

JOB NUMBER:

BUILDER'S COPY

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



**Master
Builders**

SEPTEMBER 2004



***Master
Builders***

**GENERAL
CONDITIONS**

**RESIDENTIAL
BUILDING CONTRACT**

RESIDENTIAL BUILDING CONTRACT

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RESIDENTIAL BUILDING 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;
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; * 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 16 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 ;
Contract Price -	means the amount stated in Item 6 of the Schedule as adjusted under this 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 10 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);
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 16 of the Schedule ;
Plans -	means the plans, drawings and designs relating to the Works described in Item 5(a) of the Schedule .
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 ;

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- 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 **Contract Price** 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
- 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**;

- headings and explanatory notes contained in this **Contract** do not form part of and cannot be used in its interpretation;
- words in the singular include the plural and vice versa, according to the requirements of the context;
- words importing a gender include every gender;
- references to a person includes an individual, firm or a body incorporated or unincorporated; and
- 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 14 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.

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**.

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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 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 liabilities 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) indemnify the **Owner** as principal in respect of any occurrence insured by the policy and arising out of the negligence of the **Builder** in performance of the **Works**;
- (b) provide cover for an amount which is not less than \$5 million for any one occurrence;

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** or the date the **Owner** takes **Possession** of the **Works**, whichever is earlier.

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:

- (a) 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
- (b) 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 13 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 13 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 **Contract Price** 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**;

- (a) reasonable access to the **Land**, and
- (b) 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 **Contract Price** and included in the next progress claim.

8. COMMENCEMENT AND COMPLETION

8.1 Date for Commencement

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

- (a) on or before the date (if any) specified in Item 9 of the **Schedule**; or

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- (b) within ten (10) **Days** of receiving all of the following:
- (i) all information, evidence and consents required to be given by the **Owner** under Clause 7;
 - (ii) satisfactory evidence of the **Owner's** capacity to pay the **Contract Price** pursuant to Clause 11.1; and
 - (iii) all necessary building and/or planning approvals required pursuant to Clause 4.1.
 - (iv) 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;

- (a) the date the **Builder** commenced the **Works**;
- (b) the **Date for Practical Completion**; and
- (c) 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 **Contract Price** which should cover the expected cost of the item.*

*NOTE: If the actual cost is more than the amount allowed, you will have to pay the extra amount, plus the **Builder's** margin, on the extra amount. If the actual cost is less than that allowed for in the **Contract**, the difference should be deducted from the **Contract Price**.*

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 **Contract Price adjustment where cost is less than allowance**

If the actual cost of a **Prime Cost Item**, or the actual cost of the work for a **Provisional Sum**, is less than the amount allowed for that item, the difference is deducted from the **Contract Price** and is to be allowed by the **Builder** in the next progress claim.

9.5 **Contract Price adjustment where cost exceeds allowance**

If the actual cost of a **Prime Cost Item**, or the actual cost of the work for a **Provisional Sum**, exceeds the amount allowed for that item, the excess amount plus the **Builder's** margin stated in Part A or B of the **Appendix** to the **Schedule** is added to the **Contract Price** and is to be claimed by the **Builder** in the next progress claim.

9.6 **Allowance for Prime Cost Items**

Any amount for the supply, delivery, installation or **Builder's** profit and overheads for a **Prime Cost Item** is included in the **Contract Price** unless otherwise stated in this **Contract**.

9.7 **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**:
 - (i) in an appropriate and skilful way;
 - (ii) with reasonable care and skill;
 - (iii) in accordance with the **Plans** and **Specifications**; and
 - (iv) 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 Contract Price**

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 **Contract Price**.

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 **Contract Price**, 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 **Contract Price** 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 20 of the **Schedule**, a progress payment calculated in accordance with the following:

- (a) the percentage of the **Contract Price** set out in Part D of the **Appendix** to the **Schedule** for completion of the relevant stage;
- (b) any adjustment to the **Contract Price** under this **Contract**;
- (c) any other amount due and payable by the **Owner** to the **Builder** under the **Contract** or otherwise.

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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.

