amount that the **Builder** is likely to receive under the **Contract** and shown at Item 6 of the **Schedule** as the **Estimated Total Cost of the Works** has been made on the basis of such information as to the nature and extent of the **Works** then available to the **Builder** but will not be of any contractual significance whatsoever between the parties.

30. MISCELLANEOUS

30.1 Unfixed and demolished materials

All demolished materials, and unfixed building materials supplied by the **Builder** and not paid for by the **Owner**, are the property of the **Builder**, unless otherwise stated in this **Contract**.

30.2 No adjustment for different dimensions

All dimensions in this **Contract** are approximate to the extent that they are based on dimensions estimated from any existing building on the **Land**. Subject to this **Contract**, the **Estimated Total Cost of the Works** shall only be adjusted if actual dimensions vary substantially from estimated dimensions.

30.3 Builder's right to subcontract

The **Builder** may subcontract any part of the **Works**, but is not relieved from any obligation or liability under this **Contract** or the **Act**.

30.4 Parties rights to assign contract

Neither party may assign this **Contract**, or any right, benefit or interest under this **Contract** without the written approval of the other party, which shall not be unreasonably withheld.

30.5 Copyright

If the **Builder** carries out the **Works** in accordance with any **Plans** or document supplied by the **Owner** or which incorporate designs which were:

- prepared under instruction, supervision or direction from the **Owner**; or
- prepared from sketches supplied by the **Owner**; then:
 - the **Owner** warrants that the use of the design, **Plans** or documents does not infringe copyright or any other intellectual property right; and
 - the **Owner** must indemnify the **Builder** against all actions, proceedings, claims, losses and demands in respect of any actual or alleged infringement of copyright or any other intellectual property right by the **Builder** as a result of the carrying out of the **Works**.

Where **Plans** are provided or prepared by the **Builder**, the **Owner** agrees that the **Builder** has copyright in those **Plans**, with the **Owner** having the right to have the **Works** completed on the **Land** in accordance with the **Plans** if the **Owner** has paid the **Builder** all amounts due to the **Builder** for the **Plans** or the **Works**.

30.6 Contract to be governed by the laws of Queensland

This **Contract** is to be governed by, and construed in accordance with, the laws of Queensland.

30.7 Severance

If any provision of this **Contract** is void, voidable, unenforceable or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from this **Contract** without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue to have effect.

30.8 Joint and several liability

If there is more than one person named as the **Owner** under this **Contract**, their obligations are joint and several.

30.9 Owner's agent

The person stated in Item 20 of the **Schedule** is to act as the **Owner's Agent**. Where no person is stated in Item 20, the **Owner** may, with the written consent of the **Builder**, which shall not be unreasonably withheld, appoint a person to act as the **Owner's Agent**. The **Owner's Agent** is to act on the **Owner's** behalf with respect to the administration of the **Contract** and the performance of the **Owner's** obligations under the **Contract**.

30.10 Acts of Owner's Agent deemed to be those of the Owner

Any act or omission by the **Owner's Agent** is deemed to be an act or omission of the **Owner** under this **Contract**. Any direction or instruction given by the **Owner's Agent** is deemed to be a direction or instruction given by the **Owner**.

30.11 Architect as Owner's Agent

Where appropriate, any architect engaged by the **Owner** is to be appointed as the **Owner's Agent** in accordance with the **Contract**.

30.12 Architect's instructions

Any instruction which may be given by an architect acting as **Owner's Agent** must be in writing, and signed by the architect. Any direction or instruction to carry out a variation to the **Works** must be dealt with in accordance with Clause 12.3.

30.13 Replacement of Owner's Agent

The **Owner** may, with the written consent of the **Builder**, replace the **Owner's Agent** at any time.

30.14 Builder to act as principal contractor

The **Builder** is to act as principal contractor in accordance with the Workplace Health and Safety Act 1995 and may exclude or remove from the **Land** any person who, in the opinion of the **Builder**, fails to comply with that **Act**.