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 19 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 11 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 **Contract Price** as a result of the variation, or how the adjustment will be calculated;
- state when any adjustment to the **Contract Price** is to be claimed or allowed by the **Builder**. That part of the variation document which states how any adjustment to the **Contract Price** is to be claimed or allowed must be initialled by the **Owner**.

12.5 Paying for variations

Where a variation results in an increase to the **Contract Price**, the **Owner** must pay the **Builder** the amount of the increase in accordance with the time stated in the variation document.

12.6 Variations requested by the Builder

If the **Builder** has requested the variation, the **Builder** is only entitled to additional payment if the variation was necessary due to circumstances that could not have been reasonably foreseen by the **Builder** when the **Contract** was entered into.

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12.7 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.

12.8 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 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, 12.5 and 12.7 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 15 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, 12.5 and 12.7 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**;
 - inclement weather or any condition arising as a result of inclement weather;
 - 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;
 - any suspension of the **Works** under this **Contract**; or
 - 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

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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**:

- (a) the final progress claim; and
- (b) a certificate of **Practical Completion**:
 - (i) stating the date the **Works** reached **Practical Completion**; and
 - (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 18 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**.

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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**:

- (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 a reasonable amount for the value of the **Works** carried out under the **Contract** to the date the **Contract** is ended.

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 **Contract Price** 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 **Contract Price**, 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 a reasonable amount for the value 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**:

- (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**.

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.

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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;
- (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 – CONTRACT PRICE LESS THAN \$200,000

25.1 Application of Clause

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

- (a) the **Contract Price** 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**, increase the **Contract Price** by:

- (a) the total cost incurred by the **Builder** as a result of the delay; or
 - (b) an amount equal to 0.125% of the **Contract Price** for each week, or part week, of delay after the first four (4) weeks of delay;
- whichever is the lesser amount.

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**, increase the **Contract Price** by:

- (a) the total cost incurred by the **Builder** as a result of the delay; or
- (b) an amount equal to 0.05% of the **Contract Price** for each day of delay;

25.4 When increase to be paid

Unless otherwise agreed, any increase in the **Contract Price** is to be claimed by the **Builder** in its next progress claim after giving the written notice to the **Owner**.

25.5 Right not subject to claim for extension of time

To remove doubt, the **Builder's** right to an increase in the **Contract Price** is not subject to the **Builder** claiming an extension of the **Date for Practical Completion** in accordance with Clause 15.

26. COST ESCALATION – CONTRACT PRICE OVER \$200,000

26.1 Application of Clause

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

- (a) the **Contract Price** is greater than \$200,000 or the **Contract** is being administered by an architect engaged by the **Owner**;
- (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)

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**, increase the **Contract Price** by:

- (a) the total cost, loss or expense incurred by the **Builder** as a result of the delay; or
- (b) an amount equal to 0.05% of the **Contract Price** for each day of delay;

whichever is the greater amount.

26.3 When increase to be paid

Unless otherwise agreed, any increase in the **Contract Price** is to be claimed by the **Builder** in its next progress claim after giving the written notice to the **Owner**.

26.4 Right not subject to claim for extension of time

To remove doubt, the **Builder's** right to an increase in the **Contract Price** 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.

RESIDENTIAL BUILDING CONTRACT

29. MISCELLANEOUS

29.1 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**.

29.2 No adjustment to contract price 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 **Contract Price** shall not be adjusted if actual dimensions vary from estimated dimensions.

29.3 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**.

29.4 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.

29.5 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:

- (a) prepared under instruction, supervision or direction from the **Owner**; or
- (b) prepared from sketches supplied by the **Owner**; then:
 - (i) the **Owner** warrants that the use of the design, **Plans** or documents does not infringe copyright or any other intellectual property right; and
 - (ii) 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**.

29.6 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.

29.7 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.

29.8 Joint and several liability

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

29.9 Owner's agent

The person stated in Item 16 of the **Schedule** is to act as the **Owner's Agent**. Where no person is stated in Item 16, 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**.

29.10 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**.

29.11 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**.

29.12 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.

29.13 Replacement of Owner's Agent

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

29.14 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**